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Vernon W. Thomson

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THE LAWYER IN PRACTICE AND IN PUBLIC*

VERNON W. THOMSON**

I am honored to have the opportunity to address you who are concluding your career as undergraduates and await with confidence and anticipation your admission to that graduate study as members of the bar.

The lawyer has no tangible result of his efforts to leave behind for the inspection and admiration of future generations. A great sculptor or a great painter may leave his handiwork in the halls of our capitols or national museums. The architect casts his dreams in enduring stone and steel, and the engineer leaves the results of his prowess in skyscrapers and suspension bridges. But the lawyer, in the words of Oliver Wendell Holmes, can get his only satisfaction in the knowledge that generations of men yet unborn will be moving to the measure of his thoughts.¹

There are among you whom I address this evening at least a few who within a short span of years may be in the high councils of our nation. Others of you will contribute your leadership and live out your lives in your chosen community in this or other states. But whether the stage you are given to appear on, the canvas of humanity on which you are privileged to paint, be great or small, you can never be sure that your ideas, your hopes, your plans, your dreams, may not some day set the pattern of conduct for nations and the world.

Our country had its genesis in the dreams of an impoverished Italian sailor whose only forces were three tiny ships that we would not consider safe to sail across Lake Michigan. In the dark hours in American history, the causes of liberty were kept alive by an embittered printer, equipped only with a few sheets of foolscap and a quill pen, a drum-head for a desk, and a camp-fire for his light. Our Wisconsin public school system was started in 1845 by Michael Frank in a one-room school house in the Village of Southport, which is now the City of Kenosha. The College of St. Norbert's at DePere was started with a friendly abbot for its only instructor and a brother for a pupil.

It is the manner in which you use your abilities and your efforts, and not the size or scope, that is important. And it is that manner or

*Address delivered at the Annual Marquette Law Banquet, April 17, 1952.

**Attorney General, State of Wisconsin.

¹ Holmes, COLLECTED LEGAL PAPERS 24 (1920).

method which I now would like you to consider. I commend to your attention what I have chosen to call "the affirmative approach."

THE LAWYER IN PRACTICE

Most practicing lawyers today would agree that the best place to study law is in a law school, not a lawyer's office under the old apprentice system. While law schools do not graduate finished practitioners, yet they can and should provide the young men with a firm foundation upon which to build a well-rounded professional career. Just to know the law is not enough. The law schools today have a higher obligation. They must develop leaders who are statesmen of the law.

I know that you who have studied here have had inculcated in yourselves as undergraduates a sense of individual obligation; first, for the problems of the legal profession—the improvement of the administration of justice in the courts and in the administrative tribunals, the upholding of the canons of professional and judicial ethics, the elimination of unauthorized practice of law; and, secondly, for what may be called the public or social aspects of professional responsibility for guiding public opinion.

You have learned here that law is a developing human institution designed to serve man's human needs; that it is future community leadership that you, as law students, have been preparing for today. We cannot be unmindful of the criticisms which occasionally are directed towards the legal profession. We know it occurs at times because of the conduct of some individual members of the bar; at other times because of dissatisfaction with the administration of justice, and perhaps at times because of the short-comings of modern practice springing from the specialization of our practices. But words of criticism which have been occasioned by the short-comings of those who infest the fringes of a great profession do not constitute an indictment of the profession as a whole.

More than a hundred years ago, Alexis de Tocqueville, a young French aristocrat, gave the world a fine picture of the place held by American lawyers during that age. He wrote,

"As the lawyers constitute the only enlightened class which the people do not mistrust, they are naturally called upon to occupy most of the public stations. They fill the legislative assemblies, and they conduct the administration; they consequently exercise a powerful influence upon the formation of the law, and up its execution."²

And, more recently, the late William L. Ransom stated while President of the American Bar Association,

² De Tocqueville, *DEMOCRACY IN AMERICA* 284 (World's Great Classics Ed., 1899).

"No matter how sharply and savagely some people talk about some lawyers or all lawyers, the fact remains that in American life the great body of the people really trust their lawyers in a way that they do not trust men in any other business relation, and that places on us a responsibility as lawyers and as members of a system for administering justice."³

You may well inquire what in this modern day may we do to meet the challenge of the responsibility which is ours. A century ago, Edward W. Cox, noted English barrister, set forth the lofty standards the advocate must attain :

"Scarcely need you be reminded that such duties and responsibilities will demand on your part uncommon capacities; great self-control; much courage to resist as well as to dare; stern rectitude; a fine sense of honour; a lofty morality; a profound sentiment of religion; a large Christian charity; a generous ambition; a noble disinterestedness an ever present consciousness of responsibility to Heaven for the talents that have been given to you, and to your fellow-men for the right use of the privileges with which they have entrusted you."⁴

And very recently one of the great corporate counsels of this country ephasized again that the law is a part of life and cannot be separated from the aims, the ethics, the hopes, and the will of the people when he said :

"The lawyer representing business today, if he is to live up to the challenge of his new responsibilities, . . . will shun the kind of advice which is motivated by a desire to preserve the rubrics of a vanished era; he will be alive to the social, economic and political implications of the time; he will avoid a narrow, short-sighted approach to his clients' problems; he will act with due regard for the social responsibilities of the enterprise; he will have the courage to advise against a business program or device which, although legally defensible, is in conflict with the basic principles of ethics."⁵

One of the basic obligations of the legal profession individually and collectively is the constant improvement of the administration of justice. It behooves the individual lawyer not only to so practice as to work toward the goal of improving legal administration, but also to lend his efforts to the collective work being carried on by the bar associations.

