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THE PUBLIC DUTY OF THE AMERICAN LAWYER†

RUSH H. LIMBAUGH*

As we are assembled here tonight in the folds of this great mid-western University, under the auspices of its Law School Foundation, to consider some of the lights and shadows that fall across the vast areas in which the members of one of the most ancient and honored professions live and work, may we not be oblivious to the dream and purpose of him in whose memory we meet. For it was to this university and to this law school Earl F. Nelson came as a youth, and it was here where he spent his student years and received his education for the practice of his profession. And it was to this his alma mater that he, in his years of maturity and while engaged in the arduous tasks of an active member of the bar of St. Louis, came frequently, giving liberally of his time and means as Curator of the University, as President of the Law School Foundation, as zealous friend and generous benefactor of the law school and the university, and as a faithful servant in the highest traditions of his profession.

To his widow Mrs. Nelson, who honors us by her presence here this evening, may I express for all of us our gratitude for her continued interest in the law to which her late distinguished husband consecrated his career and to the profession of the law in which he served with honor and to which he dedicated his energies and his skill as he met from day to day the challenge of public duty.

And to our special guests this evening, the deans and members of the faculty and students of the Schools of Medicine and Veterinary Medicine

†The second Earl F. Nelson Memorial Lecture delivered at the University of Missouri on March 11, 1955.

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of the University,¹ may I express our appreciation of their interest in coming here in the hope that, in this joint session of the representatives of professions whose problems are not altogether dissimilar, we may find additional means by which we may make ourselves more helpful to the people of our time.

I am to speak to you on *The Public Duty of the American Lawyer*.

The position the American lawyer has occupied in the public mind has always been singularly paradoxical. The Puritan, the Quaker and the Cavalier founders of the first colonial settlements in America had visions of establishing communities and purposes of creating a society that would have no need for lawyers.² But before they consolidated their civilization and established for it permanent institutions of government they sought and accepted the services of lawyers. The bitterness of public feeling against lawyers in early America was sometimes expressed in statutes forbidding them to appear in court for or give counsel to clients for any kind of reward or profit.³ But when the liberties of the people were endangered and when the challenge came to establish a nation it was the lawyers who set the fires of Revolution and furnished leadership for Independence and the founding of the government. Following what is popularly known as the critical period in our national history, antagonism against lawyers and the system of the English common law they caused to be established here reappeared and persisted.⁴ But it was during that time, known as the Formative Aera of American law, when great lawyers on the bench and at the bar formulated and adapted to the needs of the nation a system of Anglo-American law⁵ with which they reenforced the

1. The Earl F. Nelson Memorial Lectures, sponsored by the Law School Foundation, are delivered annually and the public is invited to attend them. Because of the announced subject of this lecture, a special invitation was extended to the deans and members of the faculty and students of the Schools of Medicine and Veterinary Medicine.

2. WARREN, *A HISTORY OF THE AMERICAN BAR*, introductory chapter on "Law Without Lawyers" 3-18. POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 135-142 (1953).

3. WARREN, *A HISTORY OF THE AMERICAN BAR*, 4. POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 136-138.

4. WARREN, *A HISTORY OF THE AMERICAN BAR*, 212, says: "Nothing in legal history is more curious than the sudden revival, after the War of the Revolution, of the old dislike and distrust of lawyers as a class. For a time, it seemed as if their great services had been forgotten and as if their presence was to be deemed an injury to the nation."

POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 177-185.

5. POUND, *THE FORMATIVE ERA OF AMERICAN LAW* (1950); *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 185-187. WARREN, *A HISTORY OF THE AMERICAN BAR*, 240-291.

foundations and the framework of the republic and out of which has emerged a tradition inseparable from the most cherished aspirations and ideals of the American people.

From the founding of the nation til the present hour the lawyer, on the one hand, has been condemned for his selfishness, his dishonesty and his pettifoggery; he has been charged of infidelity to his trust, of selling out his client and his cause, and of unjustly profiting from the misfortunes of his clients; and he has been scorned and shunned because of public aversion for him and his profession, for the courts which are composed of his numbers, and for the law and the system of administering justice for which he is primarily responsible.⁶

On the other hand, during the same time, the lawyer has been commended for his fealty, his incorruptibility, his fidelity and his trustworthiness in his private practice; he has been generously praised for his high sense of duty, his patriotic devotion and his dedication to the people's welfare in his public service; and he has preserved the self-respect of his profession by maintaining high, self-imposed, ethical standards of professional conduct.⁷

For this dual position he occupies in the public mind the lawyer himself is and must be held accountable. Nor is he oblivious of the gravity of this responsibility, both as an individual and as a member of a profession. He knows that the character and conduct of the individual lawyer determines the reputation and standing of his profession. Often he has observed that one lawyer's apostasy is the profession's opprobrium. Fettered by the lethargy and indifference of many of his associates at the bar, the lawyer of today is resolutely advancing in organized professional effort in a program of self-analysis, self-discipline, self-improvement and self-dedication. Under the leadership of the American Bar Association, the American Law Institute, the National Conference of Commissioners of Uniform State Laws, with the cooperation of voluntary and integrated bars of every state in the Union and through numerous other organizations of the bench and bar, the American lawyer is reactivating his profession in its highest traditions of honor and service.

It is of this awakened consciousness of the lawyer's duty as a member

6. WARREN, *A HISTORY OF THE AMERICAN BAR*, 211-239. POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 177-219.

7. BLAUSTEIN & PORTER, *THE AMERICAN LAWYER* (1954).

of a profession that I propose to speak. In using the term "the American lawyer" I do not mean to imply that there is anyone engaged in the practice of the law who is typical of all those who are members of the profession or that there is an average lawyer whose position we could describe or whose duties we could define. The term as used is meant to encompass every lawyer in the nation, whether he is a man at the bar in Manhattan or a county seat lawyer in remote villages in Montana or New Mexico; whether he is in the service of the government in Washington or a county attorney in Maine or Texas; whether he is in the employment of a single corporate client or attorney for a multitude of men and interests; whether he is a member of a firm of fifty or a hundred men or is working alone, without professional associations; whether he is a lawyer of large fortune and fabulous income or one without wealth earning but a modest living; whether he is a specialist in the fields of taxation, labor, insurance, banking or business, or a non-expert serving clients as counsellor and advocate in a general practice; whether he is of great prominence and renown or of obscurity and known only to a few; whether he lives and works in the great cities of New York, Chicago, Los Angeles, Philadelphia or Boston or in the hundreds of lesser cities from Maine to California and from Florida to the State of Washington; whether he is a judge on the bench or a lawyer at the bar. Wherever he is or whatever he does, the lawyer of America is a member of a profession, and as such he owes obligations to the society of which he is a part. As a privileged member of the profession to which he belongs, he is confronted hourly with the challenge of public duty.

The society which presents to the lawyer of our time this challenge is composed of a rapidly increasing population engaged in swift expansion and development in a world of endless transformation.

The Bureau of the Census of the United States has estimated that the total population within the continental boundaries of the United States, including armed forces overseas, at eight o'clock this morning was 164,472,945.⁸

The rate at which the population is increasing is enormous. When the first census was taken in 1790, shortly after the birth of the nation,

8. Estimate as stated in letter of Howard G. Brunsman, Chief Population and Housing Division, Bureau of the Census, dated March 4, 1955.

our total population was a little less than 4,000,000.⁹ When the first gun was fired at Fort Sumter it was, in round numbers, 32,000,000.¹⁰ When we entered the first World War, it was a little more than 103,000,000.¹¹ When the Japanese attacked at Pearl Harbor, our total population was approximately 133,000,000.¹² It is estimated that by 1975 the population of the nation will be from 200,000,000 to 221,000,000¹³

The lawyers of the United States constitute but a very small segment of this increasing population. There are approximately 225,000 lawyers in America, or one lawyer out of every 822 people. More than one-half of all the lawyers in America live in cities or metropolitan areas having populations of 200,000 or more.¹⁴ Nearly 25,000 of them live and work in the metropolitan area of New York City;¹⁵ more than 11,000 in the metropolitan area of the City of Chicago;¹⁶ more than 6,500 in Washington, D. C.;¹⁷ about 5,300 in the City of Los Angeles;¹⁸ 4,500 in the City of Boston;¹⁹ more than 3,600 in the City of Detroit;²⁰ nearly 3,500 in the City of Philadelphia;²¹ and more than 3,000 in the City of Cleveland.²² And if we add to these lawyers living in the large cities all of those who live in smaller cities having a population of 10,000 or more we find that there are 85% of all the lawyers in America living in strictly urban areas.²³

What has become of the country lawyer? Has he, like Leather Stocking of fiction, passed with the Pathfinder and the pioneer into the vanishing prairie of the law? Has he become the epic Judge Somers through whom the bard of Spoon River wailed "unmarked, forgotten?"²⁴ It is difficult to ascertain the exact number remaining in the vanishing

9. 3,929,214. See U. S. Census Report, 1790.

