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INTEGRITY AND THE LAWYER

DAVID W. ROBINSON*

Following an appropriate opening, Mr. Robinson, addressing the graduating class, continues as follows:

Paul begins the thirteenth chapter of his first letter to the Church at Corinth with these familiar words:

Though I speak with the tongues of men and of angels, and have not charity, I am become as sounding brass or a tinkling cymbal.

So it is with the lawyer. If he has magnificent abilities, much learning and great industry and has not integrity, he is an unworthy member of the profession and a menace to his clients and to the public.

When you receive your license from the Supreme Court of this State, you enter into the practice of a profession. You do not embark upon a business career. I cannot emphasize too much the fact that law is a profession, not a business. Without in any way minimizing the contribution which business makes to our way of life, the professional man must always remember that he has a duty to the public which is his first obligation and his highest privilege.

While integrity is the rock on which all professions are built, it is an absolute necessity in the case of a lawyer because of the nature of his responsibilities. He has duties to his client, duties to the Court of which he is an officer, duties to the public, and duties to his fellow practitioners. To each of these classes he owes obligations requiring the highest fidelity. When a duty to a client conflicts with a duty to the public or to the Court, the conflict may be resolved only by a man of the highest integrity, a lawyer well trained in his responsibilities. Today it is my purpose to mention some of these responsibilities briefly. Lawyers have attempted to express our character obligations in Canons of Ethics. But the traditions of the Bar are not limited by any set of Canons. The lawyer must live and practice so that he is not only in fact honest and upright, but also is so known by his colleagues, his clients and the public.

It is for this reason that high moral character is required of those coming to the bar. As George Wharton Pepper says in his *Philadelphia Lawyer*, "To admit young men to the bar with no other than

*This address was delivered by Mr. Robinson of the Columbia Bar, President of the South Carolina Bar Association, at the Fall Commencement of the Law School of the University of South Carolina, September 8, 1956.

an educational test is to give a respectable and intelligent *young fox* easy access to the *hen roost*."

The relation between attorney and client is of a very delicate and confidential character. At times the client tells his lawyer the intimate details of his family problems, the revelation of which might destroy the happiness of homes and mar the life of innocent children. The client entrusts to his lawyer business secrets which in the hands of a competitor would jeopardize the continuance of the client's business. A lawyer has the power to embezzle the monies and securities of minors and of widows. He has the opportunity to trade with his client on terms advantageous to the lawyer. He can write the will of a well fixed client to favor the lawyer or the lawyer's family.

But the catalogue of advantages which a lawyer may take of his client is too long to be enumerated here. This much must be said. Whenever there is a conflict of interest between lawyer and client, the interest of the client must prevail. The lawyer's duty to the client is at least as high as that of a trustee to a beneficiary, it is as high as the responsibility of one dealing with a minor. The only safe rule is never to enter upon a trade with your client. Except in the rare case where there is an overriding duty to the public, a lawyer must keep the confidences of his client.

These principles may appear to you to be elementary. They are, but they must always be kept before us ere we stray. Other obligations to our client may not be so obvious. We owe the duty of utter frankness. If a client does not have a case, it is our duty so to say. If we undertake litigation, we must not let our laziness or our procrastination defeat legitimate rights of our client.

In fixing fees it is best to take the estimate of others as to our abilities rather than the usually exaggerated views we have of the value of our own services. A lawyer is entitled to compensation for a job well done but it is important that the charges be reasonable.

A second responsibility of the lawyer is to the Court. The Court confers on you the right to practice. It is not an inherent right guaranteed by the Constitution. It is conferred by the Court on persons of good moral character who have special qualifications because of learning and good conduct. On admission you become an officer of the Court subject to its control and discipline. The lawyer is respectful to the Court, even though he does not entertain a high regard for some particular individual who happens to be presiding. At the same time the lawyer refrains from currying favor with the Judge by undue attention. Much the same attitude is proper towards jurors who for the time being are judges in a particular controversy.

As officers of the Court lawyers are a part of the machinery for the administration of justice. It is their duty to see that justice is done. Loyalty to a client cannot justify a lawyer in seeking to have a witness change his testimony or in approaching a juror or in setting up some false claim. As Canon 15 so well says, the advocate should see that "nothing be taken or withheld" from the client "save by the rules of law, legally applied." But these responsibilities must be exercised within and not without the law. "The office of attorney does not permit" any manner of fraud for any client. It is your conscience, not that of your client, that must be the yardstick.

As an officer of the Court, you have by appointment of the Court the high privilege of defending without fee persons charged with serious crimes. In his interest you must exert every effort to the end that in our courts justice may never be denied because of the poverty of a defendant. But though every such defendant is entitled to your best efforts, no lawyer is justified in advising a wealthy scoundrel how to violate the law.

