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### The Conscientious Lawyer

Jerome C. Knowlton

*University of Michigan Law School*

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*THE CONSCIENTIOUS LAWYER.\**

PROFESSOR JEROME C. KNOWLTON.

*Students of the Law Department of the University of Michigan:*

The labors of the college year of '91-'92 are closed. About three hundred graduates are to return to their respective homes, situated in some thirty-six states and territories of this Union, and there to exert a potent influence in business, professional and public life. To this large body of young men about to take up the burdens of true citizenship, we will make a few suggestions outside of technical law. You are ambitious to succeed in your chosen profession and inquire, what are the qualifications for success? We answer, something more than a knowledge of the elementary principles of the law; one may be learned in the law and yet disgracefully fail. Your profession demands something more, something higher than a mere storage battery of legal principles. The truly successful lawyer must be a conscientious man, possessed of a keen conscience of the most sensitive type. The profession is based on a cultivated sense of right.

Again, an average mental force, natural or acquired, is essential. Intellectual activity, governed by sterling common sense has been the leading characteristic of the most eminent men at the bar. It is the symmetrically developed average man that stands permanently in the front rank. Eccentricities within the bar may bring temporary notoriety but are seldom an element of strength. One of the highest compliments that can be paid a lawyer is to say of him that he is a man of average ability and good common sense. Those of you who may be timid at this time and in doubt as to your natural qualifications should take courage. Genius is not necessary to success in the law. The young man who relies upon it is sure to fail. The bar is noted for the lives that have been wrecked through dependence upon natural gifts. Too often a young man, intoxicated by the early victories which genius brings, is lulled to stupor while some less favored one in the race passes him by. Take no courage from the possession of natural gifts. Do not be discouraged by your physical infirmities. What the world demands of the lawyer of to-day is, not a display of genius, but the development of ideas. Ideas are not the gift of God; they are the result of patient, prolonged and honest study.

This thought suggests the last qualification; industry stimulated by an ambition that exacts a close distinction between recreation and idleness. The one is a necessity, the other brings failure. There are secular employ-

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\*Closing lecture to the students of the Law Department of the University of Michigan, delivered June 23, 1892.

ments in which one may approximate perfection, but in the law the older you grow the greater the task before you. There is no end to your labor. The lawyer who has completed his education is unknown to this world. We may by incessant labor rise above our contemporaries, but we will never master the science of law, which is divine in its origin, until our eyes are closed to this world and another give us new light.

So I say to you, young men, who are ambitious to reach the goal, there are three conditions: An average ability, an untiring industry, and above all a keen conscience which shall sit like a pilot over your eventful career, watching every ripple, every gust of wind, every cloud upon the horizon, and at times steering you through a stormy controversy safely between conflicting doubts, off the shoals and away from the rocks, over a course of rectitude to the end of life.

A few days since most of you stood before a court of record and took the solemn oath, "I solemnly swear that I will support the Constitution of the United States, and Constitution of this State, and that I will faithfully discharge the duties of an attorney at law and solicitor in chancery according to the best of my ability." This was no idle ceremony, not a matter of form but of substance. You have pledged your conscience to your client, to the court, to the state and nation. A man may preach religion, or practice medicine, or pursue the ordinary avocations of life, without taking an express oath of allegiance, but no man can practice law until he solemnly affirms allegiance to the state and fidelity to his client. We may well inquire, at the moment this oath is taken, what are the obligations that it imposes upon a conscientious affiant? What new responsibilities have been assumed? If as private citizens we have become officers of a court of justice burdened with a public trust, what is this trust and confidence? So great that the state insists upon a sworn promise of allegiance and faithfulness!

