

6-21-1975

## Montana Bar Speech

Max S. Baucus

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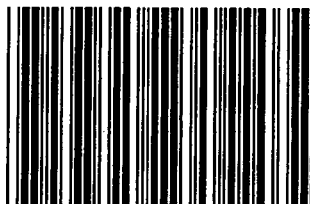
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BAUCUS

SLIGHTLY MORE THAN A CENTURY AGO, A MONTANAN NAMED HENRY MORLEY MADE AN ENTRY IN HIS DIARY. IT WAS A STATEMENT OF LAMENT. HE WAS CHAGRINED BY THE GROWTH AND CIVILIZATION SPRINGING UP AROUND HIM.

SCHOOLS AND CHURCHES WERE BEING BUILT, STORES AND THEATERS WERE APPEARING HERE AND THERE, LECTURERS AND THE LYCEUM WERE BRINGING CULTURE AND EDUCATION TO MONTANA.

FABULOUS LITTLE CENTERS OF WEALTH WITH NAMES THAT STIR THE IMAGINATION WERE DYING--TOWNS LIKE ALDER GULCH, BANNACK, EMIGRANT, CONFEDERATE, LAST CHANCE AND SILVER BOW.

DOCTORS, ACCOUNTANTS, DENTISTS, CLERGYMEN, AND, YES, LAWYERS WERE FLOODING INTO MONTANA.

HENRY MORLEY HAD NO PARTICULAR TASTE FOR THE NEW CIVILIZATION, BUT HE KNEW IT WAS INEVITABLE. HE ACCEPTED--AS GRACEFULLY AS HIS PIONEER SPIRIT WOULD LET HIM--THE DOCTORS AND DENTISTS. THEY BROUGHT THE PROSPECT OF GOOD HEALTH AND GOOD TEETH TO MONTANA.

HE PUT UP WITH TEACHERS, CLERGY, MERCHANTS AND EVEN ACTORS REMARKABLY WELL. BUT LISTEN TO WHAT HE WROTE IN HIS DIARY ONE NIGHT MORE THAN A CENTURY AGO--"WE HAD NO NEED OF LAW UNTIL THE LAWYERS CAME."

THIS TO ME IS AN INCREDIBLE STATEMENT, EVEN THOUGH IT CAME FROM A GRIZZLED PIONEER-MINER. THE DECADES OF HENRY MORLEY'S MONTANA WERE MARKED WITH VIOLENCE, INSTABILITY, CHRONIC ROWDYISM AND VIGILANTEISM.

THE FACT IS, MONTANA HAD A DIRE NEED FOR LAW. I THINK EVEN HENRY MORLEY WOULD HAVE AGREED WITH THIS IF SOMEONE COULD HAVE MADE HIM THINK REALLY SERIOUSLY ABOUT IT. I'M CERTAIN HIS QUARREL WAS NOT WITH THE LAW, BUT RATHER WITH LAWYERS.

LIKE SO MANY OF HIS ERA-AND THIS ONE, TOO,-HE VIEWED THE LAW AS A TOOL OF LAWYERS, A TOOL WITH WHICH LAWYERS COULD PRY AWAY THE HARD-EARNED RICHES OF OTHERS.

I KNOW IT'S NOT NEWS TO YOU THAT THIS KIND OF CYNICISM AND MISTRUST ARE ALIVE AND WELL TODAY. YOU'VE DISCUSSED THE BAD REPUTATION OF THE LEGAL PROFESSION IN MANY A SEMINAR, CONVENTION AND CONFERENCE. YOU'VE ENDURED IT, THE VAST MAJORITY OF YOU, VERY WELL. WE LAWYERS, HOWEVER, CANNOT AND MUST NOT BE CONTENT MERELY TO ENDURE A BAD SITUATION. WE MUST CHANGE IT. IF WE DO NOT CHANGE IT, THE VERY LAW ITSELF IS IN JEOPARDY.

