



Fall 9-1-1959

Horizons For Young Lawyers Today

Whitney North Seymour

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlulr>



Part of the [Legal Profession Commons](#)

Recommended Citation

Whitney North Seymour, *Horizons For Young Lawyers Today*, 16 Wash. & Lee L. Rev. 141 (1959).
Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol16/iss2/1>

This Article is brought to you for free and open access by the Washington and Lee Law Review at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Law Review by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Washington and Lee Law Review

Member of the Southern Law Review Conference

Volume XVI

Fall 1959

Number 2

HORIZONS FOR YOUNG LAWYERS TODAY*

WHITNEY NORTH SEYMOUR†

In a recent delightful novel about a very worldly New York rat entitled "Cadwallader," Russell Lynes writes "horizons . . . are inhospitable; they invite you to come and see them and when you get there, they have always moved away." The horizons about which I will be speaking are of the same elastic character. At first, when one begins to practice law, the horizons are necessarily near by. They are restricted by the need to build a law practice, to earn a living and to support a family. Later on, they get somewhat wider, and ultimately they can encompass a good part of the world. I propose to approach the horizons in that order, starting first with those nearby—when one is just beginning to practice law.

PROFESSIONAL COMPETENCY

Unfortunately, I cannot present you with the one magic key that all lawyers want most—how to build a law practice—because that

*This is the John Randolph Tucker Lecture, delivered at the School of Law, Washington and Lee University, on May 1-2, 1959. A few minor editorial changes have been made in adapting the lecture for publication.

†Member of firm of Simpson, Thatcher & Bartlett, New York City; President-Elect, American Bar Association; Chairman of the Board, Carnegie Endowment for International Peace. A.B., 1920, Wisconsin; LL.B., 1923, Columbia. Assistant Solicitor General of the United States, 1931-33; Instructor, New York University Law School 1925-31; Lecturer, Yale Law School, 1935-45. Member, New York Temporary Commission on Courts; Member, Attorney General's Committee on Anti-Trust Laws; Chairman, Lawyers Committee for Court of Military Appeals; President, Legal Aid Society of New York, 1945-50; Trustee, Practising Law Institute; Chairman of Board, Freedom House, 1954-date; Board of Regents, American College of Trial Lawyers; President, Bar Association of the City of New York, 1950-52; President, 1953-55, Chairman of the Board, 1955-date, American Arbitration Association; President, Municipal Art Society, New York County Lawyers Association; New York State Bar Association; Canadian Bar Association (hon.).

depends so much on the particular community, on whether one is going to hang out his own shingle or join an established firm and on other imponderables which not even those on the ground can easily or always accurately assess. It is, however, clear that one element, and undoubtedly the most important one, however one starts, is to bend every energy from the very first to become the best possible lawyer that one's talents permit. It is the able, diligent, effective lawyer who succeeds in his profession. Those who find success in other ways must be hiding silver spoons or rabbits' feet. These qualities are perhaps partly natural but they are mostly acquired. While young men are in law school, they are acquiring a part of them, but that part is mostly theoretical. I would not denigrate the great contributions the law schools make by teaching theory primarily. That is what they can do best, and there is ample time to add the practical later. Those who advocate substantial additions to practical training in law school tend to overlook that it is a learned profession and not a mere trade for which the schools are preparing their students. The problem is to harness the theory to practice, and that is the amalgam which one seeks to create in the early years out of law school. Cultivating professional skill does not necessarily require prompt specialization within the law. Specialization is bound to come with time. As the art critic Frank Jewett Mather once said: "Where nature has provided a fair intelligence, one must die very young not to die an expert."

Emphasis on the need for cultivating professional skill is not just recognition of the need for making a living. In fact, these skills make a major contribution to the fabric of our civilization. Someone has well said that the measure of a civilization is the extent of its obedience to the unenforceable. Our own national life depends on good manners, mutual respect, the Golden Rule, and the general belief that a man's word should be as good as his bond, far more than on the very complicated positive legal regulations of our society. Lawyers' skills prescribe the promises which are to be kept. They devise the mechanics of commerce and finance which permit private enterprise to provide for the changing needs of a dynamic economy with only a minimum of government participation. It is not too much to say that the economy rests on foundations devised by lawyers. Their negotiations when disputes arise result in the compromises which avoid litigation and bitterness. Finally, if fights there must be, lawyers have established and tend to adhere to their special version of Marquis of Queensbury Rules which enable resort to court processes to be less bloody than the trial by combat and ordeal that preceded them.

John W. Davis once described the social function of the lawyer this way:

“Unlike the engineer, who builds bridges, the architect, who erects buildings, the artist, who makes paintings, the lawyer as a lawyer does not build or erect or paint anything. He does not create. What he does is to lubricate the wheels of society so that the thing can move. If it were not for law, and the lawyers to interpret it, society would come to a dead stop or go into chaos. His duty is to expound, as far as he can to implement, the rules of conduct by which organized society and the life of men must be carried on. If he can make those rules living and active things, he has done about all he can do. Those rules, however, are the only cement that can hold together the society of free born men.”

Thus it is ministration to the economic and social needs of group living and of an industrial society, just as doctors minister to the physical needs, which justifies us in regarding our calling as a learned *profession*. Its effective practice is at bottom the heart and soul of our contribution to it. Important as other aspects are, this is the core of it all. While there is great room for extracurricular contributions by lawyers, no one need be ashamed of a life devoted primarily to practicing his profession and looking after the problems of his clients. Such devotion never reflects a mere concern with financial rewards—the law is too gracious a mistress to permit any such concentration.

Of course, diligence and hard work are the primary factors which will bring about the sharpening of one's professional skills. Like other tools they do not improve when they are neglected. But the usual Benjamin Franklin type of appeal to the young for hard work does not perhaps highlight the major need. It is not just spending long hours and sweating hard which are the keys to proficiency. The primary need is the use of the most meticulous care in each professional assignment. It is such care in drawing an instrument, in investigating the facts of a case, in looking up the law, and finally in presenting a case which in the end is the litmus which tells the good lawyer from the mediocre one. It is my general observation that the chances of success in litigation are perhaps 90 per cent in favor of the lawyer who has made the most careful preparation, assuming that he has some merit on his side. The practice of law by ear, the blundering into unplanned cross-examination, and the failure to look up the law carefully have, to the knowledge of any experienced trial lawyer, lost many worthy cases. The importance of meticulous care in the preparation of documents is no doubt even greater. An error there may be very costly indeed.