A lawyer is a public man. In a certain sense he holds a public office. He is something more than a private citizen; his oath of office has burdened him with certain public duties which he cannot renounce, and chief among these is active loyalty to the state. Said Justice Miller, in "The Test Oath Cases;" "That fidelity to the government under which he lives and true and loyal attachment to it, and a sincere desire for its preservation, are among the most essential qualifications which should be required in a lawyer, seems to me to be too clear for argument. The history of the Anglo Saxon race shows that for ages past the members of the legal profession have been powerful for good or evil to the government; they are by the nature of their duties the moulders of public sentiment on questions of government and are every day engaged in aiding in the construction and enforcement of laws . . . to suffer treasonable sentiments to spread here unchecked is to permit the stream on which the life of a nation depends to be poison at its source."\*

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\* *Ex Parte Garland*, 4 Wall.

This active loyalty to the state is something more than sentiment, it is the performance of duty. No lawyer has the right to say that he has no opinion upon a public question or that he has no interest in it. He ought to be interested; he ought to investigate and then form and express an opinion. He has an active duty before him in all controversies over social, economical and educational questions. He should be conservative against radical changes. The conservative force of the legal profession has been in England and this country a substantial guaranty to civil and political liberty. But his doubts and uncertainties should rise from patient and conscientious study, and not simply from ignorance or indifference.

You have sworn not simply that you will not violate, but that you will actively support the Constitution. The people expect you to keep your oath; they look to you for guidance. At all times of great political or social disturbances, lawyers have been leaders. It has been said, on high authority, that if the profession in the South had been loyal to the government in 1860, we would have been spared the horrors of the Rebellion. This may be a mistaken view. That the lawyers in the South at this critical period acted in good faith is unquestioned; but supposing that they had stood before the laymen of that section, saying: "We are right in doctrine, but wrong under the Constitution; secession is treason," what would have been the result? Do not forget, young men, the active loyalty involved in your express oath of allegiance and remember that when you enter upon the practice of the law, your first client is the state and nation.

Understand, however, that you are not urged to rush into politics. If you have chosen public life as a calling other considerations are involved; but if your ambition is to become a lawyer you should decline all political preferment during the first ten years of your professional life. Engage in active politics in the morning of your labors and you are certain of becoming a poor lawyer and not certain of becoming a statesman. One whose ambition is that he may be recognized as a lawyer and a statesman must be first a lawyer; he must win his spurs at the bar. He who attempts to be first a statesman and then a lawyer is in danger of failing in both avocations. The history of great lives advise us. Lord Erskine had studied law eight years before taking a seat in Parliament. Lord Eldon was ten years at the bar before politics attracted his attention.

A review of the lives of public men in this country would illustrate more forcibly the importance of giving close attention, during the first few years, to the practice of the law. One striking example is sufficient. Daniel Webster recognized to-day, forty years after his death, as the greatest American constitutional lawyer, was admitted to the bar in 1805, and was at once offered a clerkship in the court of common pleas, of which his father was one of the judges. The fees of the office were fifteen hundred dollars per annum, a small fortune in those days. The poverty of his father's family tempted him to accept it; clients were not rich, attorneys' fees were small. The emoluments of office would bring comforts into his

father's family, while to decline them was to condemn himself and them to an uncertain future. His father favored his accepting the office, but through the advice of a far-seeing friend Webster declined it, and thereafter gave his undivided attention to the practice of the law. For nine years contested causes in court, and not contested elections, educated him. In the end there was no public trust too good for him. He had by close attention to the duties of his profession, that jealous mistress, secured the confidence of the people, and laid that broad foundation upon which rests his name and fame to-day and for all time to come.

The lawyer has before him not only social and public duties, but also a moral duty to perform. Every state in the Union and every civilized government has laws by which the right to practice in its courts depends first of all upon good moral character. The keenest sense of morality is essential to success, but something more should be added. I believe it to be the duty of every lawyer to identify himself with some religious society. The practice of the law presents an army of temptations. Lawyers more than any other class of men need the strength that comes from an abiding faith in the Supreme Being.

