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"Some Comments from A Specialist
Against A Tyranny of Specialist Labels
Within The Bar"

I.

I am privileged to contribute my observations today as a member of your panel on "The Specialization Proposals - Helpful or Harmful to the Administrative Lawyer? "

First, I suppose that I should engage in the self-certification that seems contemplated by most of the specialization proposals and qualify myself as a specialist, as indicated by the title of these remarks. I began practice in 1938 as a county seat trial lawyer in Indiana where I handled many different types of legal matters requiring specialized

knowledge in each problem area as a problem was brought to me by a client for advice or representation. During World War II, I became a specialist in international criminal law in the course of my naval service assignments. I edited two books in this area, which I assume is some evidence of specialization.

Then followed thirteen years of legal service at the Federal Trade Commission, including six years as General Counsel and nearly two as Chairman, and two more books. In seven years of private practice since then, I suppose that I should be termed an antitrust and trade regulation specialist, and a Federal administrative law specialist. However, I have been forced by the circumstances of my clients' problems to specialization in other areas, including the regulation of insurance, tariff law, international civil law, and even maritime law.

Perhaps in the recital just presented I have made some of the argument implicit in the title of these remarks, "Some Comments From A Specialist Against A Tyranny of Specialist Labels Within The Bar." Now, permit me to lay a philosophical basis for more implicit argument on the subject of my discussion here.

II.

A favorite character of dramatists is the clown who would play Hamlet. The great artist's frustration at type-casting is a fit subject of tragedy. One of the blessings we enjoy as lawyers is that we need never suffer this form of frustration. In America, where the bar is not divided, each lawyer may enjoy the privilege of acting in a variety of roles. In this country any neophyte clutching his certificate of admission can aspire to be advocate, teacher, counselor, prosecutor or judge. Some observers have deplored the lack of specialization of the American bar. I strongly disagree. I admit that there may be some benefits accruing from rigid classification within the bar, but I think that many such benefits are far outweighed by the freedom afforded to members of an unclassified bar where specialization is the product of natural selection.

Now, if an American lawyer is to enjoy the privilege of employing his talents in a variety of roles freely selected, he must assume a concomitant responsibility. In a law-oriented society the bar has a duty to maintain adequate performance in all the roles assigned to lawyers.

Americans are activists. Throughout our history we have not only given our highest marks to doers, but we have given the very

highest marks of our esteem to those who do in a spectacular manner. Consequently, we have continually glamorized the lawyer as advocate. The vigorous courtroom battler is the figure exalted in movies, in television, and in the public press. Nor is this a recent phenomenon. In the early days of our history the courtroom served as the theater of many a primitive frontier community. The circuit-riding advocate, resplendent with booming voice and florid gesture, was a demigod.

I would be the last to rob the advocate of one shred of public admiration, nor would I discourage one fledgling lawyer from testing his steel in the heat of the courtroom. Indeed, my own experience at the bar has been in large part that of trial experience. With all that, I would like to use this occasion to note a modest reminder that there are other roles in which a lawyer can perform service of the highest order, roles which demand a high order of creativity and intense application.

Dean Pound, in his monumental work The Lawyer from Antiquity to Modern Times, discusses the emerging roles the incipient legal profession was called upon to play in ancient Roman society. He mentions the procurators and advocates -- the trial lawyers of that day -- but, as may be easily understood when one thinks of the illustrious career of the author, he focuses attention on the emergence of the jurisconsult.

The jurisconsult was the adviser, the counselor, the teacher, the commentator of that day. Dean Pound notes the debt that modern society owes to these great teachers and writers. The Digest of Justinian is merely a codification of their writings. Today, however, I would direct your attention to the role of these great men as advisers and counselors to the merchants and traders and ordinary citizens of their community. I invite you to think again about the opportunity for creativity and service that this role offers. I am sure that if a general awareness of the indispensibility of the counselor in a great trading nation, whether it be ancient Rome or modern America, were widely disseminated, our profession would benefit greatly.

That indispensibility is easily illustrated. Think for a moment of just one common business occurrence, the merger of two corporations. Then think of the many demands upon the intelligence and resourcefulness of the counselors for the parties in that situation. Before the merger, attorneys must assist in the evaluation of the acquired and acquiring corporations. For instance, what is the worth of a patent presently being litigated? The probable effects of the merger must be tested against the provisions of Section 7 of the amended Clayton Act. If a security issue is to be made in connection with the merger, the statutes, rules and regulations administered by the Securities and Exchange Commission must be complied with. The regulations of stock exchange as well as

the State blue sky laws must be consulted. The corporation laws of the States of incorporation and the laws of the States in which business is conducted must be considered. The effect of the merger upon existent business relationships -- contracts with suppliers and distributors, outstanding loans, and the like -- must be assayed. A host of other details could be mentioned. I am sure that many of you here have been involved in similar complex transactions and that numerous considerations that I have not mentioned have occurred to you. My only purpose is to illustrate the number of balls that must be juggled, the number of problems that must be resolved, by the counselor in just one isolated business transaction. He must indeed be a specialist in many fields of law to resolve this one problem.