10. U. S. Census Report for 1860 shows population of 31,513,114.

11. Estimated population for 1917 according to U. S. Census Report was 103,265,-913.

12. Estimated U. S. population on July 1, 1941, was 133,121,000 according to Bureau of Census.

13. BLAUSTEIN & PORTER, *THE AMERICAN LAWYER*, 2-8 (1954).

14. *Id.*, at p. 4.

15. *Ibid.*

16. BLAUSTEIN & PORTER, *THE AMERICAN LAWYER*, 6.

17. *Ibid.*

18. *Ibid.*

19. *Ibid.*

20. *Ibid.*

21. *Ibid.*

22. *Ibid.*

23. Estimate made from figures furnished by BLAUSTEIN & PORTER and listings in *MARTINDALE-HUBBELL LAW DIRECTORY*.

24. *MASTERS, SPOON RIVER ANTHOLOGY* 13 (1942.)

ranks of this former heroic division of the army of American lawyers, for in so many instances his neighboring cities have absorbed him and the towns and villages where he lives. An estimate of the number of all the lawyers residing in communities having less than 10,000 population based on the latest listing available indicates that there are 33,495 of what we might say represents the remnant of the traditional country lawyer of America.²⁵

Lawyers are engaged in a manifold number of things. Nine of them are Justices of the Supreme Court of the United States, 68 are judges of the Circuit Courts of Appeals of the United States, 251 are judges of United States District Courts, 19 are judges in the Court of Claims, and 62 are full-time and 99 are part-time referees in bankruptcy;²⁶ 302 are serving as judges of the supreme courts or courts having final appellate jurisdiction in the various states of the Union.²⁷ Several thousands of them are trial judges of circuit courts and other courts of general original jurisdiction, municipal courts, criminal courts, juvenile courts, courts of criminal correction and other nisi prius courts.²⁸ More than 3,000 are serving as judges of probate courts or other courts vested with jurisdiction over probate matters;²⁹ 976 are working in the various branches of the Department of Justice of the United States; 94 are serving as United States District Attorneys; and 553 are Assistant United States Attorneys.³⁰

10,081 are serving in various United States Government departments and agencies, some as members of the President's Cabinet, some as diplomats and consular officers, some as heads of the various departments and agencies, some as trial examiners and referees for quasi judicial agencies, and others in various capacities and with varied functions.³¹

25. This figure is the result of an actual count of all lawyers listed in the 1955 MARTINDALE-HUBBELL LAW DIRECTORY who reside in cities, towns and villages having a population of less than 10,000.

26. This information was furnished by Will Shafroth, Chief of the Division of Procedural Studies and Statistics in the Administrative Office of the U. S. Courts, Washington, D. C., by letter dated January 26, 1955.

27. This information was supplied by William L. Frederick, Director of Research, Council of State Governments, Chicago, Illinois, by letter of January 21, 1955.

28. Estimate made from information assembled from different sources.

29. *Ibid.*

30. This information was furnished by the Office of the Deputy Attorney General, Department of Justice, Washington, D. C., in a letter dated January 31, 1955.

31. This information was supplied by Hon. Paul C. Jones, Member of Congress, 10th Congressional District of Missouri, and is based on Civil Service Commission reports.

More than 1,700 are serving in the houses of the legislative assemblies of the forty-eight states.³² Of the 225,000 lawyers in America, 30 are governors of the different states of the Union.³³ And, on the staffs of the governors in various states, in the executive offices of state governments, in the attorney-generals' offices and in other departments and agencies of the state governments, there are several hundred additional lawyers.³⁴

Among the lawyers in private practice and in different types of government service it is estimated that 47,224 are members of firms³⁵ or partnerships and that nearly 10,000 more are associated with firms or individuals.³⁶ Firms or partnerships embrace attorneys numbering from two or more to 95.³⁷ It is estimated that 120,000 are practicing alone.³⁸ Approximately 2,300 are serving as deans, teachers and librarians in the law schools of the United States.³⁹ More than 11,000 are devoting all of their professional efforts to a single client who pays them a fixed salary.⁴⁰

There is no absolute certainty as to the amount of income lawyers receive for legal services rendered, for many lawyers supplement what

32. The official records obtained from the 48 states show that the number of lawyers serving in the legislative assemblies in 1955 is by states as follows: Alabama 39, Arizona 11, Arkansas 47, California 31, Colorado 21, Connecticut 29, Delaware 1, Florida 63, Georgia 75, Idaho 5, Illinois 66, Indiana 24, Iowa 27, Kansas 44, Kentucky 33, Louisiana 36, Maine 23, Maryland 50, Massachusetts 72, Michigan 31, Minnesota 43, Mississippi 71, Missouri 48, Montana 17, Nebraska 9, Nevada 4, New Hampshire 2, New Jersey 41, New Mexico 14, New York 118, North Carolina 70, North Dakota 8, Ohio 52, Okla 59, Oregon 19, Pennsylvania 54, Rhode Island 17, South Carolina 74, South Dakota 11, Tennessee 42, Texas 91, Utah 18, Vermont 18, Virginia 69, Washington 26, West Virginia 27, Wisconsin 30, Wyoming 12.

33. The lawyers serving as governors in 30 of the states in 1955 are: Ernest W. McFarland, Arizona; Goodwin J. Knight, California; Abraham A. Ribicoff, Connecticut; J. Caleb Boggs, Delaware; Robert E. Smylie, Idaho; George N. Craig, Indiana; Leo A. Hoegh, Iowa; Lawrence W. Wetherby, Kentucky; Fred Hall, Kansas; Robert F. Kennon, Louisiana; Edmund S. Muskie, Maine; Theodore R. McKeldin, Maryland; Christian A. Herter, Massachusetts; G. Mennen Williams, Michigan; Orville L. Freeman, Minnesota; Hugh L. White, Mississippi; Phil M. Donnelly, Missouri; Robert B. Meyner, New Jersey; John F. Simms, Jr., New Mexico; Averell Harriman, New York; Frank J. Lausche, Ohio; Paul L. Patterson, Oregon; Dennis J. Roberts, Rhode Island; George Bell Timmerman, Jr., South Carolina; Frank G. Clement, Tennessee; Allan Shivers, Texas; Arthur B. Langlie, Washington; William C. Marland, West Virginia; Walter J. Kohler, Wisconsin; LeRoy Collins, Florida. This information was furnished by the office of Governor Phil M. Donnelly of Missouri.

34. MARTINDALE-HUBBELL, INC., 1952 Statistical Report

35. BLAUSTEIN & PORTER, *THE AMERICAN LAWYER*, 8.

36. *Ibid.*

37. MARTINDALE-HUBBELL LAW DIRECTORY, 1955.

38. BLAUSTEIN & PORTER, *THE AMERICAN LAWYER*, 8.

39. Directory of the Association of American Law School.

40. BLAUSTEIN & PORTER, *THE AMERICAN LAWYER*, 8.

they earn from their efforts in the profession with income derived from other sources. But from the information that appears to be the most nearly accurate it is estimated that the average annual earnings of each of the 225,000 lawyers in America is a little less than \$10,000.⁴¹

In the legal profession, as in other categories of life, the young replace the old. We should implore the Jack Cade's of our day to be merciful, for lawyers do not have to be killed. Like old soldiers, they fade away. They probably pass off the stage at the rate of 12,000 annually, for we learn that about that number of young lawyers emerge from the law schools and are admitted to practice each year.⁴² And the total number of lawyers has not increased in recent years.⁴³ In fact, the number of lawyers in proportion to the total population is declining.