THIS FACT IS PAINFULLY CLEAR TO ME AND BECOMES MORE SO IN THE COURSE OF MY EVERY DAY DUTIES AS A CONGRESSMAN. I RECEIVE MOUNTAINS OF LETTERS FROM PEOPLE--BOTH IN OUR STATE AND FROM OUTSIDE--WHO LACK FAITH IN GOVERNMENT AND THE LAW. I MARVEL DAILY AT THE INTENSE MISTRUST OF GOVERNMENT PROGRAMS SUCH AS VETERANS ADMINISTRATION BENEFITS, SOCIAL SECURITY AND FOOD STAMPS.

THERE IS A WIDESPREAD BELIEF THAT THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT HAVE SOLD OUT TO BIG BUSINESS AND SPECIAL INTERESTS. SO MANY BELIEVE WE IN CONGRESS NO LONGER REPRESENT THEIR INTERESTS, BUT RATHER THE INTERESTS OF THOSE WITH THE MONEY TO BUY US AND POWER TO INTIMIDATE US. THEY DISTRUST AND OFTEN DESPISE THE LEGISLATIVE AND ADMINISTRATIVE SOURCES OF LAW; THEY QUESTION THE JUDICIARY. THEY LOOK AT THE LAW AS A TOOL USED BY LAWYERS, CONGRESSMEN, ADMINISTRATORS AND JUDGES TO PRY THE HARD-EARNED RICHES AWAY FROM THE UN-RICH AND THE UN-POWERFUL.

CAN WE BLAME THE HENRY MORLEYS OF THE LATE TWENTIETH CENTURY FOR THEIR VOCAL CYNICISM TOWARD LAWYERS, THE SOURCES OF LAW, AND THE LAW ITSELF? OBVIOUSLY NOT! THE MORLEYS OF TODAY WATCHED THE UNFOLDING OF WATERGATE ON TELEVISION, IN NEWSPAPERS AND MAGAZINES.

THEY BORE THE BURDEN OF DECEITFUL AND UNLAWFUL PRACTICES OF LAWYERS LIKE EX-ATTORNEY GENERAL JOHN MITCHELL AND EX-VICE PRESIDENT SPIRO AGNEW.

THEY SUFFERED THE SHAME OF LOSING A LAWYER-PRESIDENT WHO CHOSE TO FORFEIT HIS OFFICE RATHER THAN FACE A LEGAL EXAMINATION OF HIS ALLEGED MISDEEDS.

THE ON-GOING INVESTIGATION INTO ILLEGAL ACTIVITIES OF THE CIA AND THE FBI ADD FUEL TO THEIR BURNING CYNICISM AND MISTRUST.

A MAJOR PART OF OUR STOCK-IN-TRADE AS ATTORNEYS IS TO AFFIX BLAME. IF WE CANNOT BLAME THE MODERN MORLEYS FOR THEIR CYNISM AND CONTEMPT FOR THE LAW, WHOM, THEN DO WE BLAME? WHOM CAN WE BLAME IF DOING SO IS TO HAVE <sup>A</sup> POSITIVE EFFECT?

WE HAVE NO CHOICE BUT TO BLAME OURSELVES. WE MUST ACCEPT AND ACT ON THIS SELF-IMPOSED VERDICT. WE MUST BASE OUR PROFESSIONAL ACTIVITIES FIRST AND FOREMOST ON OUR LOST SOCIAL CONSCIOUSNESS. FOR TOO LONG THE ALMIGHTY DOLLAR HAS ECLIPSED THIS SOCIAL CONSCIOUSNESS, AND THE RESULTANT SHADOW APPEARS AS A BLACK AND UGLY MARK ON THE FACE OF THE LEGAL PROFESSION.

I AM NOT SAYING THAT ALL LAWYERS HAVE LOST THE CONSCIOUSNESS OF SOCIAL NEED. I AM SAYING, HOWEVER, THAT THE REPUTATION GENERATED BY THE ACTIONS OF A COMPARATIVE FEW HAS SOILED US ALL. WE MUST INSIST THAT ALL OUR COLLEAGUES HAVE THE COURAGE TO RECOGNIZE THAT ACTS WHICH ARE STRICTLY LEGAL ARE NOT ALWAYS DECENT.

