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RESPONSIBILITIES OF THE LEGAL PROFESSION*

By HON. EARL WARREN**

I am gratified to be with you today for the dedication of your beautiful new Law School building. It reflects great credit upon all who are responsible for it. I know that it represents sacrifices and years of devoted effort on the part of a great many people. It is a handsome and functional monument to their vision.

Not long ago I was examining an aerial picture of the Baltimore Campus of the University of Maryland. The towering central point was the University Hospital, surrounded by a complex of buildings of the Medical and Dental Schools and other buildings that make up this impressive urban academic center. But my attention became fixed upon the then unfinished structure whose completion we celebrate today. There it stood — a mass of steel girders, with even the bricks and mortar yet to come; and surrounding it was the usual disarray of construction equipment. The later architectural refinements, to say nothing of the desks, the books, the lecture halls and seminar rooms, were far in the offing. But, in its own rather stark way, this skeleton of a building was all the more impressive in its unfinished state as it stood off by itself in inchoate isolation. For it seemed to mark the unfulfilled promise, the faith and the confident aspirations which exemplify education itself. As I viewed the buildings as a complex, I sensed basic progress, in that here we put into close association all the health preserving skills, the social service activities to make those skills serve their great purpose to everyone, and the legal standards that will enable healthy families to live happily on equal terms with their neighbors under the aegis of law based upon justice. That is the great need of every community, state and nation.

I said a moment ago that we are celebrating the "completion" of the unfinished structure. That is not quite so, however, for even now that the most important component of all the elements which make up this institution has been added — that is the people who infuse life into the building — the Law School will never be finished. The building is but a stage in the development of your university, although a rewarding and significant stage. But the learning and experimentation

* This address was delivered at the Dedication Ceremonies of the new law building of the School of Law of the University of Maryland on April 23, 1966.
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which will take place here, and the constant probing for solution to the problems of law and life, will be a continuing and a never-ending process.

It is always inspiring to be in this historic state, which has played such a significant role in the history of our country. From our very beginnings, Maryland has impressively participated in national progress. It was a pioneer in religious toleration. At the behest of Cecilius Calvert, the second Lord Baltimore, the Maryland Assembly in 1649 passed what became known as the Maryland Toleration Act. That act declared that no Christian should “be any ways troubled, molested or discountenanced for . . . his or her religion, nor in the free exercise thereof . . . nor any way compelled to the belief or exercise of any other Religion against his or her consent.”\(^1\) What a great step forward that was in the field of human relations. Its symbolic significance has been of lasting importance in the development of religious freedom. As Professor Morison has written, “In Maryland, as earlier in Rhode Island and later in Pennsylvania, there grew up a system of legal religious toleration which became one of the cornerstones of the American republic.”\(^2\)

The courage of Maryland’s troops during the Revolutionary War earned the nickname the Old Line State. And it is of particular interest to me to recall that it was Thomas Johnson, later Maryland’s first Governor and thereafter a very distinguished member of the Court over which I am honored to preside, who in the Second Continental Congress nominated George Washington as General of “all the Continental forces.”

It was Maryland’s decisive ratification of the Constitution which allayed any doubts Washington had about approval by the crucial State of Virginia. In a letter to Gouverneur Morris, Washington wrote, “I have not at any moment despaired of [Virginia’s] acceptance of the new Constitution since the ratification of Maryland by so large and decided a majority.”\(^3\)

Time does not permit further consideration of Maryland’s impressive role in our national development, but I am confident that its ancient traditions of autonomy, individual liberty and laws “Consonant to Reason” will continue to enrich our national life.

From the very outset, members of the Maryland bar have been in the forefront of progress. The state has contributed significantly to the development of our jurisprudence. Maryland has given to the Supreme Court one Chief Justice, Roger Brooke Taney, and three Associate Justices, Thomas Johnson, whom I have mentioned, Samuel Chase and Gabriel Duvall, all of whom made substantial contributions to the jurisprudence of our nation. Still another Associate Justice, David Davis, was born here but was appointed from Illinois.

