The Responsibility of the Lawyer

Hon. Harold L. Sebring

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THE RESPONSIBILITY OF THE LAWYER

INTRODUCTION—On the occasion of the Dean’s Dinner, held in honor of the Spring (1954) graduating class, the law school was honored to have as its guest speaker Hon. Harold L. Sebring, Justice of the Supreme Court of Florida, since retired, now Dean of the College of Law of the H. B. Stetson University.

Because of the significance of his address, both to law students and to attorneys in these times, the Miami Law Quarterly presents the following text of Justice Sebring’s address.

Russell A. Rasco, Dean

All over America, this week ceremonies such as the one we are observing here are being held to honor our young men and women who have completed their formal training in the law schools, and are now about to begin their careers in the engaging but exacting profession of the law. If the law schools which have prepared these young people have kept pace with the demands of modern times, these graduates have not only been given adequate instruction in the basic subjects which were thought to be so indispensable in the practice 30 or 40 years ago, but they have also been given instruction in a great variety of new subjects that were not well known in that day—such as tax law, insurance law, labor law, administrative law, Latin-American comparative law, and the like—but that are so necessary to the practitioner in this new and complex age.

And if the faculties who have taught these graduates have been at all faithful to their sacred trust, they have found a spot somewhere within the framework of their busy schedules to talk a great deal about the ethics and the citizenship responsibilities of the profession, without a real understanding of which any extensive knowledge of the law may be not only detrimental to the individual, but to the state as well. They have found the time to hammer into the minds of their students the basic concept that the practice of the law is not a mere trade or business guided by the morals and the standards of the market place, but an ancient and honorable profession involving the exercise of a public trust—the discharge of which requires the highest degree of professional morality. They have found the means to instill in the hearts
of their students a deep and everlasting appreciation of the fact that the practice of the law is a noble calling which demands, of the individual who engages in it, much more of honesty than it does of "moxie," much more of industry than it does of genius—that the venerable and distinguished order of St. Yves has no permanent place in its ranks for the fellow who has an inclination to cut corners, or to pick up a "quick dollar" at the expense of his fellow-man.

It is about this latter area of legal training, "The Lawyer's Responsibility to the Profession and the Public"—a phase of training I deem to be the most important in the process of educating the lawyer—that I want to talk about for a little while tonight.

**DUTY OF LAWYER TO CLIENT**

The first phase of the subject with which I shall deal, is in regard to the professional duty that the lawyer owes to his client. It is spelled out in plain and simple terms in the Oath of Admission to which all lawyers subscribe when they are admitted to the practice. It involves a three-fold obligation arising from the attorney-client relationship:

1) I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land . . . .

2) I will maintain the confidence and preserve inviolate the secrets of my client . . . .

3) I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice . . . .

As will be observed, the initial obligation—to counsel or maintain only such causes or defenses as are honestly debatable under the law of the land—is framed in a double aspect. The first of these is, that while the lawyer has the important duty of prosecuting and defending the causes of his client with zeal, he has the equally important duty of performing another vital but seldom-mentioned function in respect to such causes—that of resolving conflicts rather than of promoting them, of settling disputes, when this can be done without sacrifice to his client, rather than of putting them in suit. The second aspect is, that while the lawyer may not honorably offer his services for sale to any and every bidder—indeed he must refrain from doing so when convinced that justice will not be promoted—it is not for him to determine, in the first instance, the ultimate truth or falsity of a cause or defense that has been committed to his hands, provided it is one that is "honestly debatable under the law of the land," for that is a matter for determination and decision by a duly constituted court or jury in a regular court proceeding in which the issue is fairly and fully presented. Out of this concept comes, of course, the much misunderstood but nevertheless imperative obligation
of the lawyer to accept the cause or defense of a client, even though it may not always be one in which the lawyer thoroughly believes, or one as to which the lawyer, personally, can condone the conduct of the client.

The second precept of the oath—to maintain the confidence and preserve the secrets of the client—is framed in recognition of the fact that the attorney-client relationship is, without doubt, the most delicate existent in the conduct of business or professional affairs; and that when a lawyer undertakes this great fiduciary relation as spokesman and alter ego for a client, he has a fundamental ethical duty not to disclose the confidences of his client or to let him down in any other way.