It is interesting to find that there are about the same number of physicians in the United States as lawyers. From statistical information recently compiled by the American Medical Association, we find that there were in the United States in 1953, 220,100 physicians and that, like lawyers, they are concentrated largely in urban areas.⁴⁴

What is the standing of the lawyer? What place does he have in public confidence and esteem?

Of these questions the active lawyer takes little note. Absorbed in his daily professional tasks which ordinarily consume all his energies and demand his utmost efforts, he is disposed to leave a consideration of these questions to men of the law schools, bar association officers and others who are presumed to have more time for reflection. But ultimately the responsibility comes to grips with the active practicing lawyer, and when it does he is compelled to confess disillusionment and disappointment. Though he is carrying on as a representative of one of the most ancient and honored professions he is astounded at the growing public distrust, he is alarmed by the declining influence, and he is chilled by the consciousness of loss in standing of himself and his profession.⁴⁵

41. Judge Philbrick McCoy, *Some Professional Responsibilities of the Practicing Lawyer*, 25 ROCKY MOUNTAIN L. REV. 463 (1953).

42. *Ibid.*

43. MARTINDALE-HUBBELL LAW DIRECTORIES.

44. DICKINSON, DISTRIBUTION OF PHYSICIANS BY MEDICAL SERVICE AREAS, 148-151 (1954).

45. See Silver Anniversary volume of ROCKY MOUNTAIN LAW REVIEW, Vol. 25, No. 41, containing result of Symposium on Legal Ethics and Professional Responsibility at the School of Law, University of Colorado, in June 1953, and particularly Harold L. Reeve's address on "Law Day—A Day of Accountability," 490-493.

We are in an era of the lawyer's discovery of himself. We are witnessing his reactions to the stern realities about him. His pride is hurt. His spirit is stunned. Sometimes he is heavy of heart as he looks at the road ahead. He is humble and contrite from the effects of professional unpopularity. But in defense of himself and his profession he is setting himself against the tide that runs against him. He knows that much of what he suffers is unjust and that it is due in a large measure to lack of understanding. And throughout the land tonight the American lawyer, through hundreds of bar associations reaching from those of local communities through state and national organizations is engaged upon extensive programs of public relations and public information designed to recultivate in the public mind a restored confidence in the profession of the law and the usefulness, the honor and integrity of the lawyer, a renewed respect for the law and the courts which administer justice under the law, and a revived and abiding faith in the destiny of a nation dedicated to the proposition that it shall be a government of laws and not of men.⁴⁶

As a part of the program of restoring public confidence and faith, the lawyer must by word and deed convince the public of his worthiness of such confidence and faith. Whether his position with the public is one of declining influence and loss of standing (a situation he has always confronted), the lawyer must always be keenly aware that his way into public confidence is not by a single-lane approach. He must realize that it instead follows the course of the market place where men match prices with values and services with compensation. The lawyer's entreaty that his place in society be understood and his conduct approved imposes upon him gigantic obligations and demands of him the performance of supreme duties.

In our subject tonight I have referred to the composite of these obligations and these duties as "the public duty" of the lawyer. I speak of the lawyer as a figure representing a profession. I speak of the multitude of his obligations as a duty. The lawyer as a profession owes to society a duty. What is it?

46. For the enormity and details of that program see the volume entitled "Public Relations for Bar Associations" prepared by the Standing Committee on Public Relations of the American Bar Association, Thomas L. Sidlo, chairman, 1953, widely distributed among and used by officers and members of the American Bar Association and the bar associations throughout the country.

There lived and ruled in an ancient kingdom a patriot king. The people of the kingdom were contented for the government by the king was just. One of the secrets of the king's popularity and the people's happiness was the loyal and patient devotion to duty by the king's servants. No greater honor ever came to a citizen of that kingdom than the call to enter the service of the king. In the process of selecting men for that service, every youth of the kingdom was given a locked treasure chest with instructions that he had to make and fit his own key to unlock the chest. The test required years of self-discipline, training, patience, sacrifice and toil. Most of those who tried lost heart and failed. But when one shaped his key that unlocked his treasure chest he found it only held a message to report to the king. When he presented himself before the king he was warmly welcomed and given an assignment for duty. And, having been called and given an assignment, he spent the remainder of his years in the service of the king.

In a democracy like ours, where the sovereignty of the people has been substituted for the sovereignty of the king, the privilege of a place at the bar and as a member of the profession of the law is conferred only upon those who by the standards of learning, character and dedication have been found worthy of serving the sovereign. It is a call to public service. It is an assignment for public duty. When a lawyer hearkens to that call and receives his assignment he enters the service of the sovereign, and thereafter he owes an inalienable loyalty and an utter devotion to the people by whose grace and for whose interest he serves. Henceforth he is the people's servant. It makes no difference how menial his task, how lowly his client, or how unpopular his cause. In whatever place he serves, the things he does and the consequences of his acts reflect upon the public weal and he is judged by the extent to which he is a useful, wise and faithful public servant.

Every profession has a basic responsibility. Every member of that profession must bear his share of that responsibility. The extent to which he does has a direct relation to the fate of the nation. Those who are physicians are charged with the duty to keep the nation healthy. Those who are lawyers are charged with the duty to keep the nation orderly. As a good soldier is not neglectful of the nation's safety and as a good physician is not neglectful of the nation's health, so, a good lawyer is not neglectful of the nation's tranquillity and sense of justice.

But a complete statement of the lawyer's duty involves more than a

prosaic repetition of familiar, pristine generalities. It must include also a specific declaration of the essential requisites of his personal behavior and his professional conduct from day to day where he lives and in what he does in his office, in drafting instruments, in counseling clients, in scenes of arbitration and conciliation, in the role of a specialist, in general practice, in the courts and on the platform, in contending with his adversaries, in cooperating with his associates and contemporaries, in facing temptations, in holding public office, in participating in community life, in supporting the nation's aims and ideals, and in the myriad of other things that he must do as a good citizen and as a successful lawyer.

It is to this more explicit consideration of the lawyer's public duty that we must now turn. Let us approach it from the standpoint, first, of his public duty in the practice of his profession and, second, of his public duty when called to serve in public office.

I. THE LAWYER'S PUBLIC DUTY IN THE PRACTICE OF HIS PROFESSION

1. His Duty to His Client

A. *Establishing the Relationship*

To you of the Law School, who have not entered the profession, it may appear that a discussion of a lawyer's duty to his client presupposes that you are to have a client, and that before you contemplate the duty you shall owe one you should first be concerned with whether you are to have a client, or more than one. Your apprehension about this presents a problem and gives rise to a duty the profession should not neglect. You of the field of medicine are far ahead of us at this point. We have no counterpart in legal education for your internship in medicine. A medical student can feel reasonably assured that he can leave his internship and establish himself as a practicing physician with little or no delay in getting business and making a comfortable living. Law students entering upon their profession usually cannot have such assurance. Although the idea, long associated with a beginning lawyer's experience, that when he enters the profession he must be reconciled to the proverbial starvation period abides with us, and, although in fact a few years of austere living is still considered a necessary and proper part of legal education, we are beginning effectively to substitute for this unscientific, though often effective, part of a lawyer's training and preparation for the practice of his profession a more direct approach from the law student's formal professional training to an active and reasonably lucrative practice.