The objectives of the American Bar Association in this field include: 1) the establishment of judicial councils; 2) the delegation of rule-making power to courts of highest jurisdiction; 3) the improve-

³ Ransom, *The Bar's Duty To The Public*, 11 *IND. L. J.* 151 (1935).

⁴ Cox, *THE ADVOCATE* 260 (1852).

⁵ William T. Gossett, Address delivered before the Sixth Conference of the Inter-American Bar Association, May, 1949.

ment of the jury system; 4) the simplification of the law of evidence; and 5) the improvement of administrative tribunals.

Wisconsin has embarked on a program for the improvement of justice through the creation of a Judicial Council, of which the distinguished Dean of this Law School is a member. Reference to the statute⁶ creating the Judicial Council will reveal an invitation particularly to the members of the bar to make suggestions for the improvement of the administration of justice.

In our form of government, the courts are a fundamental branch and without them democracy as we know it, liberty as we have enjoyed it, and property as we have owned it, could not long endure. This is one branch of the law that is the peculiar province of the lawyer. Judge John J. Parker has reminded us that, ". . . . if the lawyer wishes to preserve his place in the business life of the country, he must improve the administration of justice in which he plays so important a part, and bring it into harmony with that life."⁷ And he adds that, ". . . nothing else that we can possibly do or say is so important as the way in which we administer justice."⁸

PUBLIC RESPONSIBILITY

And perhaps next in importance is our response to the public aspect of professional responsibility for guiding public opinion. No group in the United States has been less conscious than lawyers of the power given them by their members and their influence in the communities in which they live. The idea that lawyers are professionally concerned only with the courts can no longer be accepted. They are looked upon individually as those who know what to do in any situation or difficulty which might arise. At the turn of the century, Holmes said that, ". . . we need all the ability we can get in our government at the present time and that we shall want, if we can get them, trained lawyers . . . in our legislatures."⁹ Those words are prophetic of present conditions.

If the lawyers of today side-step taking a public position on vital public questions because this might hurt their practice, and should they prefer to operate behind the scenes and shun public office-holding entirely, their attitude leaves lawyers no claim to leadership in an American community. It may well be questioned whether such an attitude even wins the admiration or respect of the client. What most people want is a lawyer who will stand up and fight for his point of view.

Suppose a lawyer does turn down a case—a case with principle—because he feels it will hurt his practice. Is he a real lawyer? Certainly

⁶ WIS. SATS. (1951), sec. 251.181.

⁷ Parker, *Improving the Administration of Justice*, 27 A.B.A.J. 76 (1941).

⁸ *Ibid.*

⁹ Holmes, COLLECTED LEGAL PAPERS 158 (1920).

he is no advocate. Despite the clamor, the public is more inclined to estimate a lawyer's prestige by the fight which he makes than by the side which he represents. If individual lawyers are to be leaders of public or political opinion, they must take positions on important public issues, or yield the role of leader to him who will. When a right-thinking lawyer does undertake to lead public opinion in this country, the results are sometimes astonishing. Today, with the radio, the newspaper, and now television, there is an even greater need for the lawyer to be a leader of public and political opinion because he is a trained analyst and a minister of justice.

You might inquire what great problems exist in which a lawyer should be particularly concerned, and if you put that question to your friends there will be one answer consistently given to such an inquiry. That is the problem of the relationship of this country to other foreign powers. That relationship is the basic cause for our desire to establish a world order based on law. Never before has there been a greater need for such an organization, and never before has it become so imperative that the average practitioner have some knowledge of international law.

In the past there was little need to concern ourselves with the field of international law and relations. Then its vague problems were taken care of in leisurely fashion by the diplomats in the nations' capitols. No international problem seemed to touch us short of war. But today, the United Nations through its various agencies is engaged in formulating policies and, in many instances, making decisions which vitally affect and bind all of us.

If the United Nations or any other international legal structure designed to bring law and order to the world is to be successful, are not the lawyers of America required to know something of international law? The proposed Genocide Convention and the proposed Human Rights Covenants have both been extensively considered by the American Bar Association, but it is you to whom the citizens of your community will turn for interpretation of these documents. It is you who will mold public opinion for or against a vote for ratification by your United States senators.