PROFESSIONAL WISDOM

There is a somewhat related matter, more difficult to state, which is also involved in the giving of the best service and advice. It requires viewing a client's problem broadly enough so that one's legal advice represents not mere book learning on the point but true professional wisdom. Of course, there are some questions which simply turn on the language of a particular statute or which merely necessitate the filling out of a particular form. Professional service then is routine; it merely requires care in reading the statute or in filling out the form. There are no real choices and there are no nuances of possible position which need to be considered. But most legal advice involves not only giving an answer indicated by the law and the facts, but also suggesting the course which the client should follow in the light of those factors. In earlier days lawyers lived so intimately in communities with their clients that each lawyer knew all about his client's family, its problems and its relationship to the community. The lawyer could take all those things into account in formulating advice. It was this quality which no doubt explains the very important place which lawyers occupied in earlier days. They were not called "Squire" or "Judge" for nothing; these were titles of respect. Today in many communities the lawyer unfortunately has little personal acquaintance with his client. I suggest, however, that if he is to give wise advice on many of the questions with which he may be presented, he must know all that he can about his client (including, of course, his client's solvency) and take that knowledge into account in formulating his advice. I urge, therefore, that the lawyer's function is to some extent a pastoral function in which he should try to guide his client as wisely as possible. Of course, there are clients who do not want this kind of help, who ask the lawyer what the law is and who insist on directing their course of action for themselves; but they are by no means in the majority.

At the turn of the century lawyers for large corporations were sometimes accused of merely showing corporations how to evade the law. I do not believe that this was a fair characterization of the lawyer's function, but that was an opinion held in some quarters. If this was done, lawyers were avoiding any pastoral responsibility and were merely indicating precisely what the law said. It is my observation that today, while lawyers are not expected to determine ultimate policy questions which include the kind of business judgment which the active management is in a better position to exercise, the great corporations of this country now seek and welcome the broadest legal

advice. Most corporations do not want to be in the position of turning sharp corners and of building up public resentment, and their lawyers are consequently encouraged to do the very thing which I believe lawyers should do in dealing with all their clients. Any narrower concept would reduce the lawyer's role to that of a technician—someone who understands everything about his job, as Sir Richard Livingstone once remarked, except its purpose.

ART OF ADVOCACY

We have no division of the legal profession in this country as in England. I do not know of any state where the profession is divided formally into solicitors and barristers. However, at least in our large cities, there are some very successful lawyers who do not go into court at all, other lawyers who spend their professional lives almost entirely in court and some who combine both forms of practice. In smaller communities this combination is the rule and not the exception. For the young lawyers who do not want to become merely office lawyers or solicitors, there is an immediate problem of developing the art of advocacy. This is not the place to enlarge very much upon that subject. John W. Davis and others have written perceptively upon it, and law students hear much more than they formerly did about it. Moot court programs and other devices are used in law school to inculcate the spirit of advocacy. My observation is that the only way to learn to be an advocate is to go into court as frequently as possible, try as many cases as possible, observe the trial of cases by experienced lawyers whenever possible and begin to develop those qualities of assurance and authority which are the marks of the trial lawyer. In the course of this process one learns to get along with his adversaries as professional brethren, and one seeks to avoid carrying into the professional relationship the differences between clients. Contention is good. Without it the court cannot properly perform its function under an adversary system, and clients think that they are getting their money's worth. But at the end of a court session the lawyers should be able to go off together for lunch or a drink without having to apologize for any careless insults. Thus, the young lawyer begins to establish the kind of relationship to the courts which gives the judges confidence in him—a most essential part of establishing standing as an advocate. If he recognizes his responsibility to the court, never tries to mislead the court and presents his case crisply so as not to waste time, he will soon become a welcome figure in the courtroom. The same qualities carry over into the more severe discipline of the presentation of ap-

peals. But here, at least, I must refer you to Mr. Davis' lecture on that subject, under the title "How to Argue an Appeal," which appears in the *Lawyers Treasury*, published by the American Bar Association a few years ago.

CONTINUING LEGAL EDUCATION

The law has become so complicated by the proliferation of statutes, administrative regulations, etc. in recent years that one can no longer rely entirely on his law school studies to provide him with the necessary legal equipment for the rest of his professional life. He must try to follow the decisions, statutes, regulations and legal literature. This includes the law reviews and various other publications. But even to do this some outside help is useful. Our medical brethren keep informed by reading their professional literature and by constantly seeking practical refreshers not only in their hospital work but also in lectures and demonstrations in their professional societies. The American Bar Association is presently engaged in a very much needed project to encourage cooperation among the American Law Institute, state bar associations and itself to make post-admission legal education available in all the larger communities throughout the United States. This process contemplates that at various times throughout the year every state will conduct institutes at which current developments in the law will be presented by experts. Sometimes this will be done in cooperation with nearby schools. It seems probable that the younger lawyers will find occasional attendance at such institutes a great aid in keeping up-to-date with their practice. If they can train their wives to become bar association buffs like mine, they will be able to attend such institutes freely.

ARTS AND THE LAW

But keeping up with current legal materials is only the technical bedrock of a continuing legal education; many architects must contribute to the buildings which should grace it. As Sir Walter Scott, himself a lawyer, once wrote: "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

Art, in all its forms, is after all the expression, in a highly individualized way, of common aspirations and ideals. And an interest in the arts, including history, provides a lawyer with a constant awareness of his social role, of the mysteries of the world about him,

and of the fact that he is not practicing law in isolation but as part of a broad common stream. Without the addition of such dimensions to his technical proficiency which the arts can give, a lawyer may miss the insight, the human understanding that would round out his advice. But I would not urge an interest in the arts solely as a device to add to skill—rather I would urge it as a means to a fuller and more meaningful life.

Judge Learned Hand, whose fiftieth year in the federal judiciary was celebrated this year, has emphasized the importance of a broad familiarity with literature:

“I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will * * *.”

AN INDEPENDENT BAR

A competent bar is essential, but if the bar is to serve the public adequately, it also must be an independent bar. It must be a bold bar, unswayed by official opposition or by any mere temporary tides of opinion. When the lawyer is in court representing a client, he must do what he believes necessary to protect the client's rights however critical of him a court may be, and judges sometimes become prematurely impatient with counsel when, for example, they think they apprehend a point before counsel has fully developed it. If other professional engagements permit, counsel must be willing to undertake the representation of a defendant who is execrated in the community, thereby demonstrating that the bar's duty to see to it that even the most unpopular can obtain counsel is not mere lip-service. It is only from such a bar that an independent judiciary can be recruited, and I will show later that an independent judiciary, capable of detached, dispassionate judgment with complete fairness to all parties and to the public, is perhaps the most important aspect of the American governmental system. The judiciary under our system is the umpire, and however much some over-exuberant fans may sometimes advocate killing the umpire, a game would become pretty chaotic without one.