Progress is being made in providing that approach. Law schools are effectively assisting their graduating students, and particularly those with high scholastic records, to find beginning places on legal staffs of business and industrial corporations, on government agencies or in legal branches of government service, and in leading firms of lawyers who desire to engage the services of students of high scholastic standing. More and more positions where young lawyers, fresh from law school, can earn a living are becoming available, and older lawyers and busy firms are giving more opportunities to beginning lawyers to practice with them. Legal Aid Societies and brief temporary employment in special services are also sometimes means by which young lawyers may get a start. Law schools are alert to all these opportunities and are cooperating with those who create them, with their graduating students and with the bar in rendering this assistance to beginning lawyers. But for the most part the students from the law schools still must find their own locations and depend on their own efforts to carve out for themselves a place in which to earn a livelihood as a lawyer, and as they do they are conscious of this strange hiatus between law school graduation and active professional life. Lawyers on the faculties of law schools and lawyers in active practice, through the cultivation of a closer affinity and responsibility, should find effective means of bridging this chasm. As a result of what is already being done, opportunities now available to the beginning lawyer are much better than a generation ago. From this, you who are about to begin should feel encouraged, and understand that, whether you get an immediate start in the profession or must endure a few years of Spartan self-denial, you will have a client, and more than one if you choose, and to him or them you will owe professional duties that we shall now consider.

B. Nature of the Relationship

The relationship between a lawyer and his client, similar in many of its aspects to that between a physician and his patient, is, outside of the family union, one of the most intimate and one of the most sacred of human associations. It originates in deep human needs and calls for assistance that can only be rendered in a spirit of neighborliness coupled with special skill and experience. It often involves a disclosure of secrets of life and conduct, which, except for the relation, would be kept concealed in the human heart and mind. It has to do with rights a citizen may have but of which he is deprived and which he cannot enjoy

without a lawyer's help. It calls for confidential personal and business companionship, counsel, advocacy and direction. It is a relationship that may require understanding, sympathy and tenderness, and that may also demand grim, forbidding, unyielding action.

It is in this relationship, enmeshed in these responsibilities and confronted with this duty to his client, where the lawyer spends by far the greater part of his time. It is from this relationship that a lawyer derives sustenance for himself and family and obtains the means that enable him to perform the other duties required of him as a lawyer and as a citizen. It is through this relationship that he exercises and develops his skill, perfects himself in the learned art of his profession, sobers and matures his judgment and enlarges his power and usefulness. There can be no doubt but that to this client, who makes possible for him the opportunities of that relationship, the lawyer owes his paramount duty.

C. Limitations upon the Lawyer's Duty

1) Complete Abandonment of All Other Interests Not Indispensable.

In the performance of that duty there are limitations beyond which the lawyer need not be compelled to go. The ancient apothegm that a lawyer applies his skill and exerts his energies so completely in the interests of his clients that he has none left with which to attend to his own had its origin in the utter sacrifice of the conscientious and devoted lawyer to the exactions of his clients' business. It is often used as a stricture by the ever-present critic of the profession who, on the one hand, sarcastically derides the faithful lawyer who gives of himself completely to his client, and, on the other, carpingly classifies all lawyers as people who feign a passion to give that they might satisfy a zeal to get. Be it an apt proverb or an artful aminadversion, it is a great tribute to a lawyer's sense of gratitude and loyalty to his clients who support and maintain him. It springs from his professional propensity to sacrifice himself to the needs of his clients. But the duty of a lawyer to his client, though rigid and relentless, does not require the lawyer's complete surrender of all his time and personal interests. In the practice of his profession he has other duties, too, which he must fulfill.

2) Unnecessary that He Betray, Deceive or Lie

Nor does the duty of a lawyer to his client require that he deceive, betray or lie. The distorted concept people often have of the lawyer as

one whose professional success is measured by the smartness of betrayal, his cunning in deception and his craftiness in falsification is not only a reflection on the profession but it is also degrading to public morals. We see too much of it in the press, on the stage, on the screen and in television. We abhor the idea that anyone thinks of us like that. And yet we know that the basis for it lies in the conduct of members of the bar. Nearly three generations ago a young lawyer, then emerging into national prominence, expressed the fear that the bar had done "its full share to exalt that most hateful of American words and ideals, 'smartness', as against dignity of moral feeling."⁴⁷

Some lawyers themselves still have this perverted concept of what a lawyer should do to achieve his purpose for a client. Some even follow it as a policy, on the theory that the public expects such service of lawyers, and since lawyers are public servants they should give the public the kind of service the public requires. Recently a lawyer of great eminence has publicly reasoned that under certain circumstances a lawyer's duty to his client requires that he lie.⁴⁸ And, although the Chairman of the Committee on Professional Ethics and Grievances of the American Bar Association expressed indignation with that point of view,⁴⁹ the proponent of that issue rejoined with an even more blunt and uncompromising defense of his position.⁵⁰

It cannot be denied that in representing the interest of his client to the fullest extent duty requires a zealous lawyer is often tempted to debase himself with his associates at the bar and stultify himself before the court by taking a dishonest course, when he is expected to deal honestly, and by lying when he is in honor bound to be truthful. But when he yields to such temptations, irrespective of what may be said in a technical defense of his conduct, or of the client's reliance upon his lawyers ingenious cunning, he cannot thereafter expect that either the court, the lawyers who know of his acts, or his client will trust him or have respect for him. Much less may be able to respect himself. Truth and honest conduct are the very foundations of the law. When members of the legal profession subscribe to a policy of deceit and seek to justify

47. HOLMES, COLLECTED LEGAL PAPERS, 39 (1920).

48. CURTIS, THE ETHICS OF ADVOCACY, 4 STAN. L. REV., 3, 9 (1952).

49. Drinker, *Some Remarks on Mr. Curtis' The Ethics of Advocacy*, 4 STAN. L. REV., 349 (1952).

50. CURTIS, IT'S YOUR LAW 5-36 (1954).

dishonest conduct and contortion of the truth, on the ground that their duty to their clients requires it, they violate the canons of professional ethics,⁵¹ forfeit their right to respect and confidence, and yield to one of the great temptations of modern times, to sacrifice principle for policy.⁵² A lawyer's duty to his client contemplates no such yielding to temptation and requires no such sacrifice.

3) He Need Not Detach Himself from Professional Activities when Representing a Single Client or the Government

Neither does duty to client require, nor does it justify, the withdrawal of a lawyer from his other obligations as a member of the profession when his service is limited to a single client or where he holds a position in government service. As we have seen, there are a large number of lawyers thus engaged. And this number will increase. But the lawyer's obligation to his profession and his duty to participate in its organizations and activities have also increased. Both the private interests and the government which engage these lawyers must be kept aware of the importance of the lawyer's obligation to his profession. And, even though full-time employment may imply a right of the employer to determine the complete schedule of the lawyers employed, the best interests of the government and the private employers of these men and women of the legal profession require that they be not deprived of their right to participate in professional activities. Every lawyer thus employed should make it a condition of his employment that he be not disfranchised from the exercise of his rights as a member of the profession. His duty to his client does not require that he be thus isolated from his profession or from full and active participation in its activities.⁵³

D. His Duty to His Client Requires

1) That He Adhere to the Recognized Standards of Professional Conduct .

The lawyer's positive duty to his client as represented by standards of professional conduct, formulated out of the experience of the years, is set forth in the Cannons of Professional Ethics.⁵⁴ The particular canons

51. Cannons 15, 31, 32.

52. Reeve, *Law Day—A Day of Accountability*, 25 ROCKY MT. L. REV., 490, 492 (1953).

53. POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 353-362 (1953).

54. 62 American Bar Association Reports (60th Annual Meeting, Kansas City, Missouri, 1937), 1105-1122.

which set forth these standards of conduct are numbered⁵⁵ from 4 through 17 and 30 through 32. They require that he "exert his best efforts" in behalf of an indigent prisoner he is appointed by the court to represent.⁵⁶ When he accepts employment to defend a person accused of crime, they bind him "by all fair and honorable means, to present every defence that the law of the land permits".⁵⁷ They forbid that he represent conflicting interests; they require that he make a full disclosure to his client of all circumstances pertaining to his relation to the parties in a controversy involving the client; and they adjure him not to divulge his client's secrets or confidence.⁵⁸ They require that a lawyer deal reasonably with a client who desires services of additional counsel.⁵⁹ They require that he give his client candid opinions and seek to avoid litigation where that course appears best.⁶⁰ They forbid that he mislead a party not represented by counsel or communicate with an adverse party except with his lawyer's consent.⁶¹ They forbid that he purchase an interest in the litigation,⁶² and that he use his client's money for his own purposes.⁶³ They regulate the fixing of fees according to fairness and honesty⁶⁴ and make all contracts for contingent fees subject to the supervision of a court as to their reasonableness.⁶⁵ They admonish restraint in a resort to law to enforce the collection of fees.⁶⁶ They provide that "the lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty."⁶⁷ They impose upon the lawyer the duty of restraining clients from improprieties.⁶⁸ They charge the lawyer with the duty to determine what is justifiable and unjustifiable litigation,⁶⁹ and they forbid that a

55. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 30, 31 and 32.

