



CHAMBERS OF VERMONT CHIEF JUSTICE PAUL L. REIBER

10/20/22 PLR Speech to New Admittees VT State House

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Good afternoon. This is a ceremony to celebrate your oath and admission to the bar, the oath you take as a new member of the Vermont Bar. A celebration is in many ways a call to action, the oath is just that. Generations come and generations go, but the oath remains the same, the celebration of you reciting the oath indelible in our minds when we leave this room. That is how it should be as you and I and all the attorneys who are gathered here bear witness to the sacred trust through the license all of us are privileged to hold.

In the past, Justices have used this occasion to talk about professionalism and ethics. I don't plan to break that mold, in fact I expect you will not be too surprised by what you hear this afternoon. I want to talk to you about ethics and civility as both are wrapped in professional judgment and character.

The challenge of ethics and civility in litigation in particular is linked to the adversary system. Let there be no doubt the notion of zealous advocacy is alive and well in the courts. But does it excuse us as practicing lawyers from exercising common sense and moral judgment, obligations to non-clients? The term "zealous advocacy" has been deemphasized in the rules of professional conduct in a number of states. And the US SCT has held "an attorney's ethical duty to advance the interests of his client is limited by an equally solemn duty to comply with the law and standards of professional conduct." Nix v. Whiteside, 475 U.S. 157, 168 (1986).

Anthony Kronman, former Yale Law Dean in an essay published in a book I commend to you, "Ethics in Practice", says "A third source of a lawyer's professionalism... is the capacity for



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judgment... It is a bad mistake to think that legal training sharpens the mind alone. The clever lawyer, who possesses a huge stockpile of technical information about the law and is adept at its manipulation, but who lacks the ability to distinguish between what is important and what is not and cannot sympathetically imagine how things look and feel from his adversary's point of view is not a good lawyer. He is, in fact, a rather poor lawyer who is more likely to do his clients harm than good. The good lawyer—the one who is really skilled at his job—is the lawyer who possesses the full complement of emotional and perceptual and intellectual powers that are needed for good judgment, a lawyers most important trait.”

Years ago our oldest daughter, a lawyer in another New England state, was clerking for a judge sitting on the complex case docket in that state. And Lee tells a story about sitting to the side of the courtroom before an important hearing in a large and challenging, contentious and very notorious matter. Before the judge came out to the bench in walked one lawyer who sauntered to his table and sat down staring straight ahead. A few minutes passed and the opposing lawyer arrived who immediately approached the court docket clerk, introduced himself, shook hands, turned to the table of the first lawyer and did the same. The comparison was striking she said. It was clear who was the better lawyer, borne out in the hearing that followed.

It is fitting that a judge address you on the day that you join the bar because of the deep and direct connections that run from the Office of Judge to the Office of Lawyer. Indeed, the Vermont Constitution recognizes your new office where it vests the Vermont Supreme Court with “disciplinary authority concerning all judicial officers and *attorneys at law* in the State.”¹ It is of

¹ VT. CONST. ch. II §30 (1793).



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great moment that upon taking your oath and position at the bar, you assume an office imbued with constitutional dignity by dint of the reference made thereto in our state's founding charter. From this day forward, you will inhabit the Office of Lawyer.

One of the best lawyers I ever knew was Joan Wing. Let me tell you about her and the two-fold example Joan set: on the one hand, she was a smart lawyer with a penchant for gab and a personality equally striking and strong; on the other hand, she was an outstanding citizen and member of the bar with a sense of gallantry and graciousness. Joan was an organizer and celebrator of all things good in life and the profession, who often came to the aid of bar members who found themselves in professional conduct trouble outside of the courtroom, mirroring her respect for the process inside the same. She was a perspicacious lawyer, a steadfast friend, and a great Vermonter. It is well known that lawyers serve the public by serving clients and administering justice. But good lawyers also serve the public by modeling civility and respect for human dignity, including to those who have fallen. Civility as in not mere politeness but a trait of character evidenced in speech and conduct, grace.

Joan's professional commitment evokes sections of the Preamble to the Vermont Rules of Professional Responsibility: "[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice"; "[5]...A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it..."; "[6] As a public citizen...a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their



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authority”; “[9]...many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment...while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”

The Preamble to the Rules also specify why these principles are important: “[12]. The legal profession’s relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.... Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves”; “[13] Lawyers play a vital role in the preservation of society.”

Thirteen years ago, I delivered remarks to a group of new lawyers like yourselves. On that occasion, I eulogized Joan, who had been killed in an accident on Route 7 not long before I delivered that speech. She served as president of the Vermont Bar Association, as did her father and his father before him. She served for a number of years as a Member and Chair of this Court’s Professional Responsibility Board. She was selfless in her devotion to service to others. Vermont has a history of people like Joan. Before saying more about her, I would like to tell you about another great Vermonter of a more distant vintage: Josiah Benton.