Mr. Webster, in speaking of the devout life of Jeremiah Mason, at one time a leader of the New England bar, said: "Religion, therefore, is a necessary and indispensable element in any great human character. A man with no sense of religious duty is he whom the Scriptures describe in such terse and terrific language as 'living without God in the world.' Such a man is out of his proper being, out of the circle of his duty, out of all his happiness and away, far far away from the purpose of his creation." You may also remember the eloquent words of Erskine, spoken at the trial of Thomas Paine. He said: "For my own part, I have ever been deeply devoted to the truths of Christianity; and my firm belief in the Holy Gospels is by no means owing to the prejudices of education, though I was religiously educated by the best of parents, but has arisen from the fullest and most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life which, as a shadow, passes away; and without it I should consider my long career of health and prosperity, (too long, perhaps, and too uninterrupted to be good for any man), as the dust which the wind scatters, and rather as a snare than a blessing."

It is sometimes whispered around that a Christian faith is a sign of weakness in a lawyer; that an over sensitive conscience is always at war with a lawyer's duty to his client; that one cannot be a sharp, incisive, forcible and brilliant lawyer, and at the same time be a Christian gentleman. This is not true, and if true, it is a disgrace to our profession. In matters of religious belief each one of you must judge for yourself. You will support me, however, in this proposition; that among the strong men who have left to the profession a great name and reputation are found some of the most devout Christians. Within sight of this campus are living

two men, whose names we need not call. They have at times been in the service of this institution. They are soon to lay down their life work. There are no two men living within the state who have won as great a reputation in law. None are better known or more highly honored for great public service to the state, and yet these two men, so well known to us all, have found no conflict between Christian conduct and professional duty. Throughout their lives they have been within the church; firm and conscientious believers in a Christian God.

The conscientious discharge of a lawyer's full duty requires that he guard zealously the honor of the profession. You will be tempted often to do what is unprofessional, though not morally wrong. At times circumstances may incline you to solicit business or to ask for a retainer. Do this only in leap year. The lawyer should receive a retainer, as modestly as a young woman receives a proposal of marriage. Buy no man's confidence. Respectable lawyers do not solicit business.

Some clients may suggest the doing of a clearly immoral, if not a criminal, act. Resent the insult and close against such a client the outer doors of your office. But most clients, of even more than average respectability, will tacitly intimate milder indiscretions; such as hiding a witness, or treating a juror, or sounding a judge, or the playing of some trick on opposing counsel, such as taking a snap judgment or settling a cause without his knowledge. All these and others like them are decidedly wrong. Yet you will be harrassed by such suggestions from the beginning to the end of every cause, unless by your conduct you give your clients to understand that you possess a most sensitive conscience and are responsible to the profession for your conduct in court; that you are no man's hireling. Occasionally an attorney offers as an excuse for a questionable act, the demand of his client. This is a disgrace to the profession. You must not sell your professional discretion at any price. A client may buy your time, your service and knowledge, but not your right to determine questions of legal ethics or your authority over methods of litigation. Allow me to impress upon you this fundamental principle: When a client comes to you for advice you must insist upon your advice being followed or decline the retainer. To do otherwise is to sacrifice the honor of your profession.

It is not, however, enough to do right but you must appear to do right. As a rule the profession is not sufficiently mindful of appearances. This is the great mistake of the profession. Lawyers are not guilty of one per cent. of the charges made against them. Their acts are not understood. This fact renders it extremely important that you should avoid every ground of suspicion. For this reason never take a case against a personal friend or against any person with whom you sustain any relation whatever. You cannot afford it. If you should accept such a retainer and then fail in the litigation, even after the most conscientious effort, your client would be inclined to feel that your defeat was due to your bias toward his adver-

sary; that you had failed because you intended to fail. Decline to place yourself in any such position. You must always do more than satisfy your conscience.

Once within the bar and you sustain an impressive relation to the Court, to opposing counsel and to your client. To the Court you owe respect, deference, and at times obedience. You are officers of the Court. The proprieties of the bar are too numerous for present consideration. During the first few years of your practice you should make a study of the conduct and deportment of truly eminent lawyers. This much, however, may be given for your guidance: Before the Court, manly dignity and self-respect should be maintained. To respect a judge is not to fear him; to defer to him is not to sacrifice the right of private judgment, and to obey him is not to cringe or crawl. Due regard for authority does not involve a sacrifice of self-respect.

