

THE LAWYER AS AN OFFICER OF THE COURT.

THE lawyer is both theoretically and actually an officer of the court. This has been recognized in principle throughout the history of the profession. In ancient Rome the *advocatus*, when called upon by the *prætor* to assist in the cause of a client, was solemnly admonished "to avoid artifice and circumlocution."¹

The principle was recognized also among practically all of the European nations of the Middle Ages. In 1221 Frederick the Second, of Germany, prescribed the following oath for advocates:²

"We will that the advocates to be appointed, as well in our court as before the justices and bailiffs of the provinces, before entering upon their offices, shall take their corporal oath on the Gospels, that the parties whose cause they have undertaken they will, with all good faith and truth, without any tergiversation, succour; nor will they allege anything against their sound conscience; nor will they undertake desperate causes; and, should they have been induced, by misrepresentation and the colouring of the party to undertake a cause which, in the progress of the suit, shall appear to them, in fact or law, unjust, they will forthwith abandon it. Liberty is not to be granted to the abandoned party to have recourse to another advocate. They shall also swear that, in the progress of the suit, they will not require an additional fee, nor on the part of the suit enter into any compact; which oath it shall not be sufficient for them to swear to once only, but they shall renew it every year before the officer of justice. And if any advocate shall attempt to contravene the aforesaid form of oath in any cause, great or small, he shall be removed from his office, with the brand of perpetual infamy, and pay three pounds of the purest gold into our treasury."

Among the French, the office of advocate appears to have existed from a very early date. The body of laws enacted in 802,

¹ JOSIAH H. BENTON, *LAWYER'S OATH AND OFFICE*, 19.

² *OATHS; THEIR ORIGIN, NATURE, AND HISTORY*. By James Endell Tyler. (B. D. London: 1835, p. 300.) Also, BENTON, *LAWYER'S OATH AND OFFICE*, 19.

generally known as the *Capitularies of Charlemagne*, clearly recognizes the profession of lawyers, and contains a provision to the effect that "nobody should be admitted therein but men, mild, pacific, fearing God, and loving justice, upon pain of elimination."³

An ordinance promulgated February 13, 1327, by Phillippe de Valois, Regent of France, provided that:

"No advocate shall be permitted to plead if he has not taken the oath, and if his name be not inscribed on the roll of advocates."

In 1344 additional regulations, relating to the duties of advocates, were enacted by the Parliament of Paris as follows:⁴

"Those advocates who are retained shall not be allowed to continue their practice unless they bind themselves by oath to the following effect: to fulfill their duties with fidelity and exactitude; not to take charge of any causes which they know to be unjust; that they will abstain from false citations; that they will not seek to procure a postponement of their causes by subterfuge, or malicious pretexts; that whatever may be the importance of a cause, they will not receive more than thirty livres for their fee, or any other kind of gratuity over and above that sum, with liberty, however, to take less; that they will lower their fees according to the importance of the cause and the circumstances of the parties; and that they will make no treaty or arrangement with their clients depending on the event of the trial."

One of the most striking regulations relating to advocates in former times is found in the Code of Christian V., of Denmark and Norway, 1683, which provides as follows:⁵

³ BENTON, LAWYER'S OATH AND OFFICE, 13.

⁴ ROBERT JONES, A HISTORY OF THE FRENCH BAR, ANCIENT AND MODERN, 100, 103. Other interesting regulations of advocacy among the French are the following: A decree of the Council of Rouen, in 1231, concerning the oath of advocates; an ordinance promulgated, in 1274, by Philip the Bold, relating to the functions and fees of attorneys; and an edict of Francis I., 1536, dealing with the official character and duties of advocates, and the shortening of trials. A specially interesting regulation is to be found among the reform-canon laws adopted by the bishops of the province of Tours in a council held at Chateau-Gontier, in 1231. Among other things, it was provided, "Nor shall they (advocates) bother the Judge with objections, believing that they will give in to them. They shall sustain the honor of the court, nor perpetrate in court a falsehood." BENTON, LAWYER'S OATH AND OFFICE, 15-21.