Of these, the one whose name is most familiar but who, I regret to say, has been woefully misunderstood is Chief Justice Taney. Few men in American life — and surely no Justice of the Supreme Court —

2. Id. at 85.
have been so grossly misrepresented as Taney. Until recent years, he was all too frequently depicted as the doctrinal enemy of his predecessor, Chief Justice Marshall, and as the exponent of narrow provincial interests. He was also portrayed as a stalwart defender of the institution of slavery. But, with the passing of time and the cooling of passions, that characterization has been dissipated, and the true Taney has gradually emerged. We know him today as a needed balance to Marshall’s virile nationalism — as one who personally loathed slavery but who detested even more the prospect of violent disunion. We acknowledge him today as a great Chief Justice.

A fine biography of Taney by a native of this city, Mr. Walker Lewis, was published last year. This study, which has helped to restore perspective to Taney’s place in legal history, concludes with a revealing passage, from which I should like to quote an excerpt. Mr. Lewis wrote:

Benjamin Robbins Curtis of Massachusetts was one of the most successful lawyers of his day and one of the ablest members of the Supreme Court. He attacked Taney in his Dred Scott dissent and resigned from the Court after an acrimonious exchange of letters. But at memorial proceedings for the Chief Justice held in the First Circuit Court in Boston on October 17, 1864, he said of him: “In respect to his mental powers there was not then, not at any time while I knew him intimately an infirmity or failure whatever. . . . In consultation with his brethren he could, and habitually did, state the facts of a voluminous and complicated case with every important detail of names and dates with extraordinary accuracy, and I may add with extraordinary clearness and skill. And his recollection of principles of law and of the decisions of the Court over which he presided was as ready as his memory of facts. . . . It is one of the favors which the providence of God has bestowed on our once happy country, that for the period of sixty-three years this great office of Chief Justice has been filled by only two persons, each of whom has retained, to extreme old age, his great and useful qualities and powers. The stability, uniformity, and completeness of our national jurisprudence are in no small degree attributable to this fact. . . .”

When the University of Maryland School of Law first opened its doors for regular instruction of law students over 140 years ago, three of our contemporary law schools were offering courses. Its first Professor of Law, David Hoffman, must have been a dynamic teacher. We have in our Supreme Court Library, as part of the famous Elbridge Gerry collection, a two-volume edition of Professor Hoffman’s famous work entitled *A Course of Legal Study Addressed to Students and the Profession Generally*. Justice Story characterized the book, originally published in 1817, as “by far the most perfect system for the study of law which has ever been offered to the public.”

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5. North American Review [vol. and page information not readily available].
or "Proem" contains some valuable advice to law students. For those of you in the audience who are soon to be confronted by year-end examinations, I should like to pass along some helpful tips from Professor Hoffman's book. He said:

The mental, and even the physical exhaustion to which laborious students are frequently subjected, may be greatly relieved by very simple means, the more simple, indeed, the better. In such cases we advise bathing, and, more frequently, partial ablutions, especially of the forehead, hands, and wrists; frequent brushing of the hair; gentle walking in the streets; musings on the most trivial subjects...  

Professor Hoffman then suggested that, to relax his overworked mind:

[The exhausted law student] may, for example, speculate on the probable etymology of the curious names so often presented on signs; ponder over the historical or other associations connected with the names of streets; the wonderful mutations they undergo in orthography and pronunciation, and the causes of the same... so that finally, he may, for a short time, give himself up to a total abstraction from his legal studies, and all of their associations.

So, there you have it. I hope that with this simple recipe for relaxation all you law students will attack your examinations with renewed vigor and success. We need more lawyers, many of them — dedicated lawyers — lawyers dedicated not only to the cause of individual clients but to the cause of justice as it affects the welfare of humankind.

A dedication ceremony such as this, marking as it does another forward step of a great state university, provides a fitting opportunity for self-examination. We are, of course, pleased with the accomplishments and the progress which the new law school building symbolizes. But we can also profitably employ this occasion to inquire where we are going, what our goals are, and how we hope to attain them.

