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## Success At The Bar

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Albany Law School  
Union University  
Commencement Address  
Friday, May 31, 1996

"Success At The Bar"

Dean Sponsler, Trustees of the Law School, Faculty Members,  
Graduates, Families and Friends of the Graduates, Ladies and  
Gentlemen:

I well remember the day I participated in commencement exercises as a law school graduate. However, I do not remember the name of my commencement speaker, nor do I remember the speaker's topic. This should give you some sense of the importance of what I am about to say. I did ask a member of this graduating class, who was an intern in my chambers this past semester, what the graduates would like to hear about today. "Jobs," he said. Now, that is surely an important topic.

But the real dilemma of a commencement speaker was portrayed in this exchange of dialogue between two cartoon characters in a comic strip called "Shoe":

- Q. What should I say to your class in my commencement address?
- A. Oh, I don't know . . . Draw on your years of experience, regale us with a few stories from a full and vibrant life . . . Speak to us of the challenges ahead, the lessons you've learned, the advice you have for our generation . . . and keep it around four minutes.

No lawyer can say anything in four minutes, and I am no

exception. I understand, however, that the mind can only absorb what the seat can endure.

This is an occasion for congratulations -- to the graduates for their accomplishments and to the families of the graduates for their encouragement, support and understanding. I am well aware that substantial family sacrifices were necessary to make this day possible for many of the graduates.

In handing out kudos on this auspicious occasion, we must not omit the distinguished members of the faculty, whose instruction, guidance and interest have inspired in the graduates a sense of justice as well as a knowledge of the law. I dare say that each member of the graduating class, through the herculean efforts of this faculty, is now able to examine any contract and determine at once whether it is oral or written. One member of the class told me that she always will remember the inspirational remarks made by a senior professor on the first day of Orientation three years ago. The professor said: "You are about to embark on a course of study that will try your very souls. Some of you will make it, and some of you will crack. Those who crack will be lawyers." You all have cracked, and I congratulate you.

But enough of congratulations! My duty here is to furnish a bit of advice to the graduates as they go out into the world of the law. My advice is this -- Don't go! Having discharged my duty, I now propose to share with the graduates some thoughts about success at the bar.

In my days as a state judge, I was assigned from time to time to hold court in a rural county seat where a quaint custom was said to have prevailed in olden times. The custom involved the ringing of a bell whenever a jury reached a verdict. The bell was located in a belfry above the county courthouse and was rung by pulling on a rope. The bell served to advise the local citizenry that a verdict was to be announced and, presumably, that justice would be done. In later times, according to legend, attorneys would pull the bell rope to celebrate their successes on obtaining a favorable verdict. Ringing the bell now has a symbolic meaning for attorneys in that area, and a successful attorney is often described there as one who has "rung the bell."

But success in the legal profession lies not alone in the acquisition of gold and glory. It lies also, and principally, in the satisfaction lawyers derive from helping their fellow citizens. The world has turned many times since I received my law degree four decades ago. And now, as the shadows lengthen, and I try to make some sense of it all, my thoughts turn to the people I have encountered along the way -- in private practice; in public service; as a judge; and as a law teacher. What looms the largest in my memories of these people are the opportunities I have had to be of service to them. It is in this service that I have found the fulfillment of my life in the law. It is where you will find fulfillment as well, for it is the tie that binds us all together in this great calling known as the legal profession. When all is said and done, your wealth as a lawyer

will be measured only in the good you have accomplished for your clients and your fellow citizens. That is what I consider to be success at the bar. But this success cannot be acquired without professional competence, a matter to which I now turn.

The very first rule of the Model Rules of Professional Conduct speaks of the lawyer's duty of competence. It provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." There is a good reason why the duty to be competent is the first rule of professional conduct. It is because an incompetent lawyer cannot respond to the needs of her or his client. The lawyer who violates the duty of competence is unable to perform the service she or he is licensed to provide and may in fact cause serious harm. A lawyer lacking in competence is undeserving of a place in the legal profession.