The tremendous importance of this responsibility is apparent when you realize that once a treaty has been adopted, it becomes the supreme law of our land. This has been emphasized by the so-called "Alien land law case" in California.¹⁰ In this case the District Court of Appeals of California held that the charter of the United Nations, which is in reality a treaty, at the time of its ratification immediately became law

¹⁰ *Sei Fujii v. State*, 217 P.2d 481 (1950). [Ed. Note: Three days after the delivery of this address, the California Supreme Court reversed the District Court of Appeals.] *Sei Fujii v. State*, 242 P.2d 617 (1952).

in California, thereby nullifying the California statute disabling aliens from owning land.

The Court in substance said that a Japanese alien may now own land because of the United Nations charter, which in general terms states that, "There shall be no distinction any longer between the races of the world."¹¹ One of the dangerous effects of this decision is that it leaves Russia or any other Communist state free to furnish their Nationals with funds to buy any amount of strategic property up and down the Pacific Coast.

However, an even greater danger resulting from this decision lies in the fact that it means our right to self-government, both state and national, and our right to determine for ourselves the kind of domestic law we want to live under, can be nullified whenever the President and two-thirds of the Senate at any time approve a treaty. This doctrine applies to our freedom of speech, press, and religion, as well as to our other basic rights. Our problem is unique. The United States is practically the only country of any importance in the United Nations that cannot implement or modify a treaty once ratified by the Senate and approved by the President.

We too often take the continuation of free government for granted. In so doing, we can easily lose our rights and freedoms in the entanglements of national commitments and agreements, unless we as citizens become articulate and insist that our basic rights under the Constitution and our own Bill of Rights shall not be rewritten, leveled out, compromised, and confused by nebulous and ambiguous international language.

It will not be enough, however, if we insist upon the preservation of the form of our government, if we permit, through lack of interest or information, a destruction of the substance of our government. Our relations with other nations take shape in other areas than that of diplomacy and international law. The very necessity of this relationship suggests the creation of other problems, and results in what are known as other great public issues of our day.

The extent of aid which America can provide the free nations of the world, the relationship of that policy to our ability to prevent a ruinous inflation at home, the type and vigor of moral leadership we exhibit to the free nations and its relation to our defense requirements, are subjects which will require the best intellect and soundest judgment which the bar is able to provide.

We are in America truly the hope of freedom-loving people throughout the world. We must not permit that hope to be extinguished because of mistakes and blunders in the field of foreign affairs, nor because of weakness created by economic collapse at home. The one great

¹¹ United Nations Charter, Ch. I, Art. 1.

enemy of freedom-loving peoples everywhere is today the imperialism of Soviet Russia. We must be ever vigilant to keep our nation so economically strong that it will never fall by its own weight into the lap of this Godless aggressor.

Here in this nation, more than in any other in all the recorded history of mankind, have we developed a society based on the dignity and freedom of the individual. If that freedom and dignity is not preserved, our economy will falter and our foreign affairs will fail.

Felix Morley recognizes that it is our responsibility to provide the guiding light in this troubled world when he says:

“. . . the American system of government, in contrast to all the Old World forms, is founded on faith in a code of individual conduct. The moral qualities can be understood by anyone who has taken the trouble to read the New Testament, which remains the primary source book on American government, even though seldom so regarded. More fundamental than our system of checks and balances is that spiritual aspiration which justified Alexander Hamilton's assertion that: 'It belongs to us to vindicate the honor of the human race.'"¹²

And this fight should be led by the members of the bar who, because of their training and their understanding of the basic nature of these human rights, have the perception to warn their communities of the dangers to free government of a disinterested public.

Dean Clarence Manion of Notre Dame Law School most concisely and thought-provokingly points out the existence of this danger. He says,

"This unfortunate attitude toward popular government is a general one. It results from the widespread false impression that any government is safe and good so long as the people choose it themselves. The truth is that tyranny depends entirely upon the extent of governmental power and is in no way related to the source of that power. A popularly elected tyranny is often more rapacious than a despot who takes his power by force or inheritance."¹³

Let us not relax our vigilance because the reins of government are in the hands of the people. Let us not tolerate measures which, if decreed by a despot, would be the signal for a new battle. Let each of us constitute himself a dynamic center of informed influence in his own community. Let us follow the idealism of Carl Schurz who immigrated to this country to find and preserve individual freedom. He said,

“. . . ideals are like stars, you will not succeed in touching them with your hands. But like the seafaring man on the desert of

¹² Morley, *THE POWER IN THE PEOPLE* 102 (1949).

¹³ Manion, *THE KEY TO PEACE* 92-93 (1950).

waters, you choose them as your guides, and following them, you will reach your destiny."¹⁴

To meet this high standard of idealism, the future demands that each of us try to develop to the full extent of his individual capabilities the persuasive eloquence of the great advocate, the sagacity of the wise attorney, the integrity of the great judge, the sense of public duty of the true statesman, or all of these. Such a man in any age and in any community is a respected gentleman of the law.

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¹⁴ Vol. 1 SPEECHES, CORRESPONDENCE AND POLITICAL PAPERS OF CARL SCHURZ 51 (Bancroft Ed., 1913).