⁵ THE DANISH LAWS: OR THE CODE OF CHRISTIAN THE FIFTH, FAITH-

"Lawyers who are allowed to plead Causes, shall be Men of Probity, Character, and known Repute.

"In Cities shall be appointed such a Number of Lawyers as are really requisite.

"No one shall be admitted as a Lawyer to act, who does not take an oath before the Mayor and Aldermen, that he will undertake no Cause he knows to be bad, or iniquitous; that he will avoid all Fraud in pleading, bringing Evidence, and the like: That he will abstain from all Cavils, Querks and Chicanery; and never seek by Absence, Delays, or superfluous Exceptions, to procrastinate a Suit: That he will use all possible Brevity in transcribing Processes, Deeds, Sentences, etc. That he will never encourage Discord, or be the least Hindrance to Reconciliation: That he will exact no exorbitant Fees from the Poor, or others: And that he will act honestly, and to the best of his Power, for all his Clients. Of this Oath the Judges shall admonish the Lawyers in dubious Cases, and if they think proper, require a Renewal of it in the Court: And moreover, command them to abstain from all Manner of Scurrility, and Abuse, in their Pleadings, especially where the process does not concern the Fame of the Defendant.

"A Lawyer defective in this his Duty shall be discarded, rendered incapable of ever after pleading, and moreover punished in Proportion to his Offense."

In England, while much concerning the origin of the profession is obscure, lawyers were recognized as an established order as early as the reign of Edward I (1272-1307), and their duties and conduct regulated by the Statute Primer Westminster (1275).⁶ At that time, as now in England, the profession consisted of two branches, then known, respectively, as pleaders or counters, corresponding to the modern English barrister; and attorneys, corresponding to the present day solicitor.⁷ It should be noted, also, in this connection, that the earliest regularly licensed advocates in England were known as serjeants-at-law. Serjeant-at-law was formerly the highest rank to which an English advocate could attain, and although the class itself has ceased

FULLY TRANSLATED FOR THE USE OF THE ENGLISH INHABITANTS OF THE DANISH SETTLEMENTS IN AMERICA (London, 1756), 58, 59.

⁶ 3 Edward I, St. I West. c. 29.

⁷ For origin and early history of advocacy in England, see 9 VA. LAW REV. 28-34. For distinction between barristers and solicitors, under the present English practice, see ROBBINS, AMERICAN ADVOCACY, ch. 1.

to exist, having been superseded by the King's Counsel, its fundamental characteristics remain to the present time.

"The first persons regularly licensed to appear in the King's Courts were 'serjeants,' although their full official title seems to have been *Servientes Domini Regis ad legem*, that is, 'Servants at law of our Lord the King.' Unlike all prior advocates they were part of the court itself; were regularly appointed by royal patent; were admitted only upon taking an oath; had a monopoly of all practice, and were directly amenable to the King as parts of his judicial system. The fundamental ideas involved in the creation of this class have never been abandoned, and notwithstanding the class itself by the name of 'serjeants' has ceased to exist, they are still the distinguishing characteristics of the bar of all counties where the common law prevails."⁸

The earliest authentic forms of lawyers' oaths in England are those of the Serjeant-at-law and of the King's Serjeant, and are found in an ancient Roll of Oaths compiled probably during the reign of Queen Elizabeth.⁹ These ancient oaths show with great exactness the nature of the advocate's duties, and are as follows:

"King's Serjeant: Ye shall Swear, That well and truly ye shall serve the King and his People, as one of his Serjeants of the Law, and truly council the King in His matters when ye shall be called, and duly and truly minister the King's matters, after the Course of the Law, to your Cunning: Ye shall take no wages nor Fee of any Man for any matter when the King is Party against the King; ye shall as duly and hastily speed such matters as any man shall have to do against the King in the Law, as ye may lawfully do without Delay or tarrying of the Party of his lawful process in that that belongeth to you: Ye shall be attendant to the King's matters when ye shall be called thereto: as God you help, and by the contents of this Book."¹⁰

"Serjeant at Law: Ye shall Swear, That well and truly ye shall serve the King's People as one of the Serjeants at the Law, and ye shall truly council them that ye be retained with after your Cunning: And ye shall not defer, tract or delay their Causes willingly, for Covetous of Money, or other

⁸ WARVELLE, LEGAL ETHICS, 28.