To be competent professionally, and to properly advise and represent clients, a lawyer must cultivate a number of qualities. The most important, to my mind, is thorough preparation. I do not know for sure, but I speculate that one or two among you may once have been unprepared in class during the past three years. Such a phenomenon is so rare that I even hesitate to mention it. Nevertheless, I tell my own students at the beginning of the term that an unprepared law student can easily become an unprepared lawyer. Of course, an unprepared law student may receive a low grade or fail the course. But a lawyer who is unprepared for the

trial of a case, the argument of an appeal, the drafting of a document or the advising of a client is open to a malpractice action, a disciplinary proceeding, or both. For when a person entrusts his or her liberty, fortune or even life to one who violates that trust by inadequate preparation, there is a breach of the sacred responsibility that every lawyer undertakes in the representation of a client.

Unfortunately, there exists within the legal profession a small but readily identifiable number of attorneys who fail their clients in this regard. I have had the unwelcome opportunity to see and hear some of these attorneys during my career at the bar and during my service of twenty years as a trial and appellate judge. I have heard the arguments of appeals by lawyers who were unfamiliar with the authorities cited in their briefs. I have observed the difficulties encountered by trial counsel who met their own witnesses for the first time in the courtroom. I have listened to the complaints of clients whose attorneys gave them incorrect legal advice. I have examined legal instruments so poorly drawn that one provision contradicts another. I have examined pleadings that were incomprehensible. I have witnessed the appalling consequences of incomplete research in the law and of inadequate investigation of the facts. The sad part is that all of these could have been avoided by thorough preparation.

A survey by the American Bar Association a few years ago showed "Failure to Know the Law" as ranking second on the list of predominant errors giving rise to malpractice claims. The duty

of competence requires that the counselor have a grasp of the substantive law bearing on the client's problem as well as the procedural law necessary to advance the client's cause.

Nobody knows better than you graduates, after three years of strenuous and demanding study, that the law constantly changes and that the only way to keep current is to continue your studies. Statutes are enacted, amended and repealed; administrative regulations are adopted, revised and rescinded; and case law precedents are established, modified, distinguished and overruled as the rules governing society ebb and flow. The study of law therefore must be a lifelong endeavor. Yet, there are those who are not even knowledgeable about the specific fields of law in which they practice. I well remember hearing the appellate argument of a reputed expert who urged upon my Court a precedent that had long since been overruled by the Supreme Court. This lawyer was totally unaware of the latest case, although it was determinative of his appeal. An attorney's failure to keep herself or himself current as to the law affecting a client's interests is inexcusable.

The Comment to the first Rule of Professional Conduct tells us that, through proper study, "[a] newly admitted lawyer can be as competent as a practitioner with long experience" and even "can provide adequate representation in a wholly novel field." It is therefore apparent that appropriate legal knowledge can be acquired as you go along. Every lawyer has to start someplace. The key is to read, research, write, re-write and review until

there is sufficient legal knowledge to solve the client's problem. If after study doubt remains, the rules of professional responsibility counsel association with another attorney with the necessary knowledge of the area of law in question.

Legal competence also requires the application of various technical skills, many of which you already have acquired through your law school training. Analysis of legal precedent, identification of legal issues, distillation and summary of relevant facts, legal research, writing, draftsmanship and oral communication all are skills in which you have been trained. Actual practice will provide you with the opportunity to improve these skills and acquire others, such as the drafting of specialized instruments and pleadings, the discovery and evaluation of evidence, effective trial methods, negotiation techniques and effective discourse with clients. The solution of all legal problems requires one or more of the skills I have mentioned. The honing of those skills, like the acquisition of legal knowledge, is a lifelong enterprise for those who practice the profession of law.

Lawyers entering practice today sometimes find it difficult to develop necessary professional skills. The new lawyer, especially in the larger firms, often is assigned very narrow duties and has no opportunity to evolve even the most basic skills. Some of my former law clerks, who have entered the legal world of the mega-firm and the mega-buck, complain bitterly of the lack of broader tasks as well as the absence of mentors to

aid in the development of their skills. In my day, a new lawyer would begin to learn trial methods, for example, by carrying the briefcase of a senior lawyer to court. After observing some trials, the new attorney might be permitted to examine a witness or open to a jury. Ultimately, there would come the opportunity to try a case in a court of inferior jurisdiction. And so on. Today, it would seem, the pressures of modern law firm practice, including the need for billable hours, make the apprenticeship approach impractical. This is much to be regretted and is worthy of the thoughtful attention of the Bar. Perhaps some young lawyers would be willing to take a little bit less salary in return for a little more training at the early stages of their careers.