56. Canon 4.

57. Canon 5.

58. Canon 6.

59. Canon 7.

60. Canon 8.

61. Canon 9.

62. Canon 10.

63. Canon 11.

64. Canon 12.

65. Canon 13.

66. Canon 14.

67. Canon 15.

68. Canon 16.

69. Canon 30.

lawyer excuse himself for improper conduct on the ground that he is following his client's instructions.⁷⁰ They admonish the lawyer that his highest honor is "a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen".⁷¹

The profession has not suffered public censure for the spirit or content of its canons of ethics. It has been severely criticized for failure to punish those of its members who have violated them. Some of this criticism is justified, for processes of discovery of violations and of punishing for them have not always been prompt, vigilant or effective. But in the American Bar Association, the state organizations and the local associations work of making effective the measures of raising the level of professional conduct through enforcement of the provisions of the canons is proceeding earnestly. As an indication of the progress that is being made, bar associations are holding special meetings to discuss the provisions of the canons and other problems of professional ethics. Recently there was held in Florida a special institute on professional ethics sponsored by the Florida Bar Association, and such lively interest was manifested that other institutes for the same purpose are being planned. Neglect of the individual lawyer to keep himself informed on the ethics of the profession is one of his acts of omission. He is not as likely to fulfill his duty to his client to conduct himself according to the approved ethics of his profession unless he is both informed as to what the canons require and is in sympathy with the enforcement of them.

In recent years we have come to place more emphasis on the significance and solemnity of the beginning lawyer's induction into the practice. The English reference to entry into the profession as a call to the bar is more nearly in keeping with the true concept of a lawyer's mission. We are making of the occasion an appropriate formality before the highest courts in the land. Chief among the functions of the ceremonies is the administration of the professional oath. The oath embraces the spirit of the canons of professional ethics. The impact of the oath on the mind and conscience of the young lawyer should be so complete as to serve as a constant reminder of his obligation to the clients he serves.

2) That He Observe the Recognized Standards of Judicial Conduct

A lawyer's conduct in the courts has always been a foremost means

70. Canon 31.

71. Canon 32.

the public has of judging him. Here his acts are subject to public scrutiny. Here is where he appears for his client before judges who, like him, have been lawyers. Because of public sensitiveness to the opportunity lawyers have of disposing of people's controversies and determining their rights before the courts by means the layman does not always understand, and because of abuses lawyers and judges have sometimes, either as a result of indiscretion or corrupt motives, permitted or actively perpetrated, canons of judicial ethics have been adopted to govern the conduct of judges and lawyers in their relations with judges. A judge is conscious of these canons and is aware of the practice of the lawyer in his observance of them. The lawyer's conduct before the courts and in his relations with members of the judiciary, as judged by these canons, determines his professional standing and the regard the courts have for him. One of the best services a lawyer can render his client is to know and strictly observe these canons of judicial ethics.

3) That He Grow in His Capacity for Service by Keeping Abreast
of the Progress of the Law

In an age that is celebrated for the swiftness in the advancement of technology and scientific development, progress in the law has, to a large extent, escaped public attention. In fact, lawyers themselves are not fully aware of the immense transformation that has occurred in the law in the last generation. In a momentous movement under the leadership of the organized profession, lawyers throughout the nation, working in conjunction with judges and legislators, have rewritten the Rules of Civil and Criminal Procedure in Federal Courts, and with similar leadership and workmen they have produced a Restatement of the basic branches of the substantive law. Legislation affecting the life of every citizen has been poured forth from the national Congress with unbelievable rapidity and in infinite volume. In the several states movements to modify the law have operated with similar momentum and comparable results. State constitutions have been overhauled and rewritten; new codes of civil, criminal, commercial and probate procedure have been adopted; uniform laws pertaining to a multitude of things have been passed; new methods of selecting judges have been devised; new rules have been adopted by the courts; and an endless amount of tax, labor and social welfare legislation has been made effective, and sweeping changes have been wrought in the law on every hand.

Because of these recent gigantic changes in the law and the enormous

volume of legislation, judicial decisions and administrative regulations which continues to pour forth in undiminished quantity, it has become utterly impossible for any lawyer to keep completely abreast of all that he ought to know properly and adequately to serve his clients on all legal problems. If he is a member of a firm, he can divide the responsibilities of keeping informed with his associates, but even then the task of maintaining his position as a counsellor and as an advocate is staggering, and his responsibilities to his clients continue to multiply.

Physicians have better opportunities for keeping informed of progress in the fields of medicine. Their practice takes them to hospitals and clinics where specialists work and have access to the latest reports from the fields of research and experimentation. We in the law have by no means advanced as far as have physicians in developing for our profession or making available to the members of it the latest essential professional information and assistance. Nor have we acquired the means or developed the methods by which such information can be diffused among the members of the profession or the practical benefit of it demonstrated. But we are making progress. Extensive programs of continuing legal education have been devised and effectively used for the benefit of lawyers under the direction and supervision of the American Law Institute, the American Bar Association and numerous other organizations of members of the bar. Law schools are providing housing facilities for refresher students attending institutes, and law libraries are making available their collections of legal literature for use in research. The American Bar Association, with its seventeen sections and its special committees, is constantly exploring the developments in the innumerable fields of the law, and it is making the results of such exploration, studies and research available to all interested members of the bar. In the last few years it has held regional meetings in cities in different sections of the country in which active practicing lawyers, specialists in different branches of the practice and law teachers have taken to the members of the profession general and technical information of developments in the law, and have given helpful, practical assistance. State and local bar associations, law schools and other organizations all over the country are sponsoring similar programs for the purpose of making it possible for the members of the profession to keep abreast of the developments in the law. Thousands of lawyers have attended these regional meetings, state and local schools of instruction and institutes for professional instruction.

Surrounded by such opportunities for improvement of his capacity for rendering professional service, the lawyer must not isolate himself under the pretext that the business of his clients requires all his time. Business of his clients demands that he use a part of his time exactly in this manner. An avalanche of information about developments in the law is also bearing down on the members of the profession in the form of legal periodicals, professional journals and bulletins, law reviews, loose-leaf services and treatises. New facilities and equipment for efficiency in office operation are constantly being supplied, all of which can be used to increase the effectiveness of the lawyer's services and make him more profound. He must make the most of all of these things if he is to do his full professional duty.

4) That He Strive to Render Service on the Level of the Specialist

Long before specialization in the law, as we speak of it today, Mr. Justice Holmes said all lawyers are specialists.⁷² To the lawmen, all lawyers are specialists. Clients expect their lawyers to know the law. They expect them to render expert service. Clients have a right to be served according to the standards of their expectations. But we know that most lawyers are not specialists. Nor are they experts. The large majority of lawyers are in general practice. They are doing what they can to keep the level of their work up to the standard of what is best or what is expert. But the demands of some fields of the law are so exacting that a general practitioner cannot possibly render expert service in them. More and more lawyers are finding that in such areas of the law as labor, taxation, insurance and trust practice they must devote their exclusive energies if they are to master their fields. They are specialists. You in the field of medicine are making more effective use of specialization. The lawyer in the general practice and the lawyer who limits his practice to a specialty should together find means of handling all law business and serving all clients according to the standards of perfection the client envisions and the specialist strives to attain.