LEGAL AID

While, of course, the need to indulge the habit of eating regularly requires that the young lawyer must be primarily concerned with serving the interests of clients who are able to pay him, there are in every community people unable to pay who nevertheless must be furnished with legal services. These run all the way from the desperately poor to those of very modest means who do not have ready access to a lawyer. For all such persons the organized bar is now trying to provide counsel in every community in the United States. Sometimes this is done through such organizations as the Legal Aid Society, sometimes through bar association committees or other forms of referral service, but it is now generally conceded to be an axiom that the bar does not do its duty in any community where such people are unable to get counsel. Judge Learned Hand once said to the New York Legal Aid Society, "If we are to keep our democracy there must be one commandment: Thou shalt not ration justice."

COMMUNITY SERVICE

As soon as the wolf is safely driven from the door, the horizons should be pushed back a little so that the lawyer can consider participating in various community activities. He will want to do this for the idealistic reason of making a contribution to his community and also for the practical reason of extending acquaintance among those who will appreciate his qualities. The particular organizations which will appeal naturally depend upon a variety of factors, and there is no standard which will fit all communities. Generally speaking, however, those groups which are concerned with improvement of the business, housing and social relationships among the citizens will be among those which need to be considered. Those who have young families will naturally be concerned with administration of the schools. Those who are bibliophiles will want to help the libraries. But all such activities are useful and rewarding.

Some of these activities involve administrative skills, others require more professional attention. Thus, it may be necessary to consider changes in ordinances, or to recommend changes in state law. There will be problems of tax exemption, foundation support, increased attendance at public meetings. All these activities will develop the young lawyer's ability and reputation.

In addition to the normal, long-established civic groups, it is apparent in many communities that new problems need organized at-

tention. There has been a sad increase in the number of juvenile delinquents and broken homes. Many people say that there is a direct relationship between these two things and no doubt there is. But while religious and social service organizations are busy with various facets of these problems, they are not always dealt with comprehensively and together. Furthermore, there is little activity in these fields by the organized bar as such. Of course, individual lawyers are helping with individual cases. But it would seem that if the bar's talents were made available, in a massive way, to help deal with these matters, much additional progress could be made. In our large cities the number of people needing such help must be almost as large as the number needing legal aid. When American communities were smaller, if a boy or girl was creating problems for his family, the family would consult a leading figure in the town: the lawyer, the banker, or the clergyman and his advice would be followed. If a family was on the verge of breaking up, advice was often sought from similar sources. If a wife was left alone to raise children, she could turn to some older person for advice. With the growth of cities and the decline of neighborliness these sources of strength and advice are much less available, and in some places they have virtually disappeared. An effort should be made to have the community provide modern substitutes. If members of the bar, working through carefully selected committees, were to be available on a large scale to work closely with the religious and social service organizations as sources of supplementary advice and guidance, it would be useful.

There is another source of community strength which so far seems to have gone largely untapped. With the development of retirement plans in business and government, there is an increasing number of older citizens of both sexes who have terminated their usual occupations and who must find some fresh interest and activity in their retirement. These people are at an age where their judgment is probably at its best. If they could be vouched into such community enterprises, they would probably make a valuable contribution and would welcome the opportunity to do so. While perhaps a larger proportion of such persons is to be found in Florida and California, rather than in other sections of the country, there must be some who do not chase the sunshine. We should find some way to use them. The law teachers all seem to end up at Hastings in San Francisco, but many lawyers and judges should be available. Perhaps many of those with long and fruitful careers at the bar behind them could be the teachers in the growing field of post-admission legal education I spoke of earlier.

LOCAL HISTORY

There is a widespread feeling that many young people are growing up today with an inadequate knowledge of American history. This ignorance makes them unable to contribute in the fullest degree to the strength of our communities. The young people lack understanding of the background of our institutions with the result that they are unable to defend these institutions when they are attacked. Some say that this ignorance explains the decision of the American boys who defected to the Communists during the Korean War. Without being an alarmist, since it is obvious that there is a good deal of fine teaching of American history being done, it does seem to me that the field of local history is too much neglected. Every community has memories of great citizens who contributed to its development. They include veterans of earlier wars as well as statesmen, merchants, judges, lawyers and others who once were the community leaders and heroes. When I was a boy, I knew a lot of veterans whom I then thought of, in a benighted Northern way, as veterans of the Civil War. North and South, the 4th of July was brightened by the handsome blue and grey uniforms of the surviving heroes of that sad struggle. An earlier generation listened to the tales of veterans of the Revolution. Veterans of the World Wars are around, although the habit of sitting on benches and telling stories has been unfortunately supplanted by the television dinner. Sometimes the houses of the great dead still stand; sometimes they are remembered through statuary or other memorials. Sometimes magnificent old court houses, in which they presided or led the bar, are available as mementos of the lives of the leaders of our profession. I think it would add greatly to the interest of our communities and strengthen the sense of community life and history if lawyers and others encouraged every effort to keep these memories green. Such organizations as the National Trust, which cooperates with local historical societies in preserving the historic and architectural beauties of America, deserve widespread support. When an old court house is threatened with destruction, unless it is completely useless, the bar should take the lead in finding some way to preserve it. A community which has permitted parking lots to replace its many historic treasures has impoverished itself spiritually. I am glad to say that there is a committee of the New York State Bar Association concerned with the preservation of historic court houses, and it has developed widespread interest among members of the bar, especially in smaller communities. There should be such a movement in every state.

COURT CEREMONY

Another step in the same general direction would be to inculcate a wider sense of community interest, pride and understanding in the administration of justice. Too often parts of our court houses seem to house only a new type of bureaucrat. Some of the clerks and attendants seem to confuse themselves with the judges and their convenience with the public interest. Fortunately, this has not happened in the smaller communities where, since everyone is known, the natural instinct of bureaucrats to be a little superior to the anonymous cannot get established.

Citizens called for jury duty often seek to avoid it because it interferes with their normal existence. Where such excuses are readily accepted by the officials, juries cease to be a true cross-section of the community and the results are undesirable. The reluctance to serve is to a certain extent understandable. The facilities for jurors in many of the court houses are almost intolerable. I believe that lawyers should be concerned with these matters and should see to it that all the participants in trials recognize that they are engaged in the most important sort of community work. Facilities to aid their convenience should be encouraged.