In respect to this obligation, it should be noted that there is nobody around to police the lawyer to see that he lives up to its terms; no one is there to look over his shoulder and ascertain whether or not a confidence is betrayed. There is no human agency to forestall such conduct—that is, no human agency but one's own conscience and one's own sense of honor and rectitude. His conduct in this regard is measured, as Lord Moulton once put it, only by the “extent of obedience to the unenforceable.” But woe to the “bungling blabbermouth,” or the “garrulous gossip” who has looked too much upon the wine; who, in unguarded moments reveals the secrets of his client. Unless he quickly mends his ways, his course in the profession will not have long to run. For while there is no human agency to police the conduct of the lawyer, in this regard, there is a force more certain and inexorable than any policing agency—the force of public opinion (the necessity for holding the respect of the community, of the courts, and of one’s colleagues) that ultimately compels obedience to this mandate, if the lawyer is to survive. To be sure, at times the temptation is strong—even to the old and seasoned lawyer—to attempt to please and captivate the crowd with a display of public exhibitionism which the lawyer, himself, is likely to mistake, for the moment, as a demonstration of ability, eloquence, and learning; but one who succumbs to such temptation, at the expense of his client, will very quickly learn that the lasting respect of the members of his profession is more to be prized than the temporary plaudits of the loungers about the courtroom, and that this is something that can be earned and kept only by a close-mouthed fidelity to the cause of the client, by the strictest personal decorum, and by close attention, accuracy and punctuality in the transaction of business.

As former Chief Justice Hughes once summed up the matter: “The highest reward that can come to a lawyer is the esteem of his professional brethren . . . . It cannot be purchased. It cannot be artificially created. It cannot be gained by artifice or contrivance to attract public attention . . . . No subservient ‘yes man’ can win it. No mere manipulator or negotiator can secure it. It is essentially a tribute to a rugged independence of thought and intellectual honesty which shines forth amid the clouds
of controversy. It is a tribute to exceptional power controlled by conscience
and a sense of public duty—to a knightly bearing and valor in the hottest
of encounters."

The third portion of the oath which I mentioned at the outset of
my remarks, serves further to define the extent of the lawyer's obligation
to his client: "I will never reject from any consideration personal to
myself, the cause of the defenseless or oppressed, or delay any man's cause
for lucre or malice." While this obligation has its ethical limitations, since
"the great trust of the lawyer," as the Code of Ethics points out, is [always]
to be performed within and not without the bounds of the law"—this
obligation imposes a course of action of transcendent importance too often
overlooked and too often shirked by lawyers; particularly in respect to
persons with causes or defenses that run counter to the course of public
opinion. As one deplorable example of the thing I am talking about, all
of us know that on the American scene today certain current offenses,
semi-political in nature, have become so obnoxious to the public that not
only do some members of the Bar uniformly refuse to accept the defense
of persons charged with such infractions—through fear of being "tarred
with the same brush," under the pernicious doctrine of "guilt by association,"
which seems to be so prevalent in public thinking today—but actually join
with the demagogues in condemning their professional brethren for affiliation
with such causes.

Now, let it be clearly understood, for all time, that I have no sympathy
for people who have committed such offenses. Let them be punished to
the full extent of the law, when once they are proved guilty in a formal
court proceeding! But I think it should need no saying, that a course
of professional conduct that shirks the representation of persons charged
with crime, simply because the crime itself is abhorrent to the people of
the community, flies squarely in the teeth of the greatest lesson of a free
society's tradition—that fundamental constitutional rights belong either to
everyone, or they belong to no one. When persons charged with a crime,
no matter what crime, are deprived of the precious constitutional right to
the assistance of competent legal counsel, the circle of the "defenseless and
oppressed" that is referred to in the Lawyer's Oath grows ever wider, with
each such instance, and could, if the expansion continued, eventually
absorb and blot out the whole of the body politic that had failed to face
up to its public duty in the matter.

DUTY OF LAWYER TO PROFESSION AND COUNTRY

The second aspect of the subject with which I should like to deal
involves the duty that the lawyer owes to his profession and to the free
society that sustains him. It is spelled out in that portion of the Lawyer's
Oath where it is written:

I will support the Constitution of the United States and the
Constitution of the State [wherein I am admitted to practice].
I will maintain the respect due to courts of justice and judicial officers.

