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THE LAWYER'S RESPONSIBILITIES

LUTHER W. YOUNGDAHL*

The law schools of our country face a great frontier in developing graduates who are imbued with the importance of public service—activity beyond their regular professional work—walking the extra mile to make the community a better place in which to live.

The profession of law has at all times and in all countries been a favored and honored profession. Justice Holmes, in speaking of the bar, once said: "And what a profession it is! No doubt everything is interesting when it is understood and seen in connection with the rest of things. Every calling is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge as deep into the stream of life—so share its passions, its battles, its despair, its triumphs, both as witness and actor?"

Lawyers framed the Constitution. They swarm in all departments of state and national government. They help make, execute and interpret laws in positions of leadership as governors, legislators and judges. Lawyers appear everywhere and in all stages of business transactions and there is hardly an event of any magnitude in commercial affairs in which their cooperation and counsel are not solicited. They are the trusted adviser of friends and clients.

Someone has stated that our government is said to be a government of the people, by the people, for the people—and it is not going too far to say, "subject to lawyers".

Because the influence of lawyers in all branches of public life is most profound and penetrating, people have the right to demand that lawyers should be intelligent, capable, honest and devoted to public service and to the administration of justice. When hundreds of lawyers are turned out upon the community each year—when they exercise leadership in every department of government—no question is of more importance to the public than to know whether this dominating class is living up to its true mission.

†An address delivered at the Annual Law School Day Banquet, University of Missouri, April 30, 1955.

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The duty of a lawyer is three-fold:

First: To his client as an officer and fiduciary.

Second: To the court as an officer and adviser and as a team member in the administration of justice.

Third: To his community and country as a citizen and leader to provide responsible leadership.

It is impossible to separate this three-fold duty. A lawyer cannot perform his duty to one and neglect the other.

Let us first consider the lawyer in his relationship to his client as an officer and fiduciary. Many lawyers fail to appreciate the real and full nature of their professional duties. However, in all varieties of affairs where individuals are compelled to repose confidence in others, the breach of it is the exception, not the rule. Lawyers are the most prominent illustration of this truth. Fidelity, zealousness, industry, all kinds of personal sacrifices in the interest of their client are their predominating traits.

Lawyers are often unjustly criticized. Individual misdoings are widely publicized. Of the devoted and faithful service of the many, the public hears little and knows next to nothing. Justice Cardozo aptly pointed out, "How many are judging us not by our best but by our worst and are visiting upon one and all the scorn and condemnation which should be the portion of the few. The fashion is in these times to dwell upon the shortcomings of the bar and to touch lightly on its virtues."

The ideal that lawyers have created for their own guidance finds expression in the preamble of the canons of professional ethics of the American Bar Association. It is there inscribed: "The future of the republic to a great extent depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and motives of the members of our profession are such as to merit the approval of all just men." The abuse of power and opportunity and of unlimited confidence are the primary sins for which lawyers are answerable.

A lawyer wields tremendous power. If he approves of his client's demand, he can issue or cause to be issued process which will bring into court the proudest millionaire, the most powerful magnate or the most influential citizen or corporation. The claim may be unfounded, yet the citizen must obey. A lawyer, the day after he is admitted, though he may be the worst scoundrel in the profession, may, without any sem-

blance of right, summons the worthiest individual to answer the demands of a professional blackmailer and although after years of litigation in which character, property and expense are involved, the suit is dismissed as unfounded, yet the lawyer sits serenely in his office, secure from liability, exempted from acts which often, through his negligence or design, have caused untold mischief and damage. All one needs to do is consult the records of the courts to see the dismissals of cases which cannot be proved. Such authority as this is not exceeded in any other individual in any system of government.

As one realizes that a lawyer is a kind of a judge who makes preliminary inquiry into his client's rights and duties, the moral responsibility of a lawyer becomes very great and his office assumes an importance which superficial inquiry would not ascribe to it.

In the commencement of suits the lawyer has need of honesty, learning, prudence and patriotism. It rests with him to preserve the purity of the legal system—to separate the chaff of fraud, exaggeration and doubt from the wheat of fact and truth. For if from ignorance, dishonesty or indifference to the effects of his actions he advises the commencement of an unjust suit, or the evasion or denial of a legal claim, he defeats the objectives of the law, prostitutes its form and brings its administration into contempt and disrepute.

Sheltered in the garb of his profession, the lawyer can always deflect the cause of justice and defraud the law. It is hard to detect him. He is representing another's interest and is not responsible for his client's morals or fraud and both public policy and express statute protect him from uttering one word passed in professional counsel. Lawyers, therefore, have great opportunities for good or evil. Is it not of paramount importance that individuals who are clothed with such extensive powers should be fully instructed in all their duties and functions before they are permitted to exercise them?