The era in which we have been living has been characterized by singular scientific accomplishments. Developments have occurred at a breathtaking rate. The changes during my lifetime have been staggering; but they are even more so in the case of those who are now of university age. I was reading an article the other day that, in random fashion, listed just some of the events that have occurred since this college generation was born. To begin with, there was the atomic bomb. When those now at the university were about four years old, the giant computers began commercial operation. When they were eight, men climbed Mt. Everest. When they were ten, they were immunized against polio. When they were twelve, Sputnik went up and the first civilian nuclear reactor went into operation. When they were

6. 1 Hoffman, A Course of Legal Study 41 (2d ed. 1836).
7. Id. at 41–42.
thirteen, the atomic submarine Nautilus crossed from the Pacific to
the Atlantic under the North Pole ice. When they were fourteen, a
Russian rocket photographed the far side of the moon and returned
to earth. When they were fifteen, the bathyscaphe took men down to
photograph the bottom of the Pacific Ocean’s deepest hole. When they
were sixteen, a human orbited the earth in a rocket. When they were
seventeen, the DNA genetic code for the control of the design of all
life was discovered. Equally startling subsequent developments will
occur to all of you.

Yes, those who are at the university today have witnessed changes
of immense proportions in the natural and physical sciences. These
changes have come through vast expenditures of time and money and
through unstinting application of the resourcefulness and talents of men
and women in this country and abroad.

In the social sciences, however, including the law, we have not
seen developments of commensurate dimensions to those in scientific
fields. Is this because social conditions are satisfactory? Is it because
we have learned to live in harmony with our surroundings? Is it
because we have found a way to conserve our natural resources? Is it
because we have solved our problems of population? Is it because we
have learned how to keep the air pure and our waters uncontaminated?
Is it because we have learned to live with our neighbors, at home and
abroad? Is it because we have solved the problem of poverty? Of
prejudice? Of crime? Of old age?

The answers to these questions are painfully apparent to us all.
We are still far behind in finding solutions to these social problems.
Law and the social sciences have simply not kept abreast of the physical
sciences. Though we live in a society whose complexity makes ever-
increasing demands upon law and our legal institutions; though new
social interests are pressing for recognition; though groups which
have been long inarticulate are asserting grievances long unheard, yet
somehow our legal institutions have not adequately responded to the
demands of the times.

What accounts for the lag of the social sciences? There are those
who ascribe the difficulties to science itself. There is, of course, some
truth to that explanation. The problem of a burgeoning population,
for example, results in significant measure from medical advances which
prolong life. Automation, to give another example, is said to create
problems of unemployment. Yet I feel it is too easy to use scientific
advances as the scapegoat. It may be premature to capitulate to the
computer. There are still some areas where the human mind seems
to do a better job. This was illustrated rather recently when an associ-
ation of translators met in Washington. Some attention was given
to the use of computers for translation, and it was discovered that
these metal giants cannot in all instances supply human answers to
human problems. For instance, when the words “hydraulic ram” were
fed into the machine, they came out as “water male sheep.” The phrase
“out of sight, out of mind” emerged as “invisible insanity.” The
translators concluded that they had not yet been automated out of
their jobs.
There are many who fear scientific developments and would like to stop them entirely. When we contemplate the potentials for self-destruction which certain discoveries have made possible, we may have some doubts. At the same time we must concede that we cannot halt progress by decree or wish, any more than King Canute could successfully command the waves. The only answer is to exploit the great potentials scientific discoveries offer us for betterment and to eradicate the conditions which prompt us to misapply those discoveries. One commentator has expressed this thought in the following way:

Seeing, at long last, through the eyes of science, that the universe is incomparably greater than what we had dreamed, and learning of our own long ascent, we human beings can now more truly appreciate our own uniqueness and the awesome potentials we hold. For science, setting men on this lofty peak of knowledge and granting them the wondrous capabilities of manipulating both the infinitesimal and the immense, has completely revolutionized men’s prospects. By its means, in the technically advanced countries, the standard of living of the common man has already been enormously raised, and the richness of his life can still be greatly enhanced. Moreover, it is not only in these countries that poverty can now be eliminated and human dignity augmented. For if science is rightly applied, this can be accomplished everywhere.8

