

THE DUTIES OF ATTORNEY

Address by Hon. Edwin Baker Gager, M. A., Professor of General Jurisprudence, Yale Law School, to the Applicants for Admission to the Bar of Connecticut, in the Superior Court, June 20, 1911.

The growing interest of the Bar in maintaining and raising the standards of professional excellence and professional conduct is indicated by the raising of the requirements for admission to the Bar, and by the adoption by the Bar Association of specific canons of conduct, rather ethical than strictly legal in their nature. In response to this interest our Bar Examining Committee has recommended a course in legal ethics, and has made legal ethics a subject of examination. You, gentlemen, have the honor of being the first group of candidates to pass an examination in legal ethics. Your text has been the attorney's oath of office for this State; the declaration of legal ethics adopted by the State Bar Association, and Sharswood's *Legal Ethics*. That you are here in court awaiting the order that shall admit you to the ancient and honorable privileges and responsibilities of the attorney is a sufficient voucher that you are reasonably familiar with the practical precepts involved in ethics as applied to the professional conduct of attorneys at law. I shall not, therefore, attempt to recapitulate here that in which you are certified by the Bar Examining Committee as being already reasonably proficient. It is, however, my official duty, imposed by rule of court, to address you upon your duties and responsibilities as attorneys.

Assuming your familiarity with the general subject, I wish this morning to direct your attention to certain matters which may appear obvious, and yet the neglect of which has caused many a young man, starting with prospects as bright as yours, to become a failure as a lawyer, and sometimes as a man. Some of you may remember the beautifully accurate description of a juriconsult given by Cicero. He must be "skilled in the laws, and in the usages current among private citizens, and in giving opinions and bringing actions and guiding his clients aright."

Your first and foremost duty, then, is to know the law. It is an ancient saying that the law is a jealous mistress, requiring ceaseless, single-hearted and enthusiastic devotion as a condition

of her favors. To know the law is not simply to learn it once for all, to pass your examination and then merely draw from your knowledge as occasion requires. Even you, fresh from the learning of the schools, will soon find your sources run dry if you do not diligently, in season and out of season, pore over the books, exhausting, so far as practicable, the law of such matters as may come to you, and, should you have leisure, delve in those fields in which work is most likely to come. The longer I live the more clearly I see and the more strongly I realize that the reason why so many fail to reach a high standing in the profession is that in the earlier years of their practice they did not adequately realize that the law is and always will be a learned profession, involving a lifetime of labor as the condition of its highest rewards. The man who knows is the man sought for by those desiring assistance in any profession; and it is as true of the lawyer as of the engineer, the surgeon or the specialist in any line; and this knowledge, to be effective, must be your own knowledge. Beware of the habit of trying to get your law by asking older lawyers, trying to get it upon the streets, and so getting that worthless article familiarly known as curbstone law. Get your law for yourself; cultivate confidence in yourself and in your own powers of research and of reasoning, and then, for confirmation or correction, you may consult some older lawyer in whom you have confidence. To know the law means, for us, that so long as we remain in the profession we will continue to study the law, or that part of it which we more particularly affect. And here let me urge you, if you would become lawyers with the larger outlook, with a comprehensive grasp of the real meaning of the law and the mighty part it has played in the advancement of civilization, not to confine your reading and study to the concrete rules of the system of law you may practice. Intimately connected with these rules, their ground work, the substratum, in fact, of the philosophy and theory of law, illustrating, explaining and vivifying it, are the history of law, comparative law, the principles of legislation and the principles of morals. The law you practice comes first, but to these subjects I have named should be cultivated in due proportion; and, as the years go by, the law will grow more and more interesting, its practice will give constantly increasing satisfaction, you will become more efficient lawyers, wiser, sounder, safer and better men.

Another duty is that of intellectual honesty. In its results intellectual dishonesty is about as bad as moral dishonesty. By intellectual honesty I mean thinking straight and seeing clear and applying the results fairly to the case in hand. If you do not reason clearly, if your constructions are strained and your applications far-fetched, the Court and Bar will soon find it out, and the penalty will be that as little attention will be paid to your arguments and to your claims as would be to your statements of fact were you known to be morally dishonest. Indeed, sometimes a lawyer will get a reputation for moral obliquity when the simple fact is that he persistently reasons himself into statements of law and claims of fact and courses of conduct which he thinks the necessities of his case impose, while the dispassionate observer finds it difficult to differentiate between his conduct and that of the confessedly dishonest man.

Not only must you get learning, know your subject, and also be intellectually honest in your reasoning and conduct in legal matters, but you must be morally honest with the court, your clients, your professional brethren, and I believe, above all, and as the sum total of it, be honest with yourselves.

Quoting from our Connecticut Code of Legal Ethics, I will read this:

As an officer of the court seeking to ascertain the truth, establish justice and defeat falsehood, and as the representative of the litigant entitled to his just rights, the lawyer cannot perform the duties he undertakes unless he acts in strict obedience to the laws of truth and fidelity.