⁹ BENTON, LAWYER'S OATH AND OFFICE, 25.

¹⁰ BENTON, LAWYER'S OATH AND OFFICE, 26; COSTIGAN, CASES ON LEGAL ETHICS, 64.

Thing that may turn you to Profit: and ye shall give due attendance accordingly: as God you help, and by the Contents of this Book."¹¹

No form of oath for attorneys is recorded in the ancient Roll of Oaths. It seems certain, however, that attorneys were sworn as early as 1402, for, by statute enacted in that year,¹² it was provided that they should be admitted to practice only upon an examination by the justices and upon the taking of an official oath.

The earliest form of Attorney's Oath on record is found in the *Red Book of the Exchequer*, a book of precedents in the Court of Exchequer and dating back to a very early period.¹³ The Attorney's Oath, as recorded in the Red Book is as follows:¹⁴

"The Oath of Attorneys in the Office of Pleas: You shall doe noe Falshood nor consent to anie to be done in the office of Pleas of this Courte wherein you are admitted an Attorney. And if you shall knowe of anie to be done you shall give Knowledge thereof to the Lord Chiefe Baron or other his Brethren that it may be reformed you shall Delay noe Man for Lucre Gaine or Malice you shall increase noe Fee but you shall be contented with the old Fee accustomed. And further you shall use your selfe in the Office of Attorney in the said office of Pleas in this Courte according to your best Learninge and Discrecion. So helpe you God."

From what has been said, and from the forms of oaths quoted, it will be observed that the office of advocate has, from time immemorial, especially in England,¹⁵ been considered one of both dignity and importance.

¹¹ BENTON, LAWYER'S OATH AND OFFICE, 26; COSTIGAN, CASES ON LEGAL ETHICS, 64. See also, COKE, SECOND INSTITUTE (Ed. 1817), 212-214.

¹² St. 4 Hen. IV, c. 18.

¹³ BENTON, LAWYER'S OATH AND OFFICE, 27, 28.

¹⁴ BENTON, LAWYER'S OATH AND OFFICE, 28; COSTIGAN, CASES ON LEGAL ETHICS, 64. A later volume, entitled THE BOOK OF OATHS, published in 1649 and reprinted in 1689, contains the earliest form of oath of the King's Counsel, which conforms substantially to those of the Serjeant-at-law and of the King's Serjeant. THE BOOK OF OATHS contains also the early oaths of Attorney General and Solicitor General. BENTON, LAWYER'S OATH AND OFFICE, 30, 31.

¹⁵ It seems somewhat strange, at first glance, that the modern English barrister is not an officer of the court, and that no oath is required. This is due, however, to the fact that barristers are "called" to the Bar by the Inns of

In the United States, the lawyer has, almost from the beginning, been regarded as an officer of the court, and as such admitted to the Bar only upon the taking of an official oath. It is true that during the early Colonial period the growth of the profession was slow, owing to circumstances then existing,¹⁶ but with the adoption of the common law, as the established law of the land, the ancient English conception of the office of advocate naturally followed, and it is upon this high conception that the characteristics and ideals of the American Bar have been founded.¹⁷

The principle that the lawyer is an officer of the court does not mean, of course, that a lawyer is a public official exercising a public trust.¹⁸ It does mean, however, in a very important sense, that he is a quasi-officer of the State upon whom rests in part the responsibility for the administration of justice. The fundamental idea underlying the lawyer's profession has been well expressed by Hoke, C. J., in a recent North Carolina case¹⁹ in which he says:

"An attorney at law is a sworn officer of the court to aid in the administration of justice. He is sought as counsellor, and his advice sought in the most important and intimate relations of life. There is doubt if any profession affords an equal opportunity for fixing the standards and directing the civic conduct of his fellows. It is of supreme importance, therefore, that one who aspires to this high position

Court and are subject to their supervision. If, in fact, a barrister, should be found guilty of unbecoming conduct, he would be reported by the court to his Inn for investigation and action. On the other hand, solicitors are officers of the court, and are required to take an official oath before being admitted to the practice. COSTIGAN, CASES ON LEGAL ETHICS, 61, 65; ROBBINS, AMERICAN ADVOCACY, 7.