Let us illustrate with two examples: First, let us consider a case in torts. Here is a citizen who is involved in a severe automobile collision. He is himself permanently disabled and members of his family also are injured, perhaps some of them killed. He is a good citizen against whom

72. HOLMES, COLLECTED LEGAL PAPERS 39 (1920).

calamity has struck with suddenness and fury. He may have never before had to consult a lawyer on business. But now he must. He knows a lawyer of fine reputation who attends the same lodge with him. He has confidence in that lawyer and engages him to take his case. But that lawyer has not handled automobile litigation in several years. He has worked at other professional tasks. What duty does that lawyer owe his client? It is obvious that he owes him the duty of rendering services beyond the reach of his ability and experience. He must move without delay. He makes a quick inquiry of a lawyer he knows and respects. He finds his friend has just returned from a medico-legal institute where, for more than a week, he has taken intensive professional training in the handling of tort cases. He listens to what his friend tells him of the institute curriculum: contingent contracts with clients, statements of witnesses, physicians' technical and scientific treatment of patients, the drafting of pleadings, discovery, evaluation of clients' claims, demonstrative evidence, pretrial conferences, trial technique, instructions. He is captivated by his lawyer friend's enthusiasm for the latest developments in the handling of automobile collision claims. His duty to his client requires that he obtain the best services that can be had. Such services are those of the expert in a specialized field. The lawyer who produced the business and the lawyer who is best equipped to handle it must work together to obtain for a client in such extremity all of that to which he is entitled under the law.

Second, let us consider a case in estate planning. A lawyer in the general practice is consulted by a businessman who has been successful and desires assistance in conserving for his family what he has acquired. The lawyer finds that his friend who has been a neighbor and for whom he may have done occasional business over the years has a modest fortune. He holds a substantial amount of life insurance. He has been successful in stock investments and holds a portfolio of mixed securities. He owns a business that yields substantial returns. He has not confided any of his business plans in anyone except his banker. He has not discussed, except with the accountant who does his tax work, any future planning for his business or his family. When he approaches his lawyer he confesses to him that he has been loath to discuss his personal affairs extensively with a lawyer because he has had an aversion for courts, the law and lawyers. But he tells his lawyer he knows more about his family than anyone else, and he trusts the lawyer to do what is right by him and his loved ones. The lawyer does know his client. He knows him

far better than the client suspects. And the lawyer knows the client's family, their habits and their traits of character. But the lawyer is not skilled in accounting. He is not a tax expert. He is not an expert in the planning of estates involving securities, insurance and trusts. But his client needs expert service in all these fields. The lawyer must handle the business for his successful client in such manner that the specialized techniques of the insurance expert, the tax expert, the securities expert and the trust officer may be used.

The lawyer in this situation, even though he be in the general practice, has the gravest responsibility. The client looks to him because he has confidence and he trusts in his judgment. It may become the duty of the lawyer to decide, contrary to the recommendations of all the experts, that the future of his client's family and the character of his children and his grandchildren can be better served under a plan that costs him more in taxes instead of less. It may become the duty of the lawyer to direct, against the counsel of the experts, that the increased responsibility of the children and grandchildren of the client in the operation of his business may be the means of making them more useful citizens than if such responsibilities were transferred to strangers, on the ground that they are business experts.⁷³

Indeed, the highest duty of the lawyer in the service of his client may be that of bringing to his problems the special skill and techniques of the expert, and then leading him to decisions which will promote the best interests of himself and his family as good citizens, and which decisions he might have escaped had it not been for the wise counsel and profound judgment of the lawyer.

5) His Duty to be Human

Before leaving the consideration of a lawyer's duty to his client, may we look briefly at its human import. In the handling of legal business for a client we are often so engrossed in the rigid legalism of the relation that we omit to be sympathetic and human. By being considerate, sympathetic and expressive of human interest, we may sometimes add to the measure of our legal services to our clients. Illustrative of what I mean, I am indebted to Dean King of the Law School of the University of Colorado for the reference to the Spanish author of "The Tragic Sense of Life"

73. Jones, *Counsel in Estate Planning*, 93 TRUSTS & ESTATES 417 (1954).

where he quoted Goethe's deathbed cry, "More light, more light," and added, "Not more light, but more warmth. Men die of cold and not of darkness. It is the frost that kills and not the night."

To our friends of the medical school who are here tonight, may I add this further word. Your profession has given to mankind that human warmth where life abounds in a sense that our profession never has and probably never will. It is symbolized by the traditional figure, the Family Doctor. To you who are as interested as we in rendering human aid, may I pose this question. The Family Doctor is becoming extinct. The light you bear today is far more resplendent and illuminating than was his. But are you bearing to the suffering the warmth of the bedside vigil and the sympathetic presence in the long watches of the night that which he so generously and sacrificially bore to mankind? Does not the world need tonight, if not in person, at least the equivalent in spirit, of the Family Doctor and the Family Lawyer?

2. His Duty to the Court

When a lawyer leaves the practice of the profession to accept a position on the bench, he casts off the weapons of combat to replace them with the ermine of the judge. He passes from the comradeship of the ranks to the loneliness of command. The transition is phenomenal. One day he is an advocate engaged in an adversary business. The next day he is a judge engaged in making decisions. As a lawyer he had his favoritisms in the profession. As a judge, he should refrain from all favoritism. As a lawyer he had political associations. As a judge, he must make decisions free of political considerations or implications. As a lawyer he exerted influence. As a judge, he must keep himself free from susceptibility to influence. As a lawyer he contended for the rights of clients, exercising partiality and seeking favors for them. As a judge, he must decide causes impartially and without fear or favor. As a lawyer he sought the respect of the bar. As a judge, he has the respect of the bar and the public.

Ages of experience in the relationship between the lawyer as a lawyer and the bar, and the lawyer as a judge and the bar, have resulted in the formulation of standards known as canons of judicial ethics. To these we have already referred. The lawyer's duty to observe these canons as they relate to the obligations of the bar is a duty implicit in membership in the profession. In addition to this, the lawyer is at all

times an officer of the court and owes the court his support and loyalty. He should be fair. He should be truthful. He should be trustworthy. And, he should be prepared. Slothfulness and levity result in lost confidence. Candor, sincerity and earnestness beget dignity and respect. A justice of the Supreme Court of the United States asked recently, "What is oral argument before the Court?" And, answering his own question, he said, "It is the impact of personality upon the judge."

3. His Duty to the Profession

The law is an immense thing. It is like a vast, impenetrable jungle. Once you enter it, it grips and holds you. If you seek to master it, it engulfs you. One cannot survive in it alone. He must live in it in company with his friends and fellow travelers. If a lawyer elects to live alone in the law, it will overwhelm him. If he unites with all of those who are engaged with him in its immensity he can make of it a great human instrumentality. We have passed through eras of professional ascendancy and we have reverted to decadence and deprofessionalization.⁷⁴ This is a day of revival of professional organization.⁷⁵ Under the leadership of the American Bar Association the organized bar is extending the influence of its far flung program to the office of every lawyer in the land.⁷⁶ A total of approximately 1,500 bar associations and organizations in counties, towns, judicial circuits, cities and states are now functioning in the vast program of organized professional coordination and improvement.⁷⁷ Every state in the Union has either a voluntary or integrated bar organization. The activities of these bar organizations extend into every area of law and to every field of interest of lawyers. And yet, the membership in the American Bar Association probably does not exceed 55,000 or about one-fourth of those eligible for membership. Lawyers can ill afford to avail themselves of membership and participation in these bar organizations which are working in the highest interest of the membership of the profession.

4. His Duty to His Community

Irrespective of the gigantic obligations upon the active lawyer in his profession, he must devote some of his time and talents in the interest of

74. POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 177-249.

75. *Ibid.* 253-349.

76. SUNDERLAND, *HISTORY OF AMERICAN BAR ASSOCIATION AND ITS WORK* (1953).

77. Report of Archibald M. Mull, Jr., President, National Conference of Bar Presidents, to House of Delegates, American Bar Association, February 15, 1955.

the life and people in the community where he lives. His training and his experience equip him for participation in local affairs. In business he may be called to serve as an officer or director in a local industry, corporate business, bank, savings and loan association or other commercial enterprise. In charitable and philanthropic enterprises he may be called upon to serve on hospital boards and as a member of other similar organizations and associations. In education and religion it may become his duty to serve on school boards, church boards, library boards, and teach in church schools and work on other governing bodies. In civic activities he may be called upon to assist in community chest work, Boy Scout or Girl Scout organizations, lodges, city planning boards, and various other civic enterprises. He cannot decline to do his part in these and many other things that involve the interests and welfare of his home community. His clients' interests may be affected directly or indirectly by these things. His children grow up in and associate with the other people of the community who feel a responsibility for the success of these institutions, enterprises and activities. A community reflects the ideals, the character and the pride of its people. The lawyers in a community are expected by their neighbors and friends not only to help in community expression but to furnish leadership for community life and development. A good lawyer must assume such duties and furnish such leadership.