Lord Bacon said that "The end and aim of law is to enable men to get on comfortably together." This is as true of the moral law as of the positive law. In a special, concrete sense the end and aim of legal ethics is to require such conduct from lawyers with respect to the court, the client and the brethren of the Bar, as shall enable them all to get on comfortably together, and such conduct is based on confidence, born of experience, in the absolute veracity, honor and fairness of the lawyer. What I want you to note here for a moment is that these rules of common honesty grouped together under the term "legal ethics" are not by authority imposed upon lawyers from without, but they are drawn from observation of the actual conduct and practice of the honorable, high minded members of the profession. They are, so to speak, the customary law of lawyers in their professional relations, and their binding force lies in the fact that

for hundreds of years they have in practice been recognized as vital to the usefulness and the continued existence, even, of the legal profession.

The antiquity of the oath for admission to the Bar indicates this: the oath which will be administered to you was, in almost its identical language of to-day, passed by the General Assembly of this State in 1708, and in England, dating sometime between 1246 and 1402, we find a record of the attorney's oath which sounds strangely familiar. Let me read it to you, taken from the Book of Precedents in the Court of Exchequer, "The Oath of the Attorneys in the Office of Pleas":

You shall doe noe Falsehood nor consent to anie to be done in the Office of Pleas of this Courte wherein you are admitted an attorney. And if you shall knowe of anie to be done you shall give Knowledge thereof to the Lord Chiefe Baron or other his Brethren that it may be reformed you shall Delay noe Man for Lucre Gain or Malice you shall increase noe Fee but you shall be contented with the old Fee accustomed. And further you shall use your selfe in the Office of Attorney in the said office of Pleas in this Courte according to your best Learninge and Discrecion. So helpe you God.

In spite of the cheap gibes we sometimes hear, no class of men is practically held in such confidence as the members of the Bar. Life, liberty, property, political and civil rights, are all intrusted to them, and how seldom is that confidence violated, and how soon is one, known to have violated such confidence, overwhelmed with disgrace! He is either disbarred or becomes pariah in the profession.

Locke said of moral rules that "No an escapes the punishment of their censure and dislike who offends against the fashion and opinion of the company he keeps, and would recommend himself to it." If you would recommend yourself to the company of the Bar you are about to enter you must beware lest you offend against its fashion and opinion as set forth in legal ethics. The penalty may be discipline or disbarment, and a blasted professional life.

Here let me remind you that legal ethics is not strictly a special kind of ethics or morals, but it consists in the application of those general moral rules which should govern the conduct of us all, to those special relations arising from the nature of the lawyer's business. If, in the broad sense, a man is sound morally, his legal ethics will cause him little difficulty.

Again, the lawyer is not the servant of his client, he is not the servant of the court, but he is an *officer* of the court. I want you to realize that, gentlemen, as some justification for the years of labor that you have been through, and of the care that is attempted to be exercised in the selection of those who are admitted to the Bar, because the admission to the Bar makes you an officer of the court, and the office continues during good behavior, and the lawyer has as much right to appear in court as the judge to sit upon the bench. In *Ex parte* Garland, 4th of Wallace, 333, the court said:

The attorney being by the solemn judicial act of the court clothed with his office, does not hold it as a matter of grace and favor. The right which it confers is not revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency.

In the case *In re* Thomas, in the 36th Federal Reporter, 243, an application for the disbarment of an attorney because of alleged unprofessional and immoral practices, Mr. Justice Miller spoke thus of the attorney as an officer of the court:

The lawyer in this country is one of the administrators of justice. The judge who presides in the court is another, with more authority of position, and, perhaps, in some respects a more burdensome one. But the court, and the clerk, and the marshal, the sheriff, the jury, the lawyer, all constitute ministers of justice; and a lawyer who consciously undertakes to thwart justice is unfit for the position, as much as the judge who accepts a bribe, or knowingly decides a case against the law and the right; and it should be understood that they [that is, the lawyer and the judge] are subjected to the same responsibilities. They have a duty, undoubtedly, to their clients, but this is not the first duty, as is generally supposed. Their first duty is the administration of justice, and their duty to their client is subordinate to that.

Remember that, gentlemen, when you appear in court, and when lines of conduct are suggested to you, that it is your duty to handle your case and to present it to the court with the same scrupulous faithfulness and honesty and fairness that you expect of the judge in reaching his decision.

Yesterday at the alumni dinner of the Yale Law School we heard the law referred to as a "noble profession." It has to do with the administration of justice: earthly justice, to be sure, but here and now, touching us all in the most vital points, and it is the nearest approximation to the ideal of enforceable rules of conduct that the social organization has hitherto succeeded in

developing. But may we not believe and feel that it is a noble profession, and has become recognized as such not only because it is noble by reason of its character, but because its successful practice requires noble men: men disinterested, fearless, self-sacrificing, faithful, whose word is as good as their bond, men to whom you would entrust all that is dearest and most valuable to you with implicit confidence that to the utmost of their ability they would serve and protect you in accordance with the laws of the land? Let me entreat you, as you enter your profession, to take such men, and we all know them, as your exemplars. Form an ideal for yourself: that you will know the law, that you will be intellectually honest, that you will scrupulously observe the requirements of the ethical rules of your profession so that they may become a second nature to you, that you will guard and cherish your reputation as an officer of the court to which you are admitted, that you will take up and preserve the best traditions of a long line of lawyers reaching from the days of Edward I, the English Justinian, when England, as Freeman says, became the "domain of lawyers," to the present, when the president of our country, the governor of our state, the mayor of perhaps the second city in the world, have been taken from the Bench, and high officials innumerable have been taken from the ranks of the Bar—by the consideration of these things, form your ideals, and, so far as in you lies, live it and hand it on to succeeding generations untarnished by any wavering in devotion or remissness in practice. Apply to yourselves as lawyers the words of President Hadley in his inspiring baccalaureate sermon last Sunday:

We must learn to feel, both as individuals and as communities, that we have a place in history; that we stand in a long succession of men who have inherited principles and ideals from our fathers and who are to transmit to our children those principles and those ideals in greater fullness and strength. When we can really feel that we and those about us are part of a great movement of human life from age to age, then, and not till then, do we feel the best of inspirations, that which comes of working for all time. We must learn to get hold of the best traditions of the past, and really work them into our lives, because by this means we can get hold of ideas for the future which will make life worth living.

In 1648, Lord Commissioner Whitelocke instructed the new Sergeants-at-Law appearing at the Chancery Bar for the degree of Sergeant-at-Law, as to the nature and duties of the lawyer's office; and I close with a quotation from what the Com-

missioner then said, as showing that our judges, in providing for this ceremony, practically revive a custom existing certainly as long ago as 1648, because we have the specific record of what was then said by the Commissioner to the young men then standing before him as applicants for the degree of Sergeant-at-Law. He said:

I hold it not impertinent to mention something to you of the duties of an advocate; which are some of them to the courts and some to the clients. To the courts of justice he owes reverence, they being the high tribunals of law, and therefore great respect and reverence is due to them from all persons, and more from advocates than from any other. An advocate owes to the court a just and true information. The zeal of his client's cause, as it must not transport him to irreverence, so it must not mislead him to untruths in his information to the court. . . . The duties of advocates to their clients are general and particular. The general consists in three things: secrecy, diligence, and fidelity. For secrecy: advocates are a kind of confessors, and ought to be such, to whom the client may with confidence lay open his evidences, and the naked truth of his case, and he ought not to discover them to his client's prejudice; nor will the law compel him to it.

You remember the privilege of the attorney with reference to testifying as to communications between attorney and client; and I want to impress upon you most strongly that idea, that when you get in practice and people come to you to talk over their matters, those matters should be absolutely sacred and never travel beyond your lips, or beyond the work of the office, and the communications of the office necessary for the purpose of transacting the business:

For diligence: much is required in an advocate in receiving instructions, not only by breviate, but by looking into the books themselves, in perusing deeds, in drawing conveyances and pleas, in studying the points in law, and in giving a constant and careful attendance and endeavor in his client's causes.

For fidelity: it is accounted *vinculum societatis*, the bond of society. The name of unfaithfulness is hateful in all; and more in advocates than others, whom the client trusts with his livelihood, without which his life is irksome; and the unfaithfulness or fraud of the one is the ruin of the other.

And, as was perhaps more common in those times, he illustrates his meaning by reference to the classics:

Virgil, in his fiction of Aeneas going down to hell, sets these in the front of the crimes [and I give you the translation]: Here (that is, down where Aeneas was wandering through the confines seeing and observing

the shades who were the denizens of that disagreeable region), Here, those who, while alive, hated their brothers, beat their parents, or defrauded their clients, imprisoned, await punishment.

For your duty to particular clients you may consider, that some are rich, yet with such there must be no endeavor to lengthen causes, to continue fees. Some are poor; yet their business must not be neglected if their cause be honest; they are not the worst clients, though they fill not your purses; they will fill the ears of God with prayers for you, and He who is the defender of the poor will repay your charity. Some clients are of mean capacity; you must take more pains to instruct yourself to understand their business. Some are of quick capacity and confidence, yet you must not trust to their information. Some are peaceable, detain them not, but send them home the sooner. Some are contentious, advise them to reconciliation with their adversary. Amongst your clients and all others, endeavor to gain and preserve that estimation and respect which is due to your degree and to a just, honest, and discreet person. Among your neighbors in the country, never foment, but pacify contentions.

So you see, gentlemen, that this custom that we are fulfilling here this morning, in obedience to the mandate of the judges, is of long existence, and that the notions that we try to instill into you it has been the aim of judges for a long time to instill into those days the judge whose official duty led him to pass the order transforming them from private citizens to officers of the court, was moved by the same kindly feeling of interest in their welfare and in their future that we feel here to-day. For, in concluding his address, we find that the Lord Commissioner, away back there in the days of the Roundheads and the Cavaliers, extended to the new Sergeants-at-Law before him his best wishes.

And so I, as representing our loved and honored State, extend to you, as you enter the Bar of Connecticut, in the language of the Lord Commissioner in 1648, my heartiest and best wishes: "And what honor and advantage hath been gained by any of the most eminent of your predecessors in this degree, I do heartily wish may be multiplied unto you."

Edwin B. Gager.