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The Lawyer

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American Bar Association

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THE LAWYER

E. SMYTHE GAMBRELL*

Following an appropriate opening, President Gambrell, addressing the graduating class, continues as follows:

You are conscious, I trust, of the responsibilities of citizenship, aware of the active and intelligent part you must play in government; aware that our government — municipal, state and federal — is just what its citizens choose to make it.

At this happy hour when you are launching your legal careers, it may not be amiss to remind you that a profession is a learned calling in which men of special training pursue an art in the spirit of public service. The legal profession is one of the oldest and most honorable. In the orient it dates back thousands of years. In our common law history the lawyer had his beginning almost ten centuries ago. He was one who, having some education, was glad to help the less fortunate of his community in their dealings with the King's legal representatives. The work was as an accommodation and without charge. The lawyer's position was one of honor, and even down to the present time the English Barrister cannot operate commercially, cannot join a partnership, and cannot sue his client for an unpaid fee. Young barristers in the English tradition have always been carefully selected and carefully trained in the universities and The Inns of Court and enter the profession in a high spirit of public service. In the history of the common law, lawyers have never been mere tradesmen in the market place. Over the centuries they, as professional men, have developed their own Codes of Ethics, their own moral and educational standards, and their own sense of social accountability.

The persistent march of civilization and the developments in all fields of human endeavor have made the life of the American lawyer of today one of progressive experience and increasing responsibility. The things which are happening in the economic and social order are reflected in the legal order. With social change comes the demand that the law satisfy the needs which the change has created — and so the great problem of jurisprudence in the modern world is the reconciliation of the demand somewhat paradoxical — that the law at once have logical continuity with the past and adaptability to

*This address was delivered by Mr. Gambrell of the Atlanta Bar, President of the American Bar Association, at the Autumn Commencement of the Law School of the University of South Carolina, September 10, 1955.

the present and future. "Law" says Dean Pound, "must be stable, and yet it cannot stand still".

We who are heirs to the common law are coming to see more clearly that law is not the embodiment of inexorable scientific formulas and to understand the words of Mr. Justice Holmes who said more than 50 years ago: "The life of the law has not been logic; it has been experience".

Our institutions, to survive, must realize and effectuate the progressive ideals that constitute our national faith. The rivers of our national life will flow onward and not backward. Perhaps our greatest task is to find a happy balance between liberty and authority in the modern state. The deepest issue of our time is whether civilized people can and will maintain a free society. The history of western civilization is essentially the history of the development of human freedom. The common law is the law of free peoples. It has never flourished except in nations which are free and I don't believe it can be received by any nation until that nation has become in full enjoyment of liberty.

In a democracy lawyers are the natural leaders from whom and whose conduct the attitude of the community toward the law ought largely to be derived. Their duty extends beyond their clients and to the public at large. The prestige and authority of law as a social force at any time is very much what the lawyers make it. They should be stirred by an enlightened self-interest, for the public will neither patronize nor endure a system of justice that is tardy, inefficient, or insincere.

After almost two centuries of frontier existence in the New World, American lawyers a century ago began to awaken to their public or civic responsibilities. They discovered that much which needed to be done by them required collective action and cooperation. They began forming local and state associations to advance the civic development of the profession. In 1878 representative lawyers from all parts of our country met at Saratoga Springs, New York, and formed the American Bar Association. I am happy to bring you the greetings of that great organization. What the Association is today is a far cry from the small and select social group which constituted its beginning.

James Grafton Rogers, at the 1929 Annual Meeting of the Association, in prophetic vein declared:

I see some day an American Bar Association to which every American lawyer of good standing should look as the natural

expression and protector of himself and his traditions; whose leadership, if not always omniscient, is at least readily responsive and always representative; whose publications are the main source of his professional materials; whose headquarters in some large city constitute his shrine; whose influence and prestige prevail in the courts, . . . and in the legislative halls

In the past year the profession has completed and occupied in Chicago the national shrine envisioned by Mr. Rogers. At the laying of its cornerstone the late Mr. Justice Jackson said:

Our vision today is of an American Bar Center which will focus the influence and pilot the activities of the largest association of lawyers in the world. This influence literally saturates American intellectual life. Generally, in each community its members are among the most respected and articulate leaders in every field of thought and action.