IT MIGHT BE IN ORDER AT THIS POINT TO FOCUS IN ON WHAT IS MEANT BY SOCIAL CONSCIOUSNESS. RATHER THAN LAUNCH INTO A LONG DRY EXPLANATION OF THE TERM, LET'S LOOK AT AN EXAMPLE.

WHILE HENRY MORLEY WAS PUTTING HIS MISTRUST OF LAWYERS IN THE PAGES OF HIS DIARY, A YOUNGSTER NAMED THOMAS WALSH WAS GROWING UP IN THE SMALL IRISH SETTLEMENT OF TWO RIVERS, WISCONSIN.

IN THE FALL OF 1883, THIS RATHER THIN AND INTENSE YOUNG MAN ENTERED THE LAW SCHOOL AT THE UNIVERSITY OF WISCONSIN. AFTER HIS GRADUATION, TOM JOINED THE STREAM OF FOUR MILLION AMERICANS WHO MIGRATED WESTWARD IN SEARCH OF THEIR FORTUNES UNDER CRISP, ARID SKIES.

TOM WALSH HAD HEARD MUCH ABOUT MONTANA BEFORE HE GOT TO HELENA. HE KNEW THE DRY CLIMATE WOULD BE GOOD FOR HIS ASTHMA. HE ALSO KNEW THAT HELENA, A RICH MINING COMMUNITY WITH A POPULATION OF ONLY 14,000 IN 1890, HAD MORE THAN FIFTY MILLIONAIRES. IT WAS RUMORED TO BE THE RICHEST CITY PER CAPITA IN THE ENTIRE COUNTRY.

TOM CAME TO HELENA TO PRACTICE LAW. ONE OF HIS EARLY CAUSES WAS ON BEHALF A DESTITUTE CLIENT WHOSE CASE WAS LITIGATED FOR FOUR YEARS. WALSH WON THAT CASE, HOWEVER, AND RECEIVED A HANDSOME SUM FROM HIS NEWLY AFFLUENT CLIENT, A SUM FAR GREATER THAN HE DEMANDED.

FROM THIS CASE AND OTHERS LIKE IT, TOM ACQUIRED WHAT HE CALLED A "DELIGHT OF SUCCEEDING FOR THE UNDERDOG." IN TOM WALSH'S ERA, THERE WERE A GREAT MANY UNDERDOGS, JUST AS THERE ARE TODAY. TYRANNICAL CORPORATE FORCES RAN RAMPANT IN MONTANA DURING THAT TIME. WE ALL KNOW HOW THE MINING INTERESTS <sup>BOUGHT</sup> ~~WENT~~ THEIR WAY INTO THE LEGISLATURE AND THE GOVERNOR'S MANSION, INTO THE JUDICIARY AND THE PRESS.

UNDERDOGS BY THEMSELVES WERE NO MATCH FOR SUCH POWERS. WITH TOM WALSH, HOWEVER, THERE WAS A CHANCE FOR JUSTICE AND EQUITY FOR THE UNDERDOG. HE SAW THE <sup>INDECENCY</sup> ~~WAS~~ SUFFERED BY THOSE MASSES WHOSE LIVES AND LIVELIHOODS WERE IN THE GRIP OF THE CORPORATE GIANT. HE NEVER HESITATED TO PLUNGE INTO A FIGHT ON BEHALF OF THE UN-RICH AND THE UN-POWERFUL.



TOM WALSH WAS A LAWYER. HE LOVED AND RESPECTED THE LAW. HE RECOGNIZED THAT THE LAW EXTENDED VALID PROTECTION AND ASSURANCES EVEN TO THE ANACONDA COPPER COMPANY (SMILE) --NOT TO BE CONFUSED WITH THE PRESENT DAY ANACONDA MINING, INC.

