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THE BAR AND THE PUBLIC*

HONORABLE G. DEWEY OXNER

Associate Justice, the Supreme Court of South Carolina

If anyone were to characterize the vocation in which you are about to engage as a trade or business, you would properly reply that you are in a profession, which has been defined by Dean Pound as "a group of men pursuing a learned art as a common calling in the spirit of public service,—no less a public service because it may incidentally be a means of livelihood."¹ This tradition of public service originated long ago in the Inns of Court of England, from which it was brought to this country and has since continued as a dominant characteristic of our legal profession. Woodrow Wilson aptly stated: "You are not a mere body of expert business advisers in the field of civil law or a mere body of expert advocates for those who get entangled in the meshes of the criminal law. You are the servants of the public, of the state itself."²

Some of the distinctive characteristics of the legal profession are the high fiduciary relationship occupied by the lawyer with respect to his clients, to whom he owes unswerving fidelity and undivided allegiance; the relation between the lawyer and the court, of which he is an officer, demanding the utmost candor and sincerity; the relation between the lawyer and the fellow members of his profession, with whom he should always deal fairly and with courtesy; and the obligation which the lawyer owes to the public arising from the exclusive privilege given him by the State to practice law. In the discharge of these duties, he is frequently confronted with conflicting loyalties which he must reconcile.

From colonial days the legal profession in America has been under constant scrutiny. It has not always enjoyed public popularity. At times considerable hostility has been manifested, and there has been severe criticism. Some of these complaints have been without foundation, while others were to some extent justified. It has been stated that the American Bar reached its lowest ebb right after the War Between the States. There have been some surveys in recent years indicating that lawyers do not occupy the high place they once

*Address delivered by Mr. Justice Oxner to the graduating class of the University of South Carolina School of Law at commencement exercises held September 12, 1953.

1. "Survey of the Legal Profession" (The Lawyer from Antiquity to Modern Times, p. 5).

2. "The Lawyer and the Community", 35 A.B.A. Reports 419 (1910).

held in public esteem and that the judiciary has lost some of its prestige. The accuracy of these conclusions has been vigorously challenged. Regardless of whether the confidence of the public in the Bench and Bar is on the increase or decrease, there is abundant evidence of dissatisfaction with the courts as suitable tribunals for the settlement of disputes. A number of those engaged in certain trades and lines of business frequently turn to other agencies, such as arbitration and administrative boards, for a prompt determination of their controversies. Although we may justly take pride in the record of the legal profession, it must be conceded that there is much to be done if we are to discharge the obligation resting upon us to constantly strive for improvement in the administration of justice. I would like to discuss with you briefly a few steps which might be taken toward enhancing the public esteem of both the Bench and Bar and creating a better relation between our profession and the general public.

Professional standards must be rigidly maintained and in many respects strengthened. Those seeking admission to our law schools should be closely scrutinized with the view of excluding all applicants not having the necessary character and educational background. There was a time when legal education was in the hands of the individual members of the Bar. During those days the man who read law in a lawyer's office was intimately observed by a seasoned practitioner and thoroughly instructed in professional ethics. Some of these responsibilities must now be assumed by the law schools. There must be a further careful screening process when the law graduate applies for admission to the Bar and, even after admission, there should be a speedy and effective procedure for enforcing compliance with the Canons of Ethics. Prompt disciplinary steps should be taken for any violation. Every effort should be made to eliminate "bad moral risks." In Sharswood's Professional Ethics, it is stated: "No man can ever be a truly great lawyer, who is not in every sense of the word a good man . . . from the very commencement of a lawyer's career, let him cultivate above all things, truth, simplicity and candor: They are the cardinal virtues of a lawyer."

The public must be given a true picture of the functions of the legal profession and shown how the lawyer fits into the fabric of American life. The average citizen rarely goes inside a law office. He has little knowledge of the nature of the work and the many services rendered by a lawyer. The general public pictures him as engaged in the trial of a case, resorting to every technicality and

advantage to achieve victory for his client. This is natural because the lawyer is thus depicted in the movies, on television and in the press. This phase of his life is emphasized because it is dramatic and has news value. The public is led to believe that the normal habitat of the lawyer is in the courtroom. Several Bar Associations have sought to rectify this erroneous impression, which does not contribute to good public relations. For instance, the State Bar of Michigan has produced a picture "Living Under Law", which shows all phases of the life of the average lawyer. He is shown conferring and advising with his clients in his office, studying in his library, representing his clients before boards and commissions, and in a variety of other situations. This picture, which has been shown to service clubs and various associations, has been found quite helpful in improving the public relations problem. Recently the Atlanta Bar Association put on a television show called "Frederick Ashley, Attorney at Law." Four large Atlanta banks paid the cost of this program. This show depicts the part the lawyer plays in drawing wills and planning estates. In New York State, the younger members of the Bar have instituted a statewide adult education program designed to teach the layman "Law Everyone Should Know." Included in the curriculum are practical lectures on such subjects as contracts, wills, insurance, etc.