While, of course, there may be many communities where physical circumstances, local habits or other considerations make it impossible, I have always felt that it would deepen the understanding of the importance of the administration of justice if each community were to have some ceremony every year at the time the courts reopened. While we still use the Bible for the administration of oaths and often open court with some version of the noble cry of the Supreme Court marshal, "God save the United States and this honorable court," we put too much emphasis on the mundane aspects of justice. It is, after all, perhaps the noblest activity of man—one in which he serves to carry out the Divine Will. Why not raise the eyes of our communities so that this activity is seen in its true noble perspective? As you know, the English Bench and Bar have a magnificent ceremony at Westminster Abbey in connection with the annual opening of the courts. I had the pleasure of attending one of these ceremonies several years ago. All of the judges of England, in their magnificent robes and with their uniformed attendants, followed by the London barristers in wig and gown and supported by a delegation of solicitors, attend the service in the Abbey in London. They then proceed to the Royal Courts of Justice building where they form a procession through the Hall, before the judges and barristers go off to the several courtrooms. While we

tend to be superior to ceremonials and perhaps would not welcome such elegant processions here, it would be very good to arrange some such religious ceremony prior to the opening of the courts. This could be done on a nonsectarian basis by having the ceremony conducted each year in a church or other place of worship of a different denomination. Or the ceremony could be held at the court house. Such a ceremony has been held in recent years in Trinity Church in New York, and most people who have participated regard it as a very good development. I see no reason why similar ceremonies could not be arranged elsewhere.

BAR ASSOCIATIONS

Dean Pound has pointed out in his interesting history of the legal profession, *The Lawyer from Antiquity to Modern Times*, that the profession must work through bar associations and other organizations to be effective. The individual lawyer has neither the time nor the capacity to bring about substantial and needed reforms in the administration of justice or in other broad areas of concern when he acts alone. As Mr. Justice Holmes liked to point out, the tendency is for people to talk fundamentals and superlatives and then make some changes of detail. And that is generally true at least as far as the individual is concerned. Of course, the advocacy of a lawyer in a particular case may result in reforms, for by persuading a court of some point, a new door may be opened or an old gap may be closed. Any study of the great constitutional doctrines of Chief Justice Marshall should not overlook the contributions which were made by Webster and by the other lawyers who argued the cases. But broad changes must come about through the activities of many lawyers working shoulder to shoulder to accomplish them. There are always vested interests in existing forms of administration as well as public inertia to be overcome before progress can be made. If the change is to be legislative, it is necessary to arouse the people to the need of reform because legislators are usually allergic to suggestions which merely come from their brother lawyers. The legislator begins by wanting to leave well enough alone. If, in addition, he is urged to do so by those who are well content with existing conditions, a good deal of pushing is required. In New York, for example, we have finally succeeded in getting a modest basic court reform program through the Legislature but only after a generation of effort.

We do not have time here to review the history of the organized bar, but I am sure you will want to become familiar with it in your own state. At the time of the Revolution many American lawyers had

been trained in the Inns of Court, that great wellspring of able lawyers. The crop of lawyers from shortly after the Revolution until about the middle of the following century was largely the product of apprenticeship in individual offices under experienced lawyers as preceptors, a system which was only as good as the preceptors. There were a few early inspired law teachers who sent out students to become leaders of the bar, such men as George Wythe in Williamsburg, Chancellor Kent in New York and Judge Tapping Reeve in Litchfield, Connecticut. While, of course, many of the lawyers so trained turned out to be first-rate, they were all nevertheless individualists, and there was little community activity by the bar. The few bar associations of this period were almost entirely of a social character and many of them lacked continuity. The serious modern bar association really began with the organization in 1870 of the Association of the Bar of the City of New York. Several local bar associations claim a longer continuous history, but they did not give the same impetus to organization elsewhere. The New York Association was formed by leaders of the Bar who were outraged by the corruption of judges by the Tweed Ring, and its original purpose was mainly to stamp out corruption. The purposes of the Association were stated in its charter as follows:

“[C]ultivating the science of jurisprudence, promoting reforms in the law, facilitating the administration of justice, elevating the standard of integrity, honor and courtesy in the legal profession, and cherishing the spirit of brotherhood among the members thereof.”

This Association did not collapse when its original purpose was achieved, as it was, by great determination. Ever since 1870 the Association has grown in usefulness and prestige. It is not mere parochial pride to say that it is still at the very top of local bar associations in this country.

The American Bar Association was formed in 1876. Originally a social organization, meeting at Saratoga during the racing season, its major growth has taken place since 1920. Prior to that time the Association had made some important contributions to legal education and to other fields. But it was after 1920 that the major push to raise the standards of American law schools took place, and it is since that time also that the Association has become a true national organization, representative of the profession. It now has approximately 95,000 members and I hope you will take an active part in it. It is only by support of the best elements of the profession everywhere that the Association can do its full job. There is no other representative, nationwide bar association nor should there be.

BAR ASSOCIATIONS' FUNCTIONS

The organized bar is now active on so many fronts that it is impossible here to do more than indicate a few of those which are of particular importance and which should appeal strongly to the young lawyer.

A. Professional Brotherhood

I emphasize first the maintenance of a spirit of brotherhood in the profession. Others may advance less intimate objectives, but in my view the spirit of brotherhood is the prerequisite to most progress by the organized bar. One of the great satisfactions of a learned profession is the association with one's fellow practitioners, the spirit of contest and comradeship. The spirit of brotherhood does not bar argument and contention. It does preclude meanness, unreliability, and the overreaching of brother lawyers. Thus it is squarely opposed to the sort of conduct which sometimes brings individual lawyers into disrepute. It goes beyond the formal requirements of the canons of ethics and embraces standards of morality and good manners. It encourages the older lawyers, who are living models of the great traditions of the bar, to pass on those traditions to their younger colleagues so that, in their turn, these traditions will be kept alive.

Fortunately in our smaller communities the spirit of brotherhood among lawyers is still very high. In many states (like Vermont, in my own section of the country) a fellow lawyer is always referred to as "Brother." Unfortunately, in some of the larger cities, the spirit is not now always what it should be. Where the bar is so large that lawyers see each other rather seldom, they sometimes yield to the temptation to indulge in sharp practice. They would not think of doing this in a smaller community because they would be promptly ostracized by their fellows, but in a larger community the opinion of the bar is not so omnipresent. It is only through membership in bar associations and through the rubbing of elbows with fellow bar members that this professional pressure can be generated and maintained everywhere. This is a source of strength to the profession and a source of pleasure to its members. It is, I believe, one of the principal reasons for encouraging support of the organized bar.

B. Administration of Justice

After first safeguarding the spirit of brotherhood in the profession, I emphasize, secondly, the obligation of the lawyer to improve the administration of justice. The quality of the courts is of prime concern

to the bar. The tone and efficiency of administration directly affects the livelihood of the bar. It affects the economic interests of the general public and, even more important, it affects the attitude toward and confidence in our entire governmental structure. A citizen with a case, a jurymen performing a tour of jury service, and a witness on the stand all judge the integrity of government and of our profession by what he observes in the courts. Therefore, it is a prime obligation of the bar to be constantly watchful that judicial administration is kept up-to-date so that it adequately serves the needs of the public.