In respect to this two-fold obligation, I think all of us are aware that in these times there are people who seem bent on attempting to instill in our citizens a contempt for the laws by which they are governed, and for the judicial institutions that enforce them. In this attempt, it is frequently asserted that apparently the law was designed for the protection of the criminal and that courts give this scummy fringe element under protection.

We know that such assertions are without valid substance or foundation. While it cannot be denied that a considerable portion of the Bill of Rights is directed toward the protection of the rights of people who are suspected of, or who have been charged with crime, this is not because of any overwhelming desire to protect the criminal, but rather, it is because in every case involving crime, life or liberty is at stake and is jeopardized by the mere accusation of crime. In simple truth, the law was designed and the courts were set up to protect minority elements, whether criminal or law-abiding; to protect the people against themselves and their passions in rash and turbulent moments; to protect the rights and liberties of the people against the encroachment of government which, if improperly extended, might eventually bring about a condition of political tyranny and despotism that would utterly destroy our free institutions.

Consequently, it is imperative that responsible members of the profession not allow these reckless assertions to go unheeded or unchallenged, for we have been trained to understand, perhaps better than any other group of people, that the most significant and far-reaching element in our philosophy of government involves the personal attitude of our citizens toward the courts and the law. The courts have no great armies at their beck and call to enforce their orders and decrees; obedience to their mandates and judgments rests entirely upon the abiding belief and calm assurance of the people that the power invested in those who head the courts will be exercised wisely and prudently and within the law.

Reckless and improvident statements that tend to instill in our citizens a contempt for the law, or a mistrust of the judicial exercise of power, will eventually destroy the very source from which such things emanate by destroying the confidence of the people in the free institutions which they have erected.

In this same area, there is still another field of endeavor in which the members of the Bar ought to become militant, and can be so, with profit to themselves and to the institutions which sustain the profession. I refer to the field of public relations. By public relations I do not mean the program which we frequently engage in to inform the public why every man should execute a will; why he should have the help of a lawyer in planning his estate; or why he should consult an attorney in matters
THE RESPONSIBILITY OF THE LAWYER

involving intricate business transactions—although certainly no one can deny that this is useful information that should be given to the public to illustrate the nature of the services that only the lawyer can perform.

What I have in mind, however, is public relations in its broader meaning: What, for example, is the precise function of the courts, both at the trial and at the appellate levels? Why should the law presume an accused person to be innocent until proved guilty beyond a reasonable doubt? Why should a person suspected of crime, especially one who has an unsavory reputation as a trouble maker—a “left winger,” a bootlegger, or a bolita peddler—be entitled to protection from invasion of his premises, except upon a valid search warrant duly issued and served? Why should such a man have the legal right to object to a forcible search of his person? Why should he be allowed to refuse to give testimony against himself, and thus prevent the state from securing evidence with which to prove his guilt? If a person subjected to such an invasion of his privacy is innocent of crime, why should he object to such procedures? And if the evidence obtained by such questionable methods should prove him guilty of a crime, why should he have any just cause to complain?

The right to these privileges is being seriously questioned in many quarters today. These assaults upon time-honored guarantees raise questions that the man in the street reads and hears about, and he wants to know the answers. If he cannot get full and correct answers from people who know, he is likely to accept incorrect, or half-truth answers from people who don't know. The layman wants to know about these things, and he is entitled to full and correct answers. We know the valid answers to these questions and it is our duty to give them to the public.

We know that underlying our whole structure and fabric of law and order is a Bill of Rights which was designed to protect the life of every citizen, his liberty, and his property. When the founders of our government framed it, they had fresh upon their minds the personal abuses that had been heaped upon them by the “mother country,” and the violation of personal and property rights which they thought had been secured to free men by the Magna Carta. They were familiar with the history of the times. They had seen the agents of the King go out into the highways and hedges, break into the shops and homes of the people, search and seize any and everything at their pleasure and arrest the most upright citizen at the whim or suggestion of some petty official. They had seen citizens imprisoned on mere suspicion without the opportunity to be heard, and without a fair and impartial trial. They had seen citizens thumbscrewed and put on the rack to make them confess to crimes which they had not committed.

They wanted no more of these abuses, from whatever source derived or of whatever nature. Consequently, they wrote into the Constitution, that was framed out of this grim and bitter experience, a set of basic and
fundamental principles to operate as restraints upon excesses of government—to say to arbitrary and autocratic power from whatever quarter it might advance to invade the vital rights of personal liberty and private property: “Thus far may thou come, but no farther!”