In the second place: The lawyer has a responsibility to the court as an officer and adviser and as a partner with the court in the administration of justice. In the District of Columbia we have an illustrious example of what can be achieved through the cooperation of judges, lawyers and laymen in the administration of justice. The District of Columbia Committee of the American Bar Association on Improving the Administration of Justice has made an outstanding record through this cooperation. On this Committee there are ten judges, twenty lawyers

and thirty-five laymen. The laymen are representatives of the professions and business. Among their accomplishments can be listed the new United States Court House, one of the finest in the country; supporting personnel; improvement in the manner of selecting and instructing jurors; establishment of courses in the public schools on the importance and strengthened disciplinary procedures and the necessity of the elimination significance of jury duty; traffic safety improvement; rehabilitation work with individuals paroled from penal institutions, including the "sponsor movement"; mental health work; the establishment of a psychiatric clinic in connection with the courts; and work in connection with the Youth Authority Act.

Another important consideration in this partnership between judges and lawyers in the administration of justice is the matter of bringing calendars to date. Pre-trial and discovery procedure under the new Federal Rules have assisted greatly, but there is still much work to be done, and our profession will continue to be in disrepute as long as we have such delays between the time of calendaring a case for trial and the trial date.

Every young lawyer should be made aware at some point in the education process of defects in the administration of justice most frequently subjected to criticism and of the current reforms already set in as the merits of the profession and should understand the importance of motion by public spirited lawyers, bar associations and other groups within the profession. Lawyers should know the shortcomings as well of the unauthorized practice of law. He ought, before he plunges into practice, acquire an objective and dispassionate view of the expense, delay and cumbersomeness of much of our litigation, the inefficiency of our court organization, improper methods of selecting judges and the weakness of criminal law enforcement. We should attempt to inspire leadership in young lawyers in these important fields in the improvement of the administration of justice.

The third duty of the lawyer which I should like to particularly stress tonight is the responsibility of the lawyer to his community and country as a citizen to provide leadership. Never has there been a greater frontier in the law schools in the promotion of responsible leadership among lawyers than there is today.

As the profession of law has emerged from the professional state to

a business in the last quarter-century, the lawyer stands before the community shorn of his prestige, clothed in the unattractive garb of a mere commercial agent with his social prestige disappeared.

The occasions upon which an attorney may be required to act touch, in many instances, the deepest and most precious concern of men, women and children. They may involve the liberty, property, happiness, character and life of his client. That doesn't mean that the calling of a lawyer has lost all of its honorableness or his general influence has been dissipated, but it does mean that the natural and legitimate influence which his office entitles him to wield no longer exists in its proper vigor.

The profession of law must be returned to its original concept as a profession. It is not a craft or trade, it is a profession, the main purpose of which is to aid in the doing of justice according to law between the state and the individual and between man and man. Its members are not, and ought not to be hired servants of their clients. They are independent officers of the court, owing a duty to the public as well as to private interests.

It is, of course, true that the lawyer earns his livelihood by the practice of his profession. In this sense it can doubtless be said that he has a monetary incentive in his work. It would be unrealistic to suggest that earning a living is not an important consideration in the life of a lawyer. Rightly conceived, however, his profession is a branch of the public service rather than an ordinary business vocation. He is a sworn officer of the courts and admitted to practice only after an examination into his preparation and an investigation of his character. The prime object of the profession should be the service it can render to humanity—reward of financial gain should be a subordinate consideration, and the lawyer with the proper conception of the profession need have no fear of financial reward.

Now, as always, the essential ingredient in effective, vital democracy is one thing alone—individual willingness to shoulder responsibility for the conduct of government. Lose that and we are doomed to crumble and deteriorate from within. The saving of our way of life is not a job delegated solely to a group of young men who were so recently fighting and dying on the hills and in the valleys of Korea. Whether we shall survive the inner dangers hinges on whether we are willing to recognize the individual responsibility that is ours.

Many have come to the dangerous belief that others should make the sacrifices for good government while they are merely spectators complaining about how things are done.

When Jack Johnson, the great Negro heavyweight, fought Jess Willard back in 1915, a spectator abused him—criticizing his style, color, ancestry and his courage in the ring. Between rounds Johnson leaned over the ropes, smiled and said. “Man, you’re down there talking—I’m up here fighting.” Many of us are afflicted with the disease of “spectatoritis.” We are sitting in the stands, knowing exactly what plays should have been called—after the last one has failed.

The corruption of governments the world over is caused by the failure of the average citizen to meet the responsibilities toward government. Good government begins on the main streets. The greatest strength of those dedicated to wrong lies in the smugness of those dedicated to right. Government is our business and we get just exactly the type of government we ask for. If we are to have good government preserve our freedom, the lawyer must be in the lead more than ever before and the law schools must inspire this leadership.

An American poet has indicted the profession of law, accusing it of deficiency in those qualities which western civilization stresses, as he states:

“The law the lawyers know about
Is property and land
But why the leaves are on the trees,
And why the waves disturb the seas
Why honey is the food of bees,
Why horses have such tender knees
Why winters come when rivers freeze
Why Faith is more than what one sees
And hope survives the worst disease
And charity is more than these—
They do not understand.”

(L. D. Walters in Pepler Anthology
of Recent Poetry, 1920)

De Tocqueville once remarked, “I cannot believe that a republic can subsist if the influence of the lawyers in the public business does not increase in proportion to the power of the people.”