Court congestion is a problem which harasses courts all over the United States. Lawyers and judges in many communities are wrestling with the problem. Chief Justice Warren, at the annual meeting of the American Bar Association at Los Angeles last year, referred to it as a sharp challenge to the bar. When congestion unduly delays the disposition of cases, it seriously injures the citizens who have genuine claims and the economic need to collect them promptly. Serious and apparently callous delay in a particular case sends uneasy ripples out through a community. All who know about it begin to question the basic premise on which courts operate. Extensive delays lead some to question the wisdom of continuing to have personal injury cases dealt with by the courts. There are, of course, all kinds of devices for expediting cases. Sometimes modernization of the court structure is essential. Many of our court systems, like ours in New York, may be more than a century old and badly in need of streamlining. Sometimes more flexible assignability of judges is necessary, sometimes the use of nonjudicial personnel to screen cases would provide some relief. But these are problems which seem to be constantly with us, and it is a prime obligation of lawyers to deal with them.

There is a widespread feeling in the organized bar that something drastic needs to be done in some of the states to improve the standards of selection of members of the judiciary. The quality of courts and of the administration of justice always depends in the end on the quality of the judges. Good judges provide good administration and are diligent to avoid congestion and other disadvantages. Mediocre judges provide mediocre administration and often prefer to avoid any centralized administration which might introduce greater efficiency into their operations. While it is hard to generalize as to the precise method of selection which is best, it is clear that the further political considerations are kept from the selection of judges the better the judges are. Where politicians select the judges without any check on their choice, the judges are likely to be selected more for their

political loyalty than for their judicial capacity. This does not mean that political loyalty is bad or that judges who have been politicians before they went on the bench do not often make good judges. However, political standards and professional standards are different, and professional standards, not political standards, should control in the selection of judges. Generally speaking, it is easier to eliminate political considerations where the judges are appointed than where they are elected. This is perhaps because the official making the appointment feels more direct public responsibility when the quality of the judge appointed is clearly at his door. Responsibility for mediocrity is far easier to obscure under other systems. The elective system, where it involves party tickets, has two distinct disadvantages. The first is that the judges must be concerned with politics to get elected, and then they must again be concerned with politics to get re-elected. Such concern militates against the detachment which we expect of and need from our judges.

The introduction of the election of judges instead of appointment in many of the judicial systems of the states was an echo of the Jacksonian period in American life, that exalted democracy over everything else. The theory was that the people should choose their judges and that they were entirely competent to do so. Perhaps this was all very well in a simpler day of small communities where the citizens could know the candidates and their qualifications for judicial office. But today in most communities that is simply a disingenuous justification for persistence of a system which has little to recommend it except that politicians like it. Today the average citizen knows nothing about the qualifications of most of the lawyers who are nominated for the bench. A study of this matter in New York a few years ago indicated that almost none of the voters ever knew the names of any of the judges for whom they were required to vote. Something like only 1 per cent knew the name of the candidate for the highest judicial office in the state. Under such circumstances it is evident that the electorate has no real voice in the nomination or election of judges and that popular election really means the selection of judges by the politicians of the governing party.

Of course, some good judges get into office through the elective system just as good judges get into office through the appointive system. But it is clear that the elective system makes it easier to put inferior judges on the bench than any other system, because responsibility for such choices is effectively blurred by the pretense of popular choice.

Such observations have led the bar in many states, and the American Bar Association as well, to advocate some plan which will combine the best features of the appointive and elective systems while eliminating the most political aspects of the latter. These plans may differ in detail but they have a common denominator—that judges should be selected in the first instance by the governor or some other responsible appointing officer. These plans usually contemplate that in making the selection the appointing officer should be guided by the advice of a competent bi-partisan body, sometimes containing a mixture of lawyers and laymen. Within a reasonable time after appointment of a judge from the small group submitted for consideration by such a commission, that nominee may be required to submit himself to electoral approval, without partisan designation, on the simple question of whether he should be continued in office. Such a method gives expert guidance to the appointing officer and pays deference to the concept of popular election by leaving with the electorate the right to reject a bad appointment. The judge does not have to be a partisan and when he comes before the electorate, he does not come before it as such. The only question is whether he is competent to be a judge, and only the incompetent would ordinarily need to fear that judgment. Many states are now in various stages of consideration of such programs, and no doubt they will be advanced a good deal in the near future.

C. Education of Public

Another area in which the bar could make an important contribution is to educate the public about our institutions. This goes beyond the problem of arousing interest in local history which has been touched upon. It goes beyond the maintenance of an understanding of that history which makes Washington and Lee and their great contemporaries a living part of the American tradition. It involves rather the problem of explaining the basic nature of our institutions and their contrasts with those in countries under Communist rule. It is not enough for our people to be anti-Communist, important as that is. But it is also vital that our people couple that negative view with a militantly affirmative belief. It is necessary for them to believe profoundly in the superiority of our institutions and to understand why they are superior. Such knowledge will give them strength to preserve them at home and to show others why they are to be treasured. We live in a time of great peril. This presents a peculiar challenge and opportunity to our profession. We are under constant scrutiny not only by the Communists but by the new countries which have not yet de-

cided whether to go with us, or whether to go with the Communist world or whether to pursue a neutral third course. Obviously we must insure adequate military strength and necessary internal security measures to protect our nation from attack and subversion. Lawyers sometimes differ about what measures are necessary and desirable, depending to some extent on the degree of their faith in the general good sense and patriotism of our people and on their confidence in our various splendid intelligence and security agencies.

But over and above making sure that necessary security measures are taken, our profession can contribute what is beyond the competence of the average citizen. The lawyers are in the best position to understand what is necessary to protect our system of individual liberty as well as to help guide our people so that they may strike the right balance between essential security and the vital necessity to maintain liberty. It is our conception of individual liberty under law that is the special glory of our constitutional system. Whatever the Soviets can provide in the way of economic competition (and no doubt it will become a more serious threat as time goes on), they dare not risk the safety of their system by permitting freedom to their people. The examples of Hungary and Tibet illustrate that cruelty and repression are essential to Communist society. In the new battleground of economic competition, the lawyers also have a great role to perform; they must devise the institutions and managements which will enable private enterprise to cooperate with governments in beating off the economic attacks and in assuring the triumph of a system which encourages freedom. We are like the masters at arms in medieval castles; it is our duty to provide and to sharpen the weapons of freedom. We must be steadfast in performing this duty; they can help us more than nuclear weapons. Their fallout can save man, not poison or destroy him. The atomic scientists have never yet invented anything as effective for the affirmative protection of the Republic as Virginia devised when it produced Jefferson and the Bill of Rights.