More attention should be given to the field of preventive law. The medical profession has built tremendous good will by educating the public on preventive medicine. As a part of this program, the public is informed as to the necessity of the early discovery and treatment of tuberculosis, cancer, heart and various other diseases. By a similar program in the field of preventive law, the legal profession can improve its public relations. Among other things, the public could be informed of the importance of making a will, having a title examined before purchasing property, and consulting a lawyer in the making of contracts, leases and various other legal instruments. An interesting and informative article on this subject, written by a member of the California Bar, appeared in the July, 1953, issue of the American Bar Association Journal. It was there pointed out that there are numerous daily activities, like driving an automobile, where the layman must know the rules of law.

There must be no relaxation in the discharge of our community obligation to see that those unable to pay receive the necessary legal services. There should be no distinction in the administration of justice on account of financial status. Associations formed for the

purpose of seeking this objective should receive the enthusiastic support of all lawyers. However, I need not dwell further in South Carolina on this phase of our legal obligations, for we have a splendid record in this respect. Those who have been appointed in the criminal court to defend the indigent have consistently discharged their duties with commendable zeal and ability. The practicing lawyer is also constantly doing work in various fields for which he receives no compensation. There should be some means whereby the public would be informed of this unselfish service on the part of the bar.

But not only must consideration be given to the impecunious, but to those of limited means. Justice has simply become too expensive, particularly the right to have cases reviewed by appellate courts. We have reached the point where the costs in many cases have the effect of denying the right of appeal. The appellate courts should be open to every controversy meriting consideration. It is imperative that something be done to reduce the costs of the record. It has been well stated that "courts closed to litigants because the price of admission is too high, are an incongruity in our democracy."³ An illustration of the excessive costs on appeal could be given from a case recently argued before us. Plaintiff procured a judgment in the lower court for \$8,500.00. Defendant appealed. The cost of the record, excluding briefs, amounted to \$4,375.87. In that particular case, the defendant was a large corporation, able to prosecute the appeal. But if the plaintiff had been the appellant, the expense would have been prohibitive.

We must bring about a more efficient operation of our courts. There is also an urgent need for simplification in procedure and the elimination of many motions of a wholly technical nature having no bearing on the merits of the controversy. The general public respect for law and order is based largely on what is observed in our trial courts, which furnish the layman's only contact with our judicial system. It is here that he forms his opinion as to the administration of justice. Much can be done in our trial courts to improve public relations. To illustrate, what impression does a juror or witness form who attends a civil court on Monday morning, sometimes at a great personal sacrifice, and waits in the court room for hours while lawyers argue a demurrer or motion that should have been disposed of long prior to the convening of court? Is there

3. "Justice is Expensive" by Marx, October, 1952, issue, Journal of the American Judicature Society.

any good reason why when court convenes, cases should not be in shape for disposition on the merits? More consideration should be given to the convenience of jurors and witnesses.

We must have a more highly integrated judicial system. There should be more coordination in the operation of our courts. Periodical conferences should be arranged between the judges so as to permit a mutual exchange of ideas on problems confronting the judiciary. We need a judicial council or other body similar to that existing in many states for the purpose of studying our judicial setup and making recommendations for improving the administration of justice.

Finally, there is an obligation which strictly speaking is outside the field of law. The members of the Bar should take an active part in civic affairs and should stand ready to present their views on important public issues. The lawyer is peculiarly qualified to assume leadership in the discussion of all questions relating to government. This is evidenced by the fact that the Bar has contributed a far greater proportion than any other profession or calling to the filling of important public posts. We should be on the alert to call attention to any movement calculated to undermine the basic principles of our government.

In undertaking to make some suggestions in connection with the problem of public relations, I, of course, do not mean to intimate that the goal of the lawyer should be to obtain public approbation of all his acts, or that the objective of the courts should be to obtain public favor. The call of duty frequently requires the lawyer to defend an unpopular cause. The judge must necessarily at times render unpopular decisions. Justice cannot be administered in response to the popular will. But it does not follow that we can ignore the necessity of public confidence in both the Bench and Bar. The thought I have in mind is well expressed in the preamble to the Canons of Ethics, as follows:

In America, where the stability of the courts and 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 . . . so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration It cannot be so maintained unless the conduct and motives of our profession are such as to merit the approval of all just men.

In conclusion, may I take this opportunity of congratulating this law class. You are today receiving a diploma from an outstanding law school and one of which we are all proud. You are about to become members of a Bar that has a fine record. The Bar of South Carolina has been unusually free of professional misconduct. I am sure you will help keep it clean. The duties and obligations which I have undertaken to review may be classified as extra-curricula. The discharge or fulfillment of any of them will not materially increase your income as practicing attorneys. Yet they are important and must be given recognition if the Bench and Bar are to occupy that place in the public esteem necessary for the proper discharge of the heavy responsibilities resting upon us.