¹⁶ See Introduction to WARREN, HISTORY OF THE AMERICAN BAR.

¹⁷ The oath recommended by the American Bar Association may be found in Article III of the Canons of Ethics.

¹⁸ "The 'office' to which an attorney is thus appointed, however, is not an office in the sense of a public trust for the transaction of public business but is a special license or franchise to exercise certain privileges which otherwise the grantee would not be permitted to exercise. The advocate is, therefore, an officer *sui generis* of the court and subject to the rules imposed by the court in regulation of the practice therein." ROBBINS, AMERICAN ADVOCACY, 13. Thus an attorney, who practices his profession and serves as County Judge, is not holding two offices in violation of the Constitution. Bland County Judge Case, 33 Gratt. (Va.) 443.

¹⁹ In re Application of Dillingham, 188 N. C. 162.

should be of upright character and should hold, and deserve to hold, the confidence of the community where he lives and works."

Referring to the office of advocate, Mr. J. H. Benton, in his excellent treatise, entitled *The Lawyer's Oath and Office*, makes use of the following striking language: ²⁰

"Why is any oath required for admission to the practice of the law? No oath is required by law for admission to practice in any other profession, even where qualifications to practice are prescribed or ascertained by examinations required by law, as in the case of physicians. But an official oath has always been required for admission to the practice of the law. Why is it required? What is its significance, and what obligation does it impose?"

"The significance of the lawyer's oath is that it stamps the lawyer as an officer of the State, with rights, powers and duties as important as those of the Judges themselves. * * * A lawyer is not the servant of his client. He is not the servant of the Court. He is an officer of the Court, with all the rights and responsibilities which the character of the office gives and imposes."

From the fact that the lawyer is an officer of the court it follows that, by virtue of his office, the lawyer has certain important rights. While the right to practice law is not "property," nor is it a "contract," within the constitutional meaning of those terms, it is a right of which the lawyer may not be deprived except upon good cause shown and after proper judicial proceedings.²¹ This was settled by the United States Supreme Court in the celebrated case of *Ex parte Garland*,²² decided in 1866. Speaking for the court in this case, Mr. Justice Field says:

"The attorney and counsellor being, by solemn judicial act of the court clothed with his office, does not hold it as a matter of grace. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency. * * * They hold their office during good behaviour, and can only be

²⁰ BENTON, *LAWYER'S OATH AND OFFICE*, 1, 2.

²¹ 6 C. J. 568.

²² 4 Wall. 333.

deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded."

Another important result of the principle that the lawyer is an officer of the court is that the power of admitting applicants to the practice of law is judicial in its nature, and hence is vested in the courts. But notwithstanding the general jurisdiction of the courts over the subject, the legislature may, in the exercise of its police power, prescribe reasonable rules and regulations for admission to the Bar which will be followed by the courts.²³ That is to say, the legislature may prescribe the qualifications of the applicant, but the court before which he is examined must determine whether or not he possesses them, that being a judicial and not a legislative function.²⁴

In the case of *In re Cooper*,²⁵ Selden, J., in speaking of this subject very aptly says:

"Attorneys and counsellors are not only officers of the Court, but officers whose duties relate almost exclusively to proceedings of a judicial nature, and hence their appointment may with propriety be entrusted to the courts, and the latter in performing this duty may very justly be considered as engaged in the exercise of their proper judicial functions."²⁶

²³ 6 C. J. 572. In a number of states, the examination of applicants is conducted by a board of examiners, and the oath administered by the courts.

²⁴ *In re Applicants for License*, 143 N. C. 1, at 31.

²⁵ 22 N. Y. 67.

²⁶ Good moral character is universally required as a condition precedent to admission to the Bar. Certificates of good character are, therefore, in the absence of statutory provision to the contrary, only *prima facie* and not conclusive evidence. 6 C. J. 573.