D. Independent Judiciary

I have already mentioned the importance of an independent bar. Its maintenance is vital. History shows that tyranny cannot flourish where there is an independent bar because the bar is always ready to oppose the tyrant at whatever cost to itself. A study of the course of English legal history and the present high position of the profession in England makes this clear. While there is a bar in the Soviet Union and in the satellite countries, it has little or no independence. It is

in substance a body carrying on only as the government permits. The idea of a subservient bar subject to control by the government is repugnant to our traditions.

The need of an independent bench is also entirely clear. This can exist only when there is an independent bar in which judges can gain their professional training. It is unnecessary to speak here about the origin of the doctrine of judicial review which has been generally accepted as an essential part of our system, at least since Chief Justice Marshall's decision in *Marbury v. Madison*. Professor Herbert Wechsler of Columbia Law School, a leading authority on constitutional law, has shown again the legitimate, constitutional origin of the doctrine in his recent Holmes lectures at Harvard. We hear occasional questions today about the principle, but it is so well established that it is hardly useful to examine them. Furthermore, if the doctrine were not already established, it would have to be invented. Where cases require the settlement of large issues involving conflicts between federal and state governments or between separate branches of government, there must be an impartial umpire to resolve the disputes. Only the judiciary is sufficiently free of political pressures to be able to perform the function of umpire dispassionately. It must act both with detachment and self-restraint. Since an independent judiciary exercising the power of judicial review with proper restraint is essential, and since it is not in a position to explain or defend itself, that duty must be performed by the bar. This is not only a duty which the bar owes to the court, but, even more, one which it owes to itself and to the stability of our institutions. Full support of the independence of the judiciary is not inconsistent with occasional criticism or differences with particular decisions. Many decisions are rendered by sharply divided courts. While under our system we must accept the majority opinions as the law until changed by constitutional means, the right of members of the bar to resort to the ale houses for the purpose of criticizing decisions has always existed. This does not mean that lawyers ought to encourage disregard of decisions because of disagreement, a course which would lead to anarchy, or that they ought ever to tolerate the use of what Professor Freund has recently called "billingsgate" with reference to courts. Lawyers have an obligation to see that their criticism is temperate, with appreciation of the place of particular decisions in the structure of the law. This requires detachment on their part and recognition that the judges have tried to do their best. This spirit is properly repugnant to demagogic attacks upon judges or upon the courts. Such attacks tear at the fabric of our

system; they injure it at home and abroad. When someone criticized Dean Tucker for participating in the case of the Chicago anarchists, he said, "I do not defend anarchy, I defend the Constitution." This must often be the answer to critics who attack a court for applying constitutional protections to some hated group. The Constitution would not long survive a system of excepting hated groups from its protections. Judge Learned Hand wrote many years ago:

"[W]hile it is proper that people should find fault when their judges fail, . . . perhaps it is also fair to ask that before the judges are blamed they shall be given the credit of having tried to do their best. Let them be severely brought to book, when they go wrong, but by those who will take the trouble to understand."

E. *Rule of Law*

There are other related aspects of our institutions which badly need to be the subject of wider public education. "Due process" is a legalistic term, one that is fuzzy and vague to many laymen; yet this term is the very nub of many constitutional decisions. If the public were to understand that in essence due process means fair play, they would be far better able to understand and to support judicial decisions rendered under the due process clause. Some congressional investigations in recent years have disregarded the principle of fair play, although most committees have always been fair. The committees which have offended have not operated in any particular field, and criticism of such committees is not criticism of the investigations, whether they be of communism or any other matter. Businessmen and labor leaders have sometimes been subjected to an inquisition which seemed to go beyond any legislative purpose. It was upon this ground that the American Bar Association some years ago urged Congress to adopt a code of fair procedure to govern congressional investigations. This would not have interfered with the proper conduct of investigations into any subject. It would not have prevented the investigation of Communist activity or any related matter, but it would have eliminated the criticisms and attacks upon investigations made here and broad. Upon similar grounds the bar has sought to improve the procedure of administrative bodies and, of course, judicial procedure is a constant subject of concern to the bar. The bar understands the vital importance of fair play and fair hearings and should constantly press all arms and agencies of government to share that understanding.

A still broader area has been taken up by the bar in recent years.

This involves the advancement of the doctrine of the "Rule of Law" in world affairs. In a nuclear age the ingenuity of mankind must be addressed to the establishment of institutions and rules which can prevent war and prevent controversies among nations from leading to war. The United Nations is serving a most useful purpose, but it has not been entirely successful in accomplishing these ends. Lawyers all over the world are now engaged in discussing how to come closer to the creation and enforcement of a rule of law affecting the conduct of nations. One project which has aroused a good deal of enthusiasm is to expand the jurisdiction of the World Court, including withdrawal of the Connolly amendment by which the United States has restricted its own willingness to submit to its jurisdiction. Another proposal contemplates creation of additional, perhaps regional, lower courts. It seems probable that these discussions will lead to a world conference of lawyers in 1961. No cause is more worthy of the best thoughts of the bar.

PUBLIC SERVICE

Early in the professional life of every young lawyer comes some opportunity to go into public service. This may arise by an invitation to become an Assistant District Attorney or to run for the State Legislature or even for Congress. It may be an invitation to go to Washington in one of the executive departments or to become the administrative assistant to a Senator. Of course, all such opportunities involve economic problems which require one to assess his own sense of personal values and no outsider can advise about that. It is certainly desirable for the young lawyer to have some experience in public life as a part of his background and training. Even a year or two in some legal office of the government is extremely beneficial. This will give him both the opportunity to see legal problems from a different point of view and to become familiarized with the routine of government office. These are things which are not in the books, but they are important to his practical professional life. There is, of course, a great appeal in a longer period of service and the profession has contributed many of the principal legislators and executive officers throughout the history of our states and federal government. The profession can take great pride in the performance of most of them.

The English have a practice which touches this field and which we follow only to a very limited extent. The Attorney General of England does not try to maintain a staff adequate to handle all government litigation. Instead, it is the practice of the Crown to retain a barrister engaged in private practice as counsel to the Crown in im-

portant civil and criminal litigation. I think I am right that only in poisoning cases does the Attorney General consider that it is his duty to prosecute in person and even then, as in the recent celebrated case of Dr. Adams, he will have the aid of private counsel. This I believe stems from the view that poisoners at large were a great menace to the monarchy and that it was the Attorney General's duty to the Crown to dispose of such dangerous people himself. But it is quite usual in England for a great defense counsel to be retained in some important criminal case to prosecute for the Crown. The result is that the barrister gets the full advantage of exposure to litigation from the government's point of view without having to undertake the full sacrifice of public office. The standards of compensation in such cases seem to be reasonably satisfactory and therefore no extreme sacrifice is involved. This seems to be a very good system.