Partners are another matter. I very much enjoy the story of the partner who was checking in at the Pearly Gates. The Angel at the Gates said: "You are 95 years old and must have enjoyed good health to have arrived at such a ripe age." The partner responded: "There must be some mistake. I am only 45." The Angel shuffled through some papers and said: "You are right. I was looking at your hourly billing records."

Largely because of the perception and reality of incompetent lawyering, we live in a time of declining public respect for the legal profession and of diminishing self-respect on the part of lawyers themselves. Each year thousands of lawyers leave the profession, unable to find success or fulfillment of any kind. The ABA Commission on Professionalism reported that only 6

percent of corporate users of legal services rated all or most lawyers as deserving to be called professionals. 55 percent of state and federal judges questioned in a poll said lawyer professionalism is declining. One Judge recently told a Bar Association: "You protect the least competent among you, the least disciplined among you, the least ethical among you." Unfortunately, there is much truth in what that Judge said. And it will be up to you to do something about it, because success at the bar is in large part a joint undertaking. We cannot help others if we do not respect our profession and each other.

But success at the bar requires of you not only competence, ethical conduct and respect for each other and for the profession. It requires courage as well. Ours is a profession that is concerned with conflict, and courage in the face of that conflict is necessary, not only for the protection of your clients but for the protection of society as a whole. A major part of our business is the resolution of controversies. In doing that business, we make enemies of those on the other side. Conflicts with our own clients are not unknown. A spouse sued for child support, a manufacturer sued for making a defective product, a physician sued for amputating the wrong limb, a police officer whose search is invalidated -- these are people who often become downright hostile toward the attorney who brings suit, the Judge who decides against them, and the entire legal profession. This is not unexpected, and it is the principal reason why lawyers never will be universally loved. But one must ever be

aware that attacks on lawyers and judges may mask hidden agendas designed to make inroads upon the rights of your fellow citizens.

"The first thing we do, let's kill all the lawyers." We all know that line from Shakespeare's Henry VI, and we all know that the statement was made in furtherance of a conspiracy to impose a tyrannical regime. Without an independent bar, tyrants flourish. And without a courageous bar, inroads can slowly be made on the rights enjoyed by the citizenry. A recent front-page article in the New York Times told of a public relations campaign to bash "greedy" lawyers. The lobbyist who orchestrated the campaign for the American Tort Reform Association apparently was financed secretly by a few large companies that would benefit by the limitation of product liability lawsuits. I do not say whether any particular tort reform is good or bad, but only that it is your duty to make your fellow citizens aware that their poor perception of lawyers may be used to induce the diminution of their rights. Lawyers are often bashed for using "technicalities" to set criminals free. It is your duty to make your fellow citizens aware that many of these technicalities that they condemn so much are constitutional rights that protect all of us. We all must be wary of any incursion upon constitutional rights. Lawyer bashing may indeed have some insidious purposes, and we must have the courage to fight it.

According to the Rules of Professional Conduct, "[a] lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the

quality of justice." In performing each of these professional functions, a lawyer often finds himself or herself in conflict with others. At times, one function will seem to be incompatible with another, and a lawyer will have to address these internal types of conflicts as well. It will take courage to face the conflicts imposed upon you by the rules that govern our profession.

A profession has been defined as the pursuit of "a learned art as a common calling in the spirit of public service, its work no less a public service because it is also a means of earning a livelihood." Perhaps we have gotten away from that definition. It remains for you, the new generation of lawyers, to restore pride to the profession by providing competent service to clients, by maintaining high ethical standards, by demonstrating concern for your fellow men and women, and by understanding that there is no legal profession unless there is a commitment to public service on the part of each of its members. Ours is an ancient, honorable and caring profession, whose first concern always is the welfare of others. The legal profession is the cornerstone of our democracy. It is frequently reviled, but no man or woman in this Republic would be safe without it. Every one of you now is responsible for it. Competently and ethically practiced, it will provide you with success and fulfillment in abundant measure.

We know that you have the necessary education, energy and commitment for the tasks that lie ahead. You go from here not

only with our confidence but with our love, our blessings and our hopes as well. Alexis De Toqueville, that shrewd observer of Democracy in America, wrote that lawyers "are the masters of a necessary and not widely understood science." Go forth and apply your knowledge of the "not widely understood science." Get out there and RING THE BELL!

Thank you.