In these days when the world we have known is disintegrating with bewildering rapidity and no one can predict the future, the lawyers face

a greater challenge than ever before. They will be called upon in increasing measure to play a major role. In the great crises of the past, the lawyers have not failed. They will not fail now and we must convince the public to share this faith.

Our duty to the state cannot be accomplished merely by living clean, harmless lives, nor by building up a lucrative law practice, but the bar, if it is to carry out the ends for which it is fitted and for which it was created, is expected to give some thought to public affairs for the benefit of the public rather than for the benefit of individuals.

There needs to be a rebirth of the professional spirit of the bar. Admission to the profession should be considered a call to public service. Many law firms recognize an obligation to community effort. Consent is given to one or two partners to take part in hospital drives, legal aid work, community fund activities, etc. On occasion a partner is lent to the government. This is important public service, but in these days *each* individual must dedicate his talents to public service—nothing less than that will suffice in these critical days when the fate of the world is so uncertain.

The lawyer's education in the history of our institutions which protect the freedom of the people—in the history of our country—in the Constitution and laws—their knowledge in the process of government and of political parties and their true purposes—their ability to analyze the pitfalls of incorrect thought and action, impose upon them a great public obligation. Their profound duty is to see that the foundations of free government are not shaken; that sound thinking and action prevail; that the citizens are aroused to constant dangers that lurk at every turn and to the necessity of eternal vigilance in protecting liberty.

The only way we can be sure of continued free government is an alert, articulate, aggressive and intelligent citizenry, participating in all processes of government. The lawyer-citizen should take the lead to save, preserve and perpetuate our free institutions and to inspire the people to accept the duties and obligations of citizenship by the exercise of thought and action in all these processes of government. The study of law will be most fruitful when we recognize the fact that the subject matter of the law is human relations in which there is a vast field to explore and when the skills and perspectives of psychology, philosophy, ethics, political science, government, sociology and psychiatry are effectively used in the work of the law school.

The lawyer is the product of democracy. When dictators seize power, they liquidate the lawyers. They want no lawyers in their way asserting the rights of citizens. Lawyers have rightly been called the soldiers of our civil life. One leader in law school education states that his students have returned to tell him, in recent years, that education extends beyond instruction and knowledge and the discipline of the mind. Teachers must develop a sense of responsibility in the use of knowledge. We must have failed to some extent in this regard, otherwise the profession would not be subject to the indictment so often placed against it.

No greater peril confronts us than the accumulation of knowledge which is not devoted to benevolent and beneficial ends. Knowledge must be endowed with the virtue of usefulness. That is the supreme function of a professional education.

With a growing realization of the absolute interdependence of law and other social sciences, law schools have been weaving into the teaching of law, in recent years, pertinent material from the social sciences. In fifteen to twenty-five years, the students of law schools will be managing all our judicial offices, filling our legislative halls, occupying the governors' chairs and providing the largest proportion of cabinet officers and other executive positions of government.

We must be aware that substantially all graduates will have moved to positions in their communities where—for better or for worse—they will wield and occupy places in our civic, social, religious and industrial affairs—places for which intelligent, responsible leadership is of the very essence. Should we not then be consciously directing our programs toward training our students for the future that is so inevitably before them? Law schools must increase their contribution to the society of persons possessed of the qualities of responsible leadership.

Since we are living under American life, it is important that the lawyer understand those values which distinguish it from totalitarian states. He must have a sense of responsiveness of organized government to the popular will; a sense that the objective of government is not self-perpetuation and power, but the preservation of human values; that democracy is a meaningful relationship among people, based on the dignity of man and the reverence for every life; that this entails an appreciation of the enriching qualities of diversity of viewpoint and of the danger of conformity and the menace of the stereotype; that this

requires a tolerance and an insistent and stubborn protection of the basic rights of minorities—racial, religious and political.

Without the freedom to differ we fail to understand the resources upon which we have built our strength in the past. Lawyers must be taught to understand their part in this struggle in the continued existence of our form of government and must be able to convey to others through their inspired leadership a sense of this significance. They must be active and aggressive in strengthening all these institutions as if they were particularly their chosen guardians and for that reason, they must be alert in preserving and perpetuating the values that are at their very foundation.

A legal education has too long shirked its responsibility to see that lawyers have acquired a sense of ethical values that relate not merely to client and court, not merely to community activity, but to the understanding and strengthening of American institutions for the increasing recognition of the dignity of the personality.

In this changed concept of the law school's responsibility—what may emerge? Already, of course, some of these changes have taken place in including in the curriculum of the law school a course in the place of law in society; the contribution of lawyers to the building of our democratic institutions; civil liberties and human personality; revised courses in ethics; comparative study of social values that are characteristic of the democratic and totalitarian states; training to perceive the ethical issue. The learning process must abhor coercion of values. The hope is that the choice will be wise, but there must be a protection of the freedom to make the choice. Only in this way will our teaching be consistent with the values we cherish most. Only in this way will we train leaders sincerely dedicated to the American tradition.

What a great frontier and challenge for the law schools to produce graduates who understand the basic philosophy of our institutions, who can interpret them and who, through wise, sympathetic and dedicated leadership, can construct for us a stronger, truer democracy!