Occasionally in our state and federal governments, for one reason or another, a special counsel is retained from private life. It is rather usual for legislative committees to employ counsel otherwise engaged in private practice, but the public law offices for the most part have large staffs and do not need to retain private counsel to conduct the ordinary run of litigation. If the matter involved can be regarded as presenting some disqualification of the particular law officer, that might provide an occasion for retainer of special counsel. Such opportunities are welcomed because they give the lawyer the chance to serve the public interest and to see litigation from the government's side without having to give up his private practice completely. An example in the federal government occurred following the Teapot Dome scandal. The senatorial investigation raised questions as to the ability of the Attorney General to represent the interests of the United States in the litigation arising out of the investigation. Accordingly, Owen J. Roberts of Philadelphia, then a leading trial lawyer of that state, and Atlee Pomerene of Ohio, a retired Senator, were retained on behalf of the United States as special prosecutors. They were engaged in important investigations and trials for some years. That service so demonstrated the professional talents of Owen Roberts that he was subsequently appointed to the Supreme Court.

I have spoken earlier of the desirability of having the organized bar educate the public as to the need of fair play in governmental activities. One of the opportunities for the lawyer in public life is to be an exemplar of that principle and to help carry it into governmental activities with which he is associated. I had the great honor of serving in the Department of Justice during the Hoover administration. At

that time William D. Mitchell was Attorney General and my chief, Thomas D. Thacher, was Solicitor General. The Solicitor General, aided by his staff, represented the interests of the United States in the Supreme Court. It was a joy to observe the high sense of duty with which that representation was discharged by all concerned. There is a tradition in the best prosecutors' offices to the effect that the government wins whenever a citizen gets justice. That is a noble sentiment but one which sometimes yields to the natural zeal of the prosecutor as an advocate. I am proud to say that in my observation the Department of Justice when I served in it, and at most other times, has been loyal to this principle. In a case in the Supreme Court where the victory in the court below by the government was completely unjustified, it was the practice of the Solicitor General to confess error in the Supreme Court and thus bring about a reversal cancelling out the victory. This is performance of public duty of a very high order.

If a lawyer undertakes public office, he should, of course, bring to it great interest and concern for the public welfare. While no doubt distinguished performances will inure to his ultimate benefit when he returns to private life, he will get more satisfaction out of the job if his mind is primarily upon doing it well. If it is an appointive office, he will want to maintain his independence by making it clear that his hat upon the rack is not a permanent fixture and that if he is unduly interfered with, he will pick it up and go home. That nervous finger, that gesture toward the hat is a pretty good protection in public office. But having general zeal for public duty and a determination to be independent, there remains one other duty which the bar is especially equipped to discharge. That is the duty to bring into public life some sense of grace and style. Former President Gates of the University of Pennsylvania used to say that some times he felt as if he were being pecked to death by ducks. You all know the feeling. Sometimes private or public affairs get awfully boring. Those involved are so persistently earnest and self-centered that the burden of the day's routine seems almost intolerable. When one comes across genuine style and personal grace, it is a great treat. It is a rare trait but it is one which our masters in the law have often exemplified, and they can do so again. I once had the pleasure of hearing an argument in the Supreme Court which was participated in by William D. Mitchell as Attorney General, by John W. Davis for another party and by former Senator George Wharton Pepper for a third—I believe the Senate. This was a feast of grace which I have never seen equalled. I hope you will find figures in your time who will inspire you to go on and do likewise.

A TRIBUTE TO JOHN W. DAVIS

No career better illustrates the expanding horizons offered by the practice of law than that of John W. Davis, who gave the first of these lectures just ten years ago. A graduate of this Law School in the Class of 1895, Mr. Davis first made his mark as a lawyer in the town of his youth, then in the community and finally in the world of public affairs. He rose from a promising lawyer in Clarksburg to undisputed leader of the American bar. Throughout his public career, Mr. Davis never considered himself anything but a practicing lawyer. His *Who's Who* biography began: "John W. Davis, lawyer, born Clarksburg, West Virginia."

The hard core of John W. Davis' career, the base upon which rested his ultimate leadership as the acknowledged leader of the American bar, was great professional competence and consummate skill as an advocate. Not all of his professional competence came naturally. It was the fruit of hard work and acute self-analysis.

John W. Davis lost his first three cases. The first involved some stolen turkeys; the second, a cow killed by a train; the third, a lame horse. Some fifty-five years later, in dictating his reminiscences, Mr. Davis looked back almost affectionately on those early lawsuits. He looked back, not with a sense of loss that the past contained simpler and greater joys and virtues than the present, but with a spirit of challenge. He remembered those first hesitant courtroom appearances for the mistakes he had made and for his failure to serve his clients as effectively as he might have. At the close of a great career, Mr. Davis could well have lingered over the more than 100 cases he had argued before the Supreme Court of the United States, a number of appearances equalled only by a handful of lawyers in the history of the American bar. Instead, he turned back to three small cases in which he had stubbed his toe. It was that capacity for looking at himself hard, for self-criticism, for objectivity, which was the mainspring of his career at the bar.

Our egos being what they are, we all tend to see ourselves as we would like others to see us. When one has a satisfactory intellectual image of himself, he is not likely to tinker with it. But self-criticism, the ability to stand back and look at one's self without pity or scorn, is an important aid to competence in the legal profession.

After a year of teaching here at Washington and Lee, John W. Davis began practicing law with his father in Clarksburg, West Virginia. It was a varied, unspecialized practice. It gave the young lawyer the broadest possible background, a background that was to be use-

ful to him in his later years as a legislator, advocate and diplomat. There were contracts and wills to be drawn, titles to be searched and civil and criminal cases of all kinds to be tried. In fact, even in those first early days of practice there was a touch of public life similar to the English tradition of using private barristers to prosecute cases for the Crown. Mr. Davis sometimes assisted the prosecuting attorney, not at the invitation of the Government as in England, but at the request of the aggrieved party. It was the custom for an aggrieved party to hire an assistant for the prosecuting attorney to see that justice was done to the alleged criminal. So Mr. Davis in his career had an opportunity to serve as prosecuting attorney, although he was not actually the official prosecutor.