While every lawyer should maintain a respectful attitude toward the Court, he must fearlessly exert his utmost learning and ability within the rules of law to see that his client's interests are fully protected. No fear of public disfavor or criticism by the Judge should deter the vigorous performance of duties to his client.

Witnesses are entitled to courteous treatment. Opposing counsel should be treated with respect. The prejudices of your client should not influence you in the conduct of litigation and in your treatment of adverse parties.

Candor and fairness must mark your every action in Court. No self respecting lawyer misquotes law or fact. Evidence which you know is inadmissible should not be offered for the purpose of getting improper material before Court or jury.

To the public also, the lawyer owes heavy responsibilities. Most of those who run our government from legislative halls and executive offices are lawyers. In these positions of trust the lawyer must be careful to see that his public obligation does not conflict with his duty to some client. At times a lawyer-legislator may be called on to vote for legislation adversely affecting a client. Here his public duty takes precedence over the interests of his client. A legislator must always be alert to the possibility that someone will try to bribe him under the guise of giving him legal business.

Another important duty of the lawyer to the public is to see that judges are selected on the basis of fitness rather than on the basis of political considerations. Integrity requires a lawyer to support the

better qualified in preference to a close friend. Lawyers know better than laymen the qualifications of those being considered for judge-ships and they should never hesitate to allow the public to know these views regardless of whether the judge is appointed or elected.

Some of you may some day grace the Bench. If integrity is essential to the Bar, it is doubly essential to the Bench. A judge must not respect persons. Personal friends and enemies are to be treated alike. The rich or the influential or the powerful stand before the Bench just as do the poor and friendless. When Government itself, State or National, comes before the Court as a litigant, it stands no higher than the humble citizen and must be treated as any other litigant. A different rule would undermine the basis of our federated republic. The judge must always remember that his duty is to interpret, not to make law. Wisdom is for the legislative and executive branches. In the language of Smythe Gambrell, President of the American Bar, "The essence of despotism is a court enforcing not law but policy."

No discussion of integrity and the lawyer would be complete without a word about the prohibition against the solicitation of business by lawyers. Because advertising and solicitation are the life blood of competitive business, many laymen do not understand why it is unethical for professional people to solicit and advertise. Lawyers should never stir up litigation, which would be the normal effect of advertising. The only proper advertisement is the establishment of a merited reputation for handling legal work with fidelity, vigor, and in a professional manner. Neither the lawyer who solicits negligence cases nor he who courts large corporate clients has professional standing at the Bar.

The Supreme Court of South Carolina has prescribed Canons of Professional Ethics for the guidance of all who practice here. These thoughts from the Preamble are worthy of remembrance:

In America, where the stability of Courts of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

Henry S. Drinker, of the Philadelphia Bar, in his work entitled *Legal Ethics*, thus states "The Lawyer's Cardinal Loyalties":

Neither fidelity to the court, apprehension of judicial disfavor, nor friendship and sympathy will relieve him nor should deter him from his constant obligation to see to it that no unfit person is made or continued a judge or a member of the bar, whose honor and dignity it is always his duty to uphold and maintain.

To the court he must be thoroughly candid and sincere, both in word and in action, shunning every sort of deceit or misrepresentation, preserving a self-respecting independence in the discharge of professional duty without denial or diminution of the courtesy and respect due the judicial office.

To his client he owes absolute candor, unswerving fidelity, and undivided allegiance, furthering his cause with entire devotion, warm zeal, and his utmost ability and learning, but without using means other than those addressed to reason and understanding; employing and countenancing no form of fraud, trickery, or deceit which, if brought to light, would shame his conscience or bring discredit to his profession.

To his brethren at the bar, courtesy and good faith, respecting their opinions and the relation between them and their clients, disdaining to supplant or surpass them by advertising, publicity, artifice, or by any means other than the establishment of a well-merited reputation for professional capacity, achievement, and fidelity to trust.

To himself and his profession, tireless industry, unbounded enthusiasm, delight in its problems, and joy in its struggles, and — above all — loyalty to his own ideals and to the traditions of a noble profession.

Finally, remember the closing words of Judge Lanneau Lide: Hence the final test of our practice is not whether it be unique or not, but whether it conforms, as Lord Macmillan says, to 'what is just and good and fair, and somehow or other a man of good will knows what is just and good and fair'.

So the South Carolina Bar Association welcomes you to the profession, welcomes twenty-four young lawyers who know that integrity is the cornerstone on which success in the profession is based.

Industry, learning, ability, pleasing personality, integrity, but the greatest of these is integrity.