In speaking of this important matter, Brown, J., of the N. C. Supreme Court, uses the following striking language: "The public policy of our State has always been to admit no person to the practice of the law unless he possessed an upright moral character. The possession of this by an attorney is more important, if anything, to the public and to the proper administration of justice than legal learning. Legal learning may be acquired in after years, but if the applicant passes the threshold of the bar with a bad moral character the chances are that his character will remain bad, and that he will become a disgrace instead of an ornament to his great calling—a curse instead of a benefit to his community—a Quirk, a Gammon or a Snap, instead of a Davis, a Smith or a Ruffin." *In re Applicants for License*, 143 N. C. 1, at 21.

"It is not enough," says the Supreme Court of Connecticut, "for an attor-

Upon similar principles, disbarment is also a judicial proceeding, and the power to suspend or disbar, therefore, rests in the courts. It is well settled that courts authorized to admit attorneys to the Bar have inherent jurisdiction to suspend or disbar them for sufficient cause, and such jurisdiction is not dependent upon constitutional provision or statutory enactment.²⁷

It is true that the legislature may by statute prescribe the causes for which an attorney may be disbarred, but the generally accepted view is that such statutes "merely regulate the power to disbar instead of creating it," and that they do not prohibit the courts from disbaring attorneys for causes other than those specified in the statute.²⁸

The power of the courts in the matter of suspension and disbarment has been admirably summarized by the Supreme Court of Washington in *In re Lambuth*,²⁹ in the following words:

"But the power to strike from the rolls is inherent in the court itself. No statute or rule is necessary to authorize the punishment in any proper cases. Statutes and rules may regulate the power but they do not create it. It is necessary for the protection of the court, the proper administration of justice, the dignity and purity of the profession, and for the public good and for the protection of clients. Attorneys may forfeit their professional franchise by abusing it, and the power to exact the forfeiture is lodged in the courts which have authority to admit attorneys to practice. Such power is indispensable to protect the court, the administration of justice, and themselves; and attorneys themselves are vitally concerned in preventing the vocation from being sullied by the conduct of unworthy members."

Perhaps the most important result of the principle that the lawyer is an officer of the court is that the advocate is subject to certain peculiar duties and responsibilities. It is not possible, within the scope of this article, to discuss these duties and respon-

ney that he be honest. He must be that and more. He must be believed to be honest. It is absolutely essential to the usefulness of an attorney that he be entitled to the confidence of the community wherein he practices." County Bar v. Taylor, 60 Conn. 11.

²⁷ 6 C. J. 580.

²⁸ 6 C. J. 584. In some jurisdictions it is held that a statute prescribing the causes for disbarment impliedly deprives the courts of the power to disbar for causes other than those specified. *In re Ebbs*, 150 N. C. 44.

²⁹ 18 Wash. 478, 51 Pac. 1071.

sibilities in all of their details, and, for that reason, only the general principles underlying each will be mentioned. For convenience of treatment the duties of lawyers may be grouped under four general heads, namely, (1) duties to the State or the public, (2) duties to the court, (3) duties to his profession and fellow members of the Bar, (4) duties to his client.³⁰

Viewed from the standpoint of the relation that the Profession of Law has to the public, its importance can scarcely be overestimated. By virtue of his office, the lawyer bears an intimate relationship to the State, for to him the State intrusts in a large measure the enforcement of its laws. To uphold the Constitution and the Law must, therefore, be his constant care.³¹

Legislation and jurisprudence, "the right and left hands of government," are in the nature of the case largely in the hands of the legal profession, and it is within these two great fields that the profession finds its broadest opportunities for usefulness and service. Legislation is the enactment of law and is, says Judge Sharswood, "the noblest work in which the intellectual powers of man can be engaged, as it resembles most nearly the work of the Deity. It is employed as well in determining what is right or wrong in itself—the due proportion of injuries and their remedies or punishments—as in enforcing what is useful and expedient. How wide the scope of such a work."³²

In the field of jurisprudence we find the influence of the legal profession even more strongly felt than in that of legislation, for it is here that the Law receives its practical application to specific cases as they arise in the courts. Speaking of this phase of the subject, Judge Sharswood continues:³³

"With jurisprudence lawyers have most, nay, all to do. The opinion of the Bar will make itself heard and respected on the Bench. With sound views, their influence for good in this respect may well be said to be incalculable. It is indeed the noblest faculty of the profession to counsel the ignorant, defend the weak and oppressed, and to stand forth on all occasions as the bulwark of private rights against the assaults

³⁰ WARVELLE, *LEGAL ETHICS*, 21; ROBBINS, *AMERICAN ADVOCACY*, 253.