5. His Duty in Shaping Public Opinion

When Lord Bryce wrote his profound commentaries on public opinion in America, he said that "In no country is public opinion so powerful as in the United States." And he added, "Both in great cities and in small ones, the lawyer is favourably placed for influencing opinion. If he be a man of parts, he is apt to be the center of local opinion, as Lincoln was in Springfield, where he practiced law and made his reputation."⁷⁸

Other organs, unknown in the days of the great English Ambassador, are today more powerful factors in influencing public opinion than some of those he mentioned. And if the lawyer of today is as favorably placed for influencing public opinion as he was in those days it is certain that he

78. BRYCE, *THE AMERICAN COMMONWEALTH*, Part IV (1903). In a footnote enlargement on his reference to Lincoln, the author added: "I have heard townsmen of the great President describe how the front of his house used to be a sort of gathering place on Summer evenings, where his racy talk helped to mould the opinion of the place."

is not exercising the influence as effectively now as he did in the days when Bryce wrote or in the days when Lincoln lived.

But because of his training, his knowledge of government and his inclination to keep informed on current events, and because of the fact that his opinion in his community is usually considered valuable, the lawyer today still has his part in formulating opinion. His loss of influence on opinion is due partly to his failure to keep informed and partly to his disinclination to go into the forum and state his convictions. When he does express himself on subjects relating to the public interest, he does not always reveal original thinking, familiarity with available information, or profoundness in reasoning and consideration.

It is the duty of the lawyer to keep himself informed on all questions of national interest and local significance, and to state his convictions in private conversation and in public discussion. People always like to know a lawyer's opinion on any public question, and most lawyers are called upon from time to time to address public meetings on current issues. The lawyer owes a duty to the public to accept invitations for occasional addresses and to prepare himself with diligence and to speak with conviction and without fear of public disfavor on all things pertaining to the public welfare. Too often the lawyers who are most inclined to render public service confine their energies and their public addresses to professional aims and interests. They need to assert their leadership in public discussion as Henry did before the Virginia Convention, Webster in his celebrated Reply, and Lincoln at Gettysburg. In fact, they should not wait for the Great Occasion. They should be prepared and should willingly respond at any place where the roots of opinion are wont to grow.

II. THE LAWYER'S PUBLIC DUTY AS A PUBLIC OFFICIAL

1. His Duty to Accept Public Office

Service in public office in this country is usually associated with professional politics. Ordinarily, the active lawyer does not have the time or the inclination to engage in politics in order to serve as a public official. If he has an established practice, his duty to his clients makes it impossible for him to take the time and spend the money necessary to election. As a consequence, the large majority of active and successful lawyers take no part in politics with a view of going into public office.

This reluctance on the part of lawyers to do the things necessary to

be elected has deprived the public of the official services of some of our ablest legal talent. And yet, it is a situation that has long existed. More than three score years ago, Lord Bryce wrote his famous chapter on "Why the Best Men Do Not Go into Politics".⁷⁹ It would be unfair to many lawyers of great distinction and ability who are now serving in important positions in the government to say that the best lawyers do not go into politics, but the necessity for continuity in his practice and the distaste men frequently have for engaging in the broils of party strife and professional politics have combined to keep many of the ablest men at the bar and in other professions and vocations from offering themselves for public office.

The public loss from these circumstances is difficult to measure. In an age in history in which the destiny of mankind is being determined, and when the efficacy of government by the democratic processes is being judged in comparison with the efficacy of government by totalitarianism, the governments in our country should not be abandoned to the fate of accident or to the machinations and intrigues of those who would conduct government for the benefit of those who govern.

The practice that widely prevails today among the most successful practicing lawyers to look with disdain upon the lawyer who offers himself for public office is not within the highest traditions of the profession.

There has always been a close relationship between the bar and the government, and in times of great public need and when great crises have confronted the nation, we have been fortunate in having men of great prominence and capacity to accept the responsibilities of public office. Suppose Jefferson at the time of his opportunity to further his practice as a young lawyer had declined to serve in the Second Continental Congress. Or, suppose that Jefferson, after he had achieved national distinction and established his reputation in high public office, had been unwilling to leave his law practice and humble himself by returning to a lowly position in the Legislature of Virginia.⁸⁰ Or, suppose Marshall, as a young leader of the bar enjoying a growing lucrative practice, had declined the appointment as Chief Justice,⁸¹ as one of his distinguished fellow Virginians had recently done⁸² and as one of the great leaders of the

79. BRYCE, II *THE AMERICAN COMMONWEALTH*, Chap. 58 (1903).

80. 1 RANDALL, *LIFE OF THOMAS JEFFERSON*, 194-237.

81. 2 BEVERIDGE, *LIFE OF JOHN MARSHALL*, 485-564 (1916).

82. Patrick Henry. See 2 HENRY: *PATRICK HENRY, LIFE, CORRESPONDENCE AND SPEECHES*, 562-563.

bench and bar had done after serving in that position.⁸³ And, suppose Lincoln, who could ill afford to leave his practice as a struggling prairie lawyer, had decided to offer himself as a candidate for the Senate of the United States in the grim year of 1858 and had been unwilling to risk professional reverses and the prospect of political oblivion in order to throw down the challenge to debate the burning national issues with Douglas.

Representative government by the democratic processes has suffered terrific losses in prestige in the last two generations. In America it is facing one of its most desperate trials. If the bar can supply the skill, genius and stability with which it can justify the faith of mankind, no greater service could be rendered the human race.

In the same spirit in which the giants of the American bar in former generations have offered their services to the government, lawyers of the present day should be willing to dedicate theirs. Not only should the lawyer of today be willing to seek and accept public office, but his associates at the bar should also encourage him in the public interest to supplement his service in the practice of his profession with service to his state or to the nation in public office.

2. His Duty in Public Office

There is no other profession more closely associated with government than the profession of the law. A lawyer, better than any other professional man, should be informed about and he should understand the functions, the instrumentalities and the results of government. Likewise, he should, more than anyone else, be deeply concerned with government. For the lawyer spends his time working with the products of government. Even where the lawyer confines himself solely to the routine practice of attending to his client's business, what he does for his client is determined largely by legislation, by judicial decision, and by administrative action. These are the products of government. They come from the hands of those who hold offices in the government. The lawyer cannot be fully successful in the practice of his profession if he is content only to look to others to shape these products of government. He must accept responsibility both for having an intimate understanding of the

83. John Jay. See 3 BEVERIDGE, *LIFE OF JOHN MARSHALL*, 120-121 (note) (1916).

purposes and the results of government and for taking an active part in the operation of government. To do that he must be willing to hold public office.

There is probably no other point at which the lawyer of today fails as tragically in the performance of his public duty. By far too many lawyers indifferently evade the obligation to keep informed on the problems and operation of government, and decline to accept responsibility for it. The ideas that a lawyer must make a commercial success of his profession and that the standards of success in big business are the standards by which his success in his profession is measured are all too prevalent among the members of the legal profession. The ambition of the most skilled and active lawyer, whose professional services are in the greatest demand, completely to disregard all other professional obligations and devote himself exclusively to service to his clients, in the hope that he may acquire a fortune in the period of his greatest power and usefulness, so that he may in his later years devote a part of his time to public service, is highly dangerous to his complete professional success and to the public interest.⁸⁴ Law schools are not altogether blameless in the shaping of such ambition. On the occasion of the 250th Anniversary of the founding of Harvard College, one of the most celebrated of its alumni Mr. Justice Holmes said before the Harvard Law School Association, "A law school does not undertake to teach success. . . What a law school does undertake to teach is law."⁸⁵ The purpose and the curriculum of the law school of today have not advanced much beyond the Holmes concept. In our law school training and in most quarters of our professional experience, we continue to hear emphasized the necessity of the absolute subservience of the lawyer to the law, to the exclusion of all his other interests and activities. Implicit in a program of training and in a policy of application on which this is the major emphasis is the idea that this is the surest way to professional success.