The reasons for the perpetuation of these rights in all their vigor are just as valid today as they were for their adoption in the first instance. For we know that in the absence of an unrelenting, unswerving and unfaltering protection of these rights by the judicial institutions which we have erected for the purpose, the light of liberty can easily grow dim; the concept of the individual dignity of man can become much more of form than it is of substance.

Consequently, we have the responsibility, not imposed in as high a degree on any other group or profession, to make these things plain to the public. When the average man in the street is given an adequate and sensible explanation for any particular course of legal action imposed by the requirements or restraints of a law that is bottomed on justice and reason, he will be quick to sense the validity and soundness of such course of action and defend the thesis upon which it is founded.

Then, there is still another obligation that the lawyer owes to his profession and to the society that sustains him—that of serving as an intelligent, unselfish and articulate leader of public opinion. In the unsettled times that leave their impress on this complicated age, sound public opinion is indispensable. Without it even courageous leadership may fail.

If the members of the Bar are to make themselves worthy of the tradition and power of an ancient and venerable profession, they must stand up and be counted at this critical hour when free peoples over the world are being confronted with a totalitarian ideology that denies the existence of a God and is directly opposed to the hard won principles of freedom and fair play upon which this government was founded.

The ultimate decision as to how to deal with this virulent menace has, in this country by the expansion of suffrage, the increase of popular education, and the perfection of modern mass communication, been placed in the hands of a larger segment of our people than has even before been the case.

It is this group, the men in the streets who will be called upon to make the final decisions, who must be made to understand clearly the plain meaning of individual liberty and the basic connotations of constitutional rights. They must be made to understand that constitutional guarantees are safe and secure only in a government of law and not of men; and they must be made to see the reason that this is so. They must be made to understand how political rights are granted under our constitutional processes, how justice is administered, and what makes law and order secure. They must be made to understand the importance of individual self-restraint and individual self-discipline in the preservation of freedom.
They must be made to understand that personal privileges involve personal obligations; that real freedom is meaningful only if it encompasses responsibility.

Because of the nature of their training, lawyers, in the main, have been schooled in the real meaning of these things and understand their full implications. Lawyers ought to stand ready to share this knowledge with others who may not have been fortunate enough to have received such schooling. For in the dissemination of this knowledge and its universal acceptance by our people lies the hope for the future of America.

In this endeavor, those who are on the “firing line” will doubtless find themselves “sniped at” with a barrage of untruths, half-truths, and just plain propaganda, coming from vicious, reckless or uninformed people, or groups, who, for some reason known best to themselves, or the causes they serve, seem bent on destroying the faith and trust of our people in the basic soundness of existing political institutions. But this must not deter the lawyer in the discharge of this great duty. Lawyers know that one of the things that has made this nation great is a tolerance and willingness of people generally, to listen to all sides of a question; that the strength of the democratic concept is on the assumption that the people, after hearing all sides, are perfectly capable of sorting the wheat of truth from the chaff of error.

If, as someone once suggested, the test of truth is its ability to get itself accepted in the free competition of the market place of ideas, lawyers must be courageous enough to demonstrate a public, aggressive and articulate belief in fundamental human rights and individual liberties. Having once put their hand to the plow, they must be tough enough to survive in this endeavor, in the face of apathy, indifference, defamation, falsehood and propaganda.

I have implicit confidence in the desire of most lawyers to expound and reveal the truth concerning the fundamental purposes of government and the guarantees written into the organic law for the protection of the citizen. I have faith in the will of the citizen to arrive at the truth, from conflicting opinion, and then to follow the course of right.

I claim nothing sacred for the Constitution from which our liberties derive. It is a secular instrument subject to amendment just as any other compact designed by human hands. But I do assert that in its essence, it contains much of the simple, yet lofty, truths preached by the humble Galilean Carpenter 2000 years ago. There is not a single social precept in democracy that is not found in His teachings. He was the first to place real emphasis on human dignity. He impressed on us the attributes of social justice and the universal brotherhood of man. Upon these lofty precepts, our government was founded. Only by our dedicated service to them can we preserve, under law, a free country in which free men can live together in prosperity and in peace.