³¹ In most states an applicant is required to take an oath to support the Constitution of the United States and of the state in which he is licensed to practice.

³² SHARSWOOD, *LEGAL ETHICS*, 53.

³³ SHARSWOOD, *LEGAL ETHICS*, 54.

of power, even under the guise of law; but it has still other functions. It is its office to diffuse sound principles among the people, that they may intelligently exercise the controlling power placed in their hands, in the choice of their representatives in the legislature and of judges, in deciding, as they are often called upon to do, upon the most important changes in the Constitution, and above all, in the formation of that public opinion which may be said in these times, almost without a figure, to be the *ultimate sovereign*."

The duties of the lawyer to the court spring directly from the relation that he sustains to the court as an officer in the administration of justice. The law is not a mere private calling, but is a profession which has the distinction of being an integral part of the State's judicial system. As an officer of the court the lawyer is, therefore, bound to uphold the dignity and integrity of the court; to exercise at all times respect for the court in both words and actions; to present all matters relating to his client's case openly, being careful to avoid any attempt to exert private influence upon either the judge or the jury; and to be frank and candid in all dealings with the court, "using no deceit, imposition or evasion," as by misreciting witnesses or misquoting precedents. "It must always be understood," says Mr. Christian Doerfler, in an address before the Milwaukee County Bar Association, in December, 1911, "that the profession of law is instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly bring to the attention of the court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case. * * * His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the court is to aid and assist in the administration of justice."

In this connection, the timely words of Mr. Warvelle may also well be remembered:³⁴

"But the lawyer is not alone a gentleman; he is a sworn minister of justice. His office imposes high moral duties and grave responsibilities, and he is held to a strict fulfillment

³⁴ WARVELLE, *LEGAL ETHICS*, 40.

of all that these matters imply. Interests of vast magnitude are intrusted to him; confidence is imposed in him; life, liberty and property are committed to his care. He must be equal to the responsibilities which they create, and if he betrays his trust, neglects his duties, practises deceit, or panders to vice, then the most severe penalty should be inflicted and his name stricken from the roll."

That the lawyer owes a high duty to his profession and to his fellow members of the Bar is an obvious truth. His profession should be his pride, and to preserve its honor pure and unsullied should be among his chief concerns. "Nothing should be higher in the estimation of the advocate," declares Mr. Alexander H. Robbins, "next after those sacred relations of home and country than his profession. She should be to him the 'fairest of ten thousand' among the institutions of the earth. He must stand for her in all places and resent any attack on her honor—as he would if the same attack were to be made against his own fair name and reputation. He should enthrone her in the sacred places of his heart, and to her he should offer the incense of constant devotion. For she is a jealous mistress." ³⁵

Again, it is to be borne in mind that the judges are selected from the ranks of lawyers. The purity of the Bench depends upon the purity of the Bar.

"The very fact, then, that one of the co-ordinate departments of the government is administered by men selected only from one profession gives to that profession a certain pre-eminence which calls for a high standard of morals as well as intellectual attainments. The integrity of the judiciary is the safeguard of the nation, but the character of the judges is practically but the character of the lawyers. Like begets like. A degraded Bar will inevitably produce a degraded Bench, and just as certainly may we expect to find the highest excellence in a judiciary drawn from the ranks of an enlightened, learned and moral Bar." ³⁶

The relations between members of the Bar should obviously be those of mutual respect, good will and esteem. The maintenance of these relations depends upon the exercise of the utmost good faith and the due observance of the customary courtesies of the

³⁵ ROBBINS, *AMERICAN ADVOCACY*, 278.