There is no need for a distinction between a purpose to teach lawyers

84. As was said by Judge Arthur T. Vanderbilt in the Proceedings of the Inter-Professions Conference on Education for Professional Responsibility, held at Buck Hill Falls, Pennsylvania, April 12-14, 1948, p. 154, "There is nothing more pathetic than the successful professional man who wants to serve his community, but who has never schooled himself in the world of political realities. A day of public service and of real interest in the world of politics at the age of 25 is worth infinitely more to the community than month of any old man's leisure."

85. HOLMES: COLLECTED LEGAL PAPERS 36.

the law and not to teach them how to succeed as lawyers, as though the one should be held to be the converse of the other. Knowledge of the law need not exclude a purpose to be successful in the practice of the profession. In fact, are not law students entitled, as a part of their training for their profession, to learn something of the duty and responsibility of the lawyer in a profession as well as solely to learn the law?

In the training for the law, as in training for other professions, consideration is most appropriately being given to the suggestion that there be included in the curriculum or in some other manner infused in the spirit of the students the importance of the performance of their duties as citizens and their responsibilities as professional men for what occurs in government. Such training and emphasis is particularly appropriate for the legal profession.

Leaders of the organized bar are also quite properly advocating as a professional policy a reawakening of the lawyer to his obligations in government.⁸⁶ A lawyer's greatest success for his clients and himself can come through a better adaptation of the products of the government to the needs of the public. Law schools, members of the legal profession, and other professional schools, with members of the other leading professions, are considering together means of supplying the needs for training and experience that will help members of the professions meet this greater responsibility in public service and thereby add to their professional success.⁸⁷

When a lawyer lapses into the habit of thinking he cannot be professionally successful unless he declines to hold public office, he should review the achievements of some of our most eminent lawyers. May we look at but one example: During his time there was probably no more successful lawyer at the American bar than Daniel Webster. He did not decline in the time of his most active professional work to perform the most difficult tasks of public office. When he was engaged in the most arduous labors before the Supreme Court of the United States in cases of great national interest and involving highly technical points of law, he turned abruptly to deliver as a leading member of the Senate of the

86. See e.g. Wright (Pres. Am. Bar Ass'n), *Hidden Assets and Responsibilities*, 29 WASH. L. REV. 321, 329-330 (1954).

87. Proceedings of the Inter-Professions Conference on Education for Professional Responsibility, held at Buck Hill Falls, Pennsylvania, April 12-14, 1948.

United States one of the greatest orations of all time. The interests of his clients were not neglected, nor did they suffer as a result of his performance of his duty in public office.⁸⁸

Lawyers are wholly responsible for the judicial branch of the government. There is no training for judicial service except that obtained in experience at the bar. Judges of great stature and attainment have come from men whose prior judicial experience was obtained only by service at the bar. It has not been uncommon for ordinary members of the bar to become great judges, and it has been to the great credit of the legal profession that out of their numbers have always come men who were willing to give up practice at the bar to serve the judiciary. In two notable instances in recent times men of great prominence and ability, whom all of us know, whose incomes from the practice of their profession exceeded by far what judicial service offered them, were willing to leave their successful practice at the bar to take positions on the bench. All of us know of many judges who have left the bar for arduous and confining service on the bench, even though they could have made far greater sums of money by continuing their practice at the bar. This has been true both of judges in inferior and trial courts and of judges on the appellate bench. There is no higher service in the government into which lawyers are called than service in the judiciary. It is the duty of the profession to furnish for judicial service its ablest men. Methods for the selection of the best men for judicial positions are always being reviewed, considered and improved. We in Missouri are proud of the fact that we have devised a system for the selection of judges that has not only attracted national attention and favorable comment, but which has also furnished for service on our courts in this State the leading men in our profession. It is the duty of men of the highest judicial qualifications in the legal profession to continue to respond willingly to the high call of judicial service.

Secondary, in point of responsibility of the lawyer, to the judicial branch of the government is the legislative assembly. Lawyers should never be parties to the kind of criticism that often is leveled at the American legislative assembly. It is that branch of government that is nearest to the people, and as servants of the people lawyers should be willing, as they always have been willing, to accept seats both in the

88. 1 FUESS, DANIEL WEBSTER, 361-398.

Congress and in the state legislatures. The contributions made to legislative efforts by lawyers of the past should serve to encourage lawyers of our time to render legislative service. The dedication of great men to legislative service was well exemplified by Patrick Henry, of the bar of Colonial Virginia, when on that bleak March day in 1775 in a session of the Virginia Convention he thundered the indignation of the people against oppression, and it was exemplified by Edmund Burke of the British bar who, within twenty-four hours of that memorable event, made his great speech on conciliation with America in the House of Commons. It is exemplified today in the patriotic service of lawyers of distinction and ability in legislative assemblies all over the nation. It was through the cooperation and leadership of men at the bar in the Congress of the United States that noteworthy legislation approving civil and criminal codes has been adopted, and that legislation of great consequence to the nation and to her people is being passed. It is the duty of men at the bar who appreciate the importance of good government, and who are capable of legislative leadership, to continue to furnish leadership and service in our legislative assemblies and to all of those auxiliary agencies of the Congress and the state legislatures which help to give us our statutory law.

The executive positions in the government of the nation and in the states have often been filled by lawyers of great ability and renown. It is a tribute to the devotion and public spirit of members of the bar that so many of our state executive positions are filled by members of the bar. Lawyers should be as well prepared for executive leadership as men of any other profession or vocation. And when members of the bar receive calls into positions of executive or administrative leadership in government it is their duty to respond with their best efforts in the highest public interest.

In innumerable departments of the national and state governments there are positions requiring training, skill, experience, judgment and patriotic devotion to the public welfare which the lawyer is equipped to fill. Such positions of importance in the government have always attracted men of ability and high standing at the bar. A generation ago, Elihu Root was the acknowledged leader of the American bar. When he was at the very summit of his achievements in the practice of his profession, and when he was receiving an immense annual income, together with endless professional honors, he left his exalted position at the head of the bar to

accept service in the government. During the remainder of his distinguished career he gave himself without stint or limit to the task of shaping and directing the foreign policy of the nation in a new venture in world politics for which there was no precedent in American foreign policy. His services to the nation cannot be measured in terms of commercial value, but they represent consummate achievement in professional skill and dedication.

It is obvious that no member of the bar alone can perform the gigantic tasks required in what we have found to be the duty of the American lawyer, but all lawyers working together can. It is not a duty alone of any individual member of the bar. It is a duty of the profession.

In meeting that duty we should consider ourselves as the guardians of the institutions by which the people, in the exercise of their powers of self-restraint, through the processes of the law govern themselves and maintain order and justice. In that position we should so conduct ourselves as though the enemy is always at our gates. Dangers to the public peace are always present. In private practice and in public office, the American lawyer must be ever alert to these dangers and prepared to resist them. By instinct, by training, by trial and by experience, he is prepared to face the presence of danger and even to walk in the ruins of disaster and maintain his confidence and faith.

It was with such confidence and faith that Churchill faced his duty to Britian on the fall of the Chamberlain government. On May 10, 1940, Hitler started the invasion of the Low Countries. On that day the government of Chamberlain collapsed. The King called upon Churchill to form a new government. Through the day and night he organized a Cabinet and prepared for the defense of Britain. On the following morning at three o'clock he went to bed. After the war was over, he described his feelings at that hour: "I felt as if I were walking with destiny, and that all my past life had been but a preparation for this hour and this trial. . . . Therefore, although impatient for the morning, I slept soundly and had no need for cheering dreams."⁸⁹

89. CHURCHILL, *THE GATHERING STORM*, 66.