As Clarksburg grew from a rural county seat with a legal practice largely concerned with real estate to an industrialized community with glass factories and extensive mining operations, the range and variety of John W. Davis' practice grew. As his professional stature increased and his practice broadened, Mr. Davis became a well-known figure in the community. The time was ripe for him to expand his horizon into community affairs.

It was almost inevitable that Mr. Davis would take a leading part in the community affairs. His father was one of the community's outstanding lawyers and a former Congressman. And as Mr. Davis himself had said:

"Of course, in small-town country, it was true then and true today that a lawyer stands out more as an individual character than he does in a large urban center. He is the spokesman for one group or another in the community. If there is a public meeting of any sort, he is called on to participate. He acquires an individuality and a following which is very hard to attain in large urban centers."

Mr. Davis' first plunge into politics was a reluctant one. In 1899, just when he was beginning to make a name for himself in the practice of law, he was elected to the State legislature and two years later he became Chairman of the Democratic County Committee. His interest and his association were to continue from then on, but politics was still a diversion to him. He regarded himself, as he always did, first and last as a lawyer.

Despite an active and growing practice, despite a role of political leadership, Mr. Davis also found time to devote his energies to the organized bar. In 1906, just eleven years after his graduation from Washington and Lee University, he was elected President of the West Virginia Bar Association. This was not a passing interest, sandwiched

in between the practice of law and the demands of party politics. It was an integral part of his practice and was to continue to be so throughout his life. When he returned to private practice after World War I, he served as president of both the American Bar Association and The Association of the Bar of the City of New York.

Repeated attempts were made to persuade Mr. Davis to become a candidate for a major office, but he continued to devote all his energies to the practice of law until 1910, when he was elected a member of the United States House of Representatives from the First District of West Virginia. The Congress was a natural place for Mr. Davis with his broad background in drafting and his wide experience in the courtroom. As Mr. Davis himself has said:

“The lawyer is the student of government—that is where he begins; that is his tool. Second, he is usually vocal, and can express his views in public. I think in every democracy in the world, the lawyers are the predominant figures.”

And among the lawyers in the House of Representatives, Mr. Davis emerged as a leading figure. He helped draft the Clayton Act, took an important role in the tariff battle, and rapidly gained a reputation as a legal craftsman and an effective, pungent speaker. Mr. Davis, although fascinated by the work of committees and the adversary speeches on the floor, never considered politics as a career. In fact, in discussing the advantages of going into politics years later, he saw politics not only as an end in itself, but also as a place to learn skills that would be useful in private practice. He said:

“There was the drafting of legislation, all that, and knowledge of men. It broadened my outlook tremendously. It will broaden any man’s outlook. When a man goes to Washington and works, it is the greatest university in the world, because a little bit of everything comes there.”

In 1913, in the midst of his second term as a Congressman, he was invited to become Solicitor General of the United States, the greatest public office for an advocate in the United States. As Solicitor General, Mr. Davis argued dozens of cases before the Supreme Court of the United States with the economy, the style and the analytic insight that characterized his career at the Bar. Many of the cases Mr. Davis argued are historical landmarks in today’s law school casebooks. But Mr. Davis was not one to pick and choose the kind of law he liked to practice. He took the practice of law as clients brought it to him. As he saw his duty, both in public and in private practice, it was to tell his client, after a study of the law, what rule of life it was he should

follow. Professional competence was the heart of his public as well as his private legal career.

All of you I am sure are familiar with Mr. Davis' career as ambassador to the Court of St. James and his campaign for the Presidency on the Democratic ticket in 1924. By 1924, Mr. Davis was back in private practice again in New York as senior partner in one of its great law firms. It was this association that was to be one of the major campaign issues of the election, and was to give rise to one of the most forthright statements ever made by a lawyer called upon to play a larger role in public affairs but always remaining a lawyer.

When it was suggested that Mr. Davis' political career might be enhanced if his law firm did not represent so many large corporate clients, Mr. Davis wrote:

"At no time have I confined my services to a single client and in consequence I have been called upon to serve a great many different kinds of men; some of them good, some of them indifferently good, and some others over whose character we will drop the veil of charity. Indeed, some of my clients—thanks perhaps to their failure to secure a better lawyer—have become the involuntary guests for fixed terms of the nation and of the state. Since the law, however, is a profession and not a trade, I conceive it to be the duty of the lawyer, just as it is the duty of the priest or the surgeon, to serve those who call on him unless, indeed, there is some insuperable obstacle in the way.

No one in all this list of clients has ever controlled or even fancied that he could control my personal or my political conscience. I am vain enough to imagine that no one ever will. The only limitation upon a right thinking lawyer's independence is a duty which he owes to his client, once selected, to serve him without the slightest thought of the effect such a service may have upon his own personal popularity or his political fortune. Any lawyer who surrenders this independence or shades this duty by trimming his professional course to fit the gusts of popular opinion in my judgment not only dishonors himself but disparages and degrades the great profession to which he should be proud to belong. You must not think me either indifferent or unappreciative if I tell you in candor that I would not pay this price for any honor in the gift of man."

The young lawyers of today have the same chance to develop their talents and to expand their horizons, almost to the limits of the universe, if they are true to the great traditions of Washington and Lee as was John W. Davis.

CONCLUSION

I should like to turn to another great Southern lawyer, in conclusion, for his life gave rise to one of the greatest tributes to a mem-

ber of the bar that I have ever read. J. L. Petigru was a leading lawyer of Charleston, South Carolina. During the War Between the States he was apparently loyal to the Union, and that noble and beautiful city, whose sons were involved in a different cause, seems to have been tolerant of his nonconformity. So eccentric was his view that when the citizens were meeting in Columbia to vote for secession and a tourist asked him the way to the insane asylum, he pointed to their meeting hall. After his death the following great epitaph was erected to his memory in St. Michael's Episcopal Churchyard:

Future Times will hardly know
 How great a Life this simple stone commemorates:
 The tradition of his Eloquence,
 His Wisdom and Wit may Fade;
 But he lived for ends more durable than Fame.
 His Eloquence was the Protection of the Poor and Wronged
 His learning illuminated the principles of law.
 In the Admiration of his Peers.
 In the respect of his People
 In the Affection of his Family
 His was the highest Place;
 The just Meed
 of his Kindness and Forebearance
 his Dignity and Simplicity
 His brilliant Genius and his unwearied Industry.
 Unawed by Opinion
 Unseduced by Flattery
 Undismayed by Disaster
 He confronted Life with antique Courage
 and death with Christian Hope.
 In the great Civil War
 He withstood his People for his Country:
 But his people did Homage to the Man
 Who held his conscience higher than their Praise;
 And his Country
 Heaped honours upon the grave of the Patriot,
 To Whom, living,
 His own righteous self-Respect sufficed
 Alike for Motive and Reward.