In seeking to meet the problems of these turbulent times, law schools like yours face an exciting challenge. The programs which they offer should provide the opportunity for meeting the social problems which surround us. I am thinking not only of the so-called “bread and butter” courses which may be available. The law is not just a craft. It is a profession. And it is a profession with increasing responsibilities to serve society as a whole. Today’s law schools have a significant responsibility, not just to train lawyers but to further the development of our democratic system. The law must keep abreast of the needs of society. In order to fulfill these needs, a lawyer cannot confine his services entirely to special interests, important as those may be. But the community in which he lives and the national community as well — indeed, the international community — must be viewed in the broader sense as each lawyer’s client.

For the law schools to perform their proper function today, they must participate in research in the law as it relates to social conduct. There is a compelling need for creative research projects which will afford an insight into the complexities of modern living. In this way, the law schools can facilitate the growth of the law, which must attune itself to the changes in our social and economic institutions. For, as Thomas Jefferson observed, “laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths

disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times."

The law has been notoriously slow, however, in heeding Jefferson’s advice of “keeping pace with the times.” Sometimes I think we go through the same old motions even though we know that they are not working. It is as if we were on a treadmill. To cite one example — statistics have shown for a recent year a million and a half arrests for drunkenness. It is hard to imagine that chronic alcoholism, poverty and a combination of other factors accounted for this astounding figure. Nor is it hard to imagine that the same dreary cycle of arrest, incarceration and release without cure was followed with respect to many of the unfortunates involved. Yet, we go along complacently without trying to find out if there is a better way to approach the problems.

Over 750 years ago the Magna Carta proclaimed, “to no one will We sell, to no one will We deny or delay, right or justice.” Despite some recent progress, we have not yet achieved for the indigent the same equal justice under law which is accorded to those of means. And our crowded dockets still attest that justice delayed is justice denied. I could give many other examples of failure to come to grips with problems of our society. All of these are your problems and mine as members of the legal profession.

It is true that some experimental work is being done to provide an alternative to imprisonment in appropriate cases and to achieve the rehabilitation which institutions that are “correctional” in name alone have failed to achieve. But more, much more, remains to be done. Through the cooperation of our law schools, impressive headway has been made in reforming our archaic bail system in several areas. This is but one of the numerous areas in the law and kindred social sciences for experiment and progress. Professor Stephen, in his History of the Criminal Law of England, wrote:

The study of the criminal law might be made an instructive and interesting part of liberal education, but, in order that this may be done, it must be viewed, not merely as a trade, but as an art founded on a science, the art of making wise laws, the science of understanding and correctly classifying large departments of human conduct.\[10\]

Those words were written over a hundred years ago; they remain a beacon light in the distance today. I should like to see the law schools attract and train a much larger number of students than they now do for criminal law research. Teachers should be engaged in increasing number for special studies. Faculty initiative, when financed generously by governmental and foundation support, can well lead the way to attracting more students to enter this field.

There must, moreover, be daring imagination in the exploration of cures for crime and other social blights. I have no doubt that if the same spirit is applied in this area as the Einsteins, the Marconis,

9. XV The Writings of Thomas Jefferson 41 (1904).
the Bells, and the Salks have used in their fields, our accomplishments can be no less impressive than theirs. In pursuing this mission we must be prepared to cast aside popular and often erroneous assumptions about reality. We must disregard immediate political acceptability. As one imaginative law professor has put it, "If the future is not to be held in the grip of the past's deadening apathy, but is to take possession of its own time, then today's law schools must become laboratories experimenting in ideas and in the possible application of theories of adversary justice."\(^1\)

As we dedicate this fine new law school building, we should resolve that its facilities will be committed to these ends. Their pursuit is no less exciting than the conquest of space. May the minds and spirits of those of you who are privileged to participate in the quest likewise defy the laws of gravity as you probe for solutions to the problems of living together on this planet Earth.

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