Our new Bar Center is manned by a staff of more than 50 trained employees dedicated to helping American lawyers meet their growing responsibilities. Working through 17 Sections and more than a score of committees, the Association constantly is holding conferences, conducting studies and research and publishing reports and other literature, providing inspiration, leadership, education, and tools to help us do better work for our clients and for the public. The services of the Association are of a high order and every lawyer and every state and local bar group ought to have full and constant access to them.

A special objective of the ABA this year will be the bringing of a majority of the lawyers of this country — at least 51% of 241,000 — into the national body. There is no place for snobbishness in the national organization of the legal profession. We cannot say that a licensed lawyer whom the state holds out to the public as trustworthy is not good enough to associate with us in our efforts to improve the bar and the administration of justice.

To do our best work we must fully realize that continuing legal education and self improvement are a constant process for all lawyers, and that membership in the American Bar Association as well as in state and local associations is an absolute necessity for those who expect to keep abreast, serve their clients efficiently and meet their public obligations.

I wish to emphasize the public, for the fundamental proposition on which all Bar Association work is premised is that any measure that

is not for the best interests of the public is not for the best interests of the Bar; and those measures which are for the best interests of the public are for the best interests of the Bar. This proposition, I take it, is not debatable. To question it, to seek to put the interests of the Bar above the interests of the public, is to reduce ourselves from the high level of a profession to the status of a trade or occupation.

The legal profession exists for the benefit of the public and must justify itself by its service to the public, not overlooking the fact that in the long run the public will purchase service in any particular field from those who provide the best service regardless of whether they belong to a profession or are laymen. We sometimes are quick to claim an exclusive right to perform certain services for the public and have strenuously resisted what we call "lay encroachments on our exclusive domain". We would do well to remember that we have no divine right to practice law—that we were created centuries ago by society to meet social needs, and that society can and should eliminate us if in character, or in competency, we fail to measure up to what is expected of us.

Our monopoly of the right to practice law, to give legal advice and to appear in court is a valuable privilege which should carry with it substantial responsibilities. The protection of the dignity and worth of every human being depends ultimately on whether the poor as well as the rich are able adequately to assert their rights in all relationships and are assured of equal treatment in our courts. Any failure in achieving equal justice for all is primarily the responsibility of the legal profession. A certificate to practice law not only gives to the lawyer the right to earn a living; it makes him the member of a great profession whose obligation it is and always will be to see to it that justice under law is made a reality for all our people.

Sometimes outsiders have criticized us for alleged sins of omission and of commission. If we would set ourselves to improve the profession from within, our outward aspects and our public relations would largely take care of themselves, the public would get better and swifter justice, the influence of lawyers in courts and legislatures and elsewhere would be enhanced, and the American way of life would be happier.

Good public relations in the legal profession, as in other callings, starts with being good. Good public relations is simply good service, publicly appreciated. If performance is good, all we need is Truth well disseminated. The American Bar Association's Committee on

Public Relations says: "Good deeds are the only foundation for good public relations".

I trust that here, in these hallowed surroundings, in the spring-time of life, you have come to know that a University is more than a mere research center or a place of gracious living; that it is where youth first discovers duty and opportunity and learns that the joy of life is to put out all of one's powers as far as they will go toward great goals. You are fortunate if you realize at the outset that life is a profound and passionate thing and that despite its occasional austerities it may still be lifted into poetry and lit with spiritual charm.

Now, I hope that something I have said on your graduation day may keep you from the allurements of lesser victories in the days ahead, and that as you continue to bring to your work stout hearts, you will remember that in the Book of Genesis it was said to Cain: "If thou doest well, shalt thou not be accepted?"