III.

In conclusion, I turn more explicitly to the tyranny of the specialist label.

I agree with that wise and talented gentleman, John D. Randall, Sr., who so successfully practices general corporate law in Cedar Rapids, Iowa, that:

"The good lawyer must be resourceful; the lawyer who is both successful and outstanding-a credit to the Bar-must either know the law in a simply enormous number of fields, or he must have some instinctive feel for what is probably the law. The instinct, in turn, can come only from a vast background of knowledge. The outstanding lawyer ought, in fact, to know everything about everything, the whole sweep of human learning. He ought to be a historian, scientist, a philosopher and a stylist in the handling of the English tongue and pen."

The specialist in the law becomes one through education or experience, or by a combination of both. In our complex society he very often becomes a specialist because the immediate needs of his client so require -- in other words, that one big, tough case may turn him into a specialist. If the situation is repeated often enough, he may achieve recognition as a specialist on a state, regional, or national level. In any event, his specialization usually is the product of a process of natural selection.

One arrives at the nub of the problem when one asks, "who is to affix the specialist label and by what standards shall the label be determined?"

The pitfalls of self-certification are so obvious and so delict that discussion of this method of selecting specialization labels is hardly

worth consideration. Almost equally filled with pitfalls would be the development of a bureaucracy to determine standards for labeling legal specialists and for their individual selection. Anyone who has observed the efforts of the U. S. Civil Service Commission to develop various salary grades for federal hearing examiners and other lawyers, based upon the level of difficulty of the case to which they apply their legal knowledge and training, will readily understand some of the basic problems and inconsistencies of this alternative. Efforts to assign adjectives such as "difficult", "more difficult", and "most difficult" would be laughable, were it not for the fact that civil service classification experts seem wedded quite seriously to this means of classifying legal problems and the salaries of the lawyers or administrative judges who will handle these assumed levels of the problems of our citizens. This is not just a tyranny of labels; it is a tyranny of adjectives.

I would like to make one more point in this Alice-in-Wonderland excursion into legal specialization. I note a tentative position of the American Bar Association's Section of General Practice that one necessary limitation on the creation of a category of legal specialists is that such

specialists cannot "associate with lawyers outside of the specialty or trainees for the specialty". The specialist apparently must be one who practices solo, lives in an ivory tower, and acts only as a lawyer's lawyer, unsullied by contact with the clients who have the problems.

Again, this presents a laughable and unreal situation. In fact, we know that a large proportion of the real legal specialists tend to cluster together in medium-size or large metropolitan law firms, even though they may constitute only a small percentage of the 6,000 members of the Antitrust Section or the nearly 3,500 lawyers who belong to the Section of Administrative Law of the American Bar Association, to use two examples of specialist groups. Are they to be deprived of the label because they associate with specialists in other legal areas and train younger lawyers into their speciality, or because they deal directly with clients who have legal problems in their area of specialty? If so, this is indeed tyranny, both as to the bar and as to the public.

I close with these thoughts from Alice In Wonderland & Through the Looking Glass:

"Alice could only look puzzled; she was thinking of the pudding.

'You are sad,' the Knight said in an anxious tone. 'Let me sing you a song to comfort you.'

'Is it very long?' Alice asked, for she had heard a good deal of poetry that day.

'It's long,' said the Knight, 'but it's very, very beautiful. Everybody that hears me sing it - either it brings the tears into their eyes, or else -'

'Or else what?' said Alice, for the Knight had made a sudden pause.

'Or else it doesn't, you know. The name of the song is called 'Haddocks' Eyes'.'

'Oh, that's the name of the song, is it?' Alice said, trying to feel interested.

'No, you don't understand,' the Knight said, looking a little vexed. 'That's what the name is called. The name really is 'The Aged, Aged Man'.'

'Then I ought to have said, 'That's what the song is called?'' Alice corrected herself.

'No, you oughtn't; that's quite another thing! The song is called 'Ways and Means'; but that's only what it's called, you know!'

'Well, what is the song, then?' said Alice, who was by this time completely bewildered.

'I was coming to that,' the Knight said. 'The song really is 'A-sitting on a Gate'; and the tune's my own invention.' "