To opposing counsel you owe good faith and courtesy. These will render your life of battles endurable. If the emergency of a controversy require that every man shall look out for himself, say so frankly; but having once pledged your word to opposing counsel, keep it. It is more important that you should be an honest lawyer than that your client should win. As between lawyers there should be kindness and the extension of every indulgence. Each should seek to lighten the others' labors so far as is consistent with the protection of his client's rights. Give litigants to understand that the issue of a cause is not between the lawyers but between the parties; that a law-suit is not a cock-fight, but an effort to distribute justice. At the trial contend against your adversary frankly and with force, but not with bitterness. Above all things avoid personalities. The attorney who makes a personal attack on opposing counsel simply disgraces himself.

To your client, you are all we have said and much more. The relation of attorney and client is extremely confidential. The law has spread its mantle of privilege over your communications. Behind this vale of secrecy is the greatest opportunity for an educated conscience to do valuable service. Here meet your client with frankness and insist upon knowing the whole truth. This is not always possible, especially in criminal cases. Even in civil cases, the disposition of clients to deceive their attorneys is surprisingly strong. As a rule, they will come to you with a theory and tell you only so much as supports it. Abandon their theories, and search by diligent inquiry for the truth. Having possessed yourself of it, advise your client accordingly. If he has no cause of action, say so. If he has a cause of action say so, hesitatingly. Never assure your client of a verdict in advance of the trial. Courts and juries are too uncertain and your judgment may be faulty. Only the ignorant lawyer speaks positively to his client.

It is your duty to encourage a settlement of causes entrusted to you. Never undertake the trial of a case for the money there is to be made in

trying it, unless you look upon the law as a trade rather than a profession. A law-suit is a very unfortunate thing. Our ablest lawyers settle more causes than they try, and often charge more for settling them than they would for trying them. They look upon the trial of a case as a surgical operation to be avoided if possible, but when it becomes inevitable then they cut deep and with a keen blade.

Whenever you enter the court-room for the trial, enter with that comfort and strength that comes from having made a conscientious effort to avoid bringing the matter before the Court. But when the jury is sworn, then the hour for temporizing is closed. Then insist upon every substantial point in your client's favor. Give your client your whole power as a lawyer. Discharge your full duty and then you will never be afflicted with that remorse that comes from the feeling that if you had given more active attention to the case you might have won a verdict.

You have pursued under the Law Faculty of this department a course of legal study that you might equip yourself for the fulfillment of these obligations which your profession exacts of you. We have failed in our labors if your minds are not impressed with the importance of your duty to the state, to your profession, to the courts and to your client. We have failed if you are not impressed with the fact that you must enter the practice of the law governed by the most liberal spirit of tolerance toward all men and toward all institutions; toward all religious creeds and beliefs. A lawyer must be a broad-gauged and conservative man. He can not afford to be narrow and technical. He must not be a bigot; a bigot never won a sharply contested issue of fact before any court.

Your course at this institution has been not simply for the acquirement of knowledge but also for the development of character. We have failed if during your stay here those traits of character which count for genuine success have not been sharpened, or if you have not been impressed with the fact that the greatest element of strength in a lawyer is, not his learning nor his cunning, but his manhood. You go forth to a long and hard struggle. No one can sympathize with you more deeply than those from whom you received elementary instruction in law. You will be beset by temptation and at times almost overcome with despair. Poverty may stand between you and your ambition, while a sacrifice of honor lays before you and your children, bread, and meat. Turn aside from such temptations. Never compromise your professional honor. Make an honest fight in life, stand before the world, known to all men as a conscientious lawyer. Satisfy the ego, your innermost self, and God will be pleased and man ought not to complain. So shape your conduct from day to day that, when your head rests on its pillow at night, a clear conscience shall lull you to sleep.