ON OCCASION HE REPRESENTED ANACONDA, AND DID SUCH AN OUTSTANDING JOB THAT THE COMPANY OFFERED HIM A POSITION AS COUNSEL -- FOR A HIGH SALARY, I MIGHT ADD. LISTEN TO WHAT TOM WROTE IN A LETTER TO BURTON K. WHEELER MANY YEARS LATER ABOUT THIS OFFER:

"...I ONCE HAD A MOST ALLURING OFFER TO GO TO BUTTE WHICH I PROMPTLY AND EMPHATICALLY DECLINED. I HAVE OFTEN CONGRATULATED MYSELF SINCE ON THE GOOD SENSE I SHOWED IN THE FACE OF A VERY DECIDED TEMPTATION. IN THE FIRST PLACE I REMAINED, AS I ALWAYS HAD BEEN, NO MAN'S MAN. AS I REVIEW THE SITUATION NOW, HOWEVER, I CAN SEE THAT HAD I GONE TO BUTTE I SHOULD EITHER HAVE FALLEN INTO ONE CLASS AND BEEN UNDER...THE SUSPICION OF BEING SUBJECT TO ORDERS, OR IN THE OTHER CLASS...SOMETHING IN THE NATURE OF OUTLAWS."

TOM WALSH WAS CONSCIOUS THEN AS WE ARE TODAY OF THE TATTERED IMAGE OUR PROFESSION PRESENTS. BUT HE IS ALSO THE **SHINING** EXAMPLE OF WHAT WE CAN DO TO RESTORE THE LUSTRE.

BY HIS EXAMPLE IN BOTH WORDS AND DEEDS WE CAN  
BE THE FORCE THAT DESTROYS THE CYNICISM CONTINUALLY THREATENING THE  
VERY FOUNDATION OF THE LAW.

ON JANUARY 24, 1924, SENATOR THOMAS WALSH, <sup>FROM MONTANA</sup>  
NATIONALLY ~~RECOGNIZED~~ <sup>RENOWNED</sup> FOR HIS IMPECCABLE CHARACTER, WAS RECOGNIZED  
BY THE VICE PRESIDENT OF THE UNITED STATES TO DELIVER A SPEECH <sup>IN THE SENATE</sup>  
LIKE THE BRIEFS HE WROTE IN HIS YEARS OF PRACTICING LAW, IT WAS  
PENETRATING AND SUCCINCT.

WHEN HE WAS FINISHED, A SHOCKING SCANDAL HAD  
BEEN LAID <sup>BARE</sup> ~~OPEN~~ TO THE PUBLIC AND TO CONGRESS, AN AFFAIR OF INCREDIBLE  
CORRUPTION IN THE LEASING OF THE NATION'S OIL RESERVES, AN AFFAIR  
THAT HAD TAKEN HIM MONTHS OF LABOR TO EXPOSE. IT WAS CALLED THE  
TEAPOT DOME SCANDAL. IT TOPPLED A PRESIDENCY. IT PROVED THAT HENRY  
MORLEY WAS WRONG, THAT THERE IS A GREAT NEED FOR LAW AND GOOD LAWYERS  
TO APPLY THE LAW.

PERHAPS WE CANNOT ALL BE THOMAS WALSHES. BUT WE CAN BE GOOD LAWYERS. WE CAN REFUSE TO AUCTION OFF OUR SENSE OF DECENCY. WE CAN STRIVE TO ENSURE THE CARRIAGE OF JUSTICE EVEN IF DOING SO MEANS FEWER DOLLARS IN OUR POCKETS. WE CAN REDOUBLE OUR EFFORTS TO PROVE THAT TOCQUEVILLE WAS RIGHT IN ASSERTING THAT LAWYERS ARE THE NUTS AND BOLTS, THE FABRIC OF AMERICAN SOCIETY. LET US MAKE CERTAIN THAT THIS FABRIC IS STRONG, THAT IT WILL BEAR UP UNDER PRESSURE FROM THOSE WHO WOULD SACRIFICE THE INTERESTS OF THE MANY ON BEHALF OF A FEW.

THANK YOU VERY MUCH.