³⁶ WARVELLE, *LEGAL ETHICS*, 35.

profession. All agreements and engagements between counsel should, therefore, be punctually and scrupulously kept. The good opinion of one's associates of the Bar is an asset that cannot be valued too highly, and this good opinion can be gained and held only by "real learning, by the strictest integrity and honor, by a courteous demeanor, and by attention, accuracy and punctuality in the transaction of business."³⁷

Duties to the client are justly ranked among those that are primary and fundamental. The relation between attorney and client is one of special trust and confidence. It is doubtful if there is any profession or calling that bears as intimate a relation to the every day affairs of men as that of the lawyer. "No profession," says Mr. Robbins, "not even that of the doctor or preacher, is as intimate in its relationship with people as that of the lawyer. To the doctor the patient discloses his physical ailments and symptoms, to the preacher the communicant broaches as a general rule only those things that commend him in the eye of heaven, or those sins of his own for which he is in fear of eternal punishment, but to his lawyer he unburdens his whole life, his business secrets and difficulties, his family relationships and quarrels and the skeletons in his closet. To him he often commits the duty of saving his life, of protecting his good name, of safe-guarding his property, or regaining for him his liberty. Under such solemn and sacred responsibilities, the profession feels that it owes to the people who thus extend to its members such unparalleled confidence the duty of maintaining the honor and integrity of that profession on a moral plane higher than that of the merchant, trader or mechanic."³⁸

From a strictly legal standpoint, the attorney owes to his client the duty of exercising reasonable care, skill and diligence—that is, that care, skill and diligence that are usually exercised by lawyers. He is not held to the highest possible degree of care, but rather to that of the average practitioner. In other words, his liability to his client is measured in terms of negligence.³⁹

Such is the advocate's legal liability, but his moral responsibility is broader in scope. "Entire devotion to the interest of the

³⁷ SHARSWOOD, *LEGAL ETHICS*, 76

³⁸ ROBBINS, *AMERICAN ADVOCACY*, 251.

³⁹ 6 C. J. 682.

client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability—these are the higher points, which can only satisfy the truly conscientious practitioner.”⁴⁰

It is not to be understood from this statement, however, that the high duty of an advocate to his client is to be exercised at the expense of truth. For high as is the obligation of the advocate to his client, the obligation to truth is higher. The lawyer is an officer in the administration of justice, and he is not expected, even in the interest of a client, to disregard the fundamental principle upon which justice is based. “Truth,” therefore, “in all its simplicity—to the Court, to the client, and adversary—should indeed be the polar star of the lawyer.”⁴¹

It has been the endeavor of the writer to set forth in this article, in as brief a manner as possible, the nature of the lawyer's profession, together with some of the duties, obligations and responsibilities incident thereto. Advocacy has ever been regarded as an honorable calling—and justly so. Fidelity is its chief characteristic, justice to its object, truth its underlying principle, and service its ideal. The Canons of Ethics of the American Bar Association, declaring the lawyer's duty in its last analysis, may well be quoted in conclusion:⁴²

⁴⁰ SHARSWOOD, *LEGAL ETHICS*, 79. Lord Brougham is credited with having made the following interesting but extravagant statement: “There are many whom it may be needful to remind that an advocate—by the sacred duty of his connection with his client—knows, in the discharge of that office, but one person in the world—that client and none other. To serve that client by all expedient means, to protect that client at all hazards and costs to all others (even the party already injured), and, amongst others, to himself, is the highest and most unquestioned of his duties. And he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon any other, nay, separating even the duties of a patriot from those of an advocate, he must go on, reckless of the consequences, if his fate should unhappily be to involve his country in confusion for his client.” This statement of Lord Brougham is, of course, extreme, and cannot be approved. Even the high duty of an advocate to his client could hardly be said to demand an utter disregard of the “suffering, torment and destruction” that might be brought upon others, and assuredly it does not demand a disregard of the welfare of one's country. “Besides this,” as Mr. Robbins very aptly comments, “an advocate who casts destruction broadcast may involve his client in the general ruin.” ROBBINS, *AMERICAN ADVOCACY*, 271, 272.

⁴¹ SHARSWOOD, *LEGAL ETHICS*, 167.

⁴² Canons of Ethics of the American Bar Association, Art. II, § 32.

"No client, corporate or individual, however powerful, nor any cause civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

E. W. Timberlake, Jr.

WAKE FOREST, N. C.