Benton came to my attention a couple of months ago. Benton was born in Addison in 1843 and attended Albany Law School in New York, from which he would graduate in 1866. His studies were interrupted by his yearlong service in the Civil War with the 12th Vermont Volunteers.² From 1866, when he graduated from Albany Law, until 1873, he practiced law in Bradford,

² See Benton, Josiah H, Jr., Vermont in the Civil War, <https://vermontcivilwar.org/get.php?input=9296>.



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Vermont, and Lancaster, New Hampshire, interspersed with stints as a clerk to the lower house of the New Hampshire Legislature and as private secretary to the New Hampshire Governor. In 1873, Benton moved to Boston, and was actively involved in that city's intellectual life, serving for twenty-two years on the Board of Trustees of the Boston Public Library.

In 1905, Benton wrote a book entitled "The Lawyer's Official Oath and Office." It is a wonderful book. In it, Benton describes the lawyer's office, tracing its development beginning with the Middle Ages. Benton begins his book by asking why it is that "any oath is required for admission to the practice of law."³ He responds that "[t]he significance of the lawyer's oath is that it stamps the lawyer as an officer of the State, with rights, powers and duties as important as those of the Judges of the Courts themselves."⁴ The lawyer, who has been duly sworn into office, Benton writes, "is not the servant of his client. He is not the servant of the Court. He is an officer of the Court, with all the rights and responsibilities which the character of his office gives and imposes."⁵ As an officer of the court, a lawyer plays a dual role.

According to Professor Robert Gordon, a historian of the American legal profession at Stanford Law School, lawyers are, at their best, "double agents."⁶ I would prefer to call them "dual players." These dual players "mediate between the public order and its requirements, on the one hand, and the self-regarding desires of private individuals, on the other"⁷ My late friend and colleague Joan lived fully in concert with both roles. From my 2009 speech: Joan "saw her role

³ JOSIAH HENRY BENTON, *THE LAWYER'S OFFICIAL OATH AND OFFICE* 3 (1905).

⁴ *Id.* 3-4.

⁵ *Id.* (emphasis in original).

⁶ ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 18 (1993) (quoting Robert W. Gordon, "The Ideal and the Actual in the Law: Fantasies and Practices of New York City Lawyers, 1870-1900," in *THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA* (G. W. Gawalt, ed., 1984)).

⁷ *Id.* 18 (citing Gordon, *supra* note 8).



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as counsel to a client in part to make sure the system worked, no gaming the situation to take advantage of an inexperienced lawyer or one whose chips were down.”

I have mentioned that the law is a dignified profession; but it is also an ancient one. I should like to think that it is not dignified because it is ancient, but, rather, ancient because it is dignified. Benton provides ready examples of the profession’s antiquity in his 1905 book. For example, he quotes an English text on lawyers dating to about 1285, entitled “The Mirror of Justices,” as follows: “Pleaders are sarjeants wise in the law of the realm who serve the commonalty of the people, stating and defending for hire actions in court for those who have need of them.”⁸ Lawyers have been inhabiting their office, and thereby serving the public, for quite some time.

However, the legal profession is not merely concerned with history because of the profession’s antiquity. As Anthony Kronman, the legal philosopher at Yale Law School I mentioned earlier, wrote in his essay in 2000, “[t]o enter the legal profession is... to come into an activity with self-conscious historical depth, to feel that one is entering an activity that has long been under way, and whose fulfillment requires a collaboration among many generations”.⁹ In short, Professor Kronman writes, entering the Lawyer’s Office “is to know that one belongs to a tradition.”¹⁰ This tradition prizes, among other things, good judgment, courteousness, and civility.

The Lawyer’s Office requires that the lawyer be civil, and well-mannered. During court proceedings, lawyers demonstrate professional competence through their respectful behavior,

⁸ BENTON, *supra* note 4, at 12.

⁹ Antony T. Kronman, “The Law as a Profession,” *in* ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, AND REGULATION 34 (Deborah L. Rhode, ed., 2000).

¹⁰ *Id.*



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towards clients, opposing parties, the public who may be present at such proceedings, court staff, opposing counsel, and the Court itself. Behaving courteously in court will surely advantage one's client, but this is only one reason that a lawyer should behave this way. Another reason is that the Lawyer's Office requires it—and requires it not merely as a pattern of behavior but as a trait of character.¹¹ Professor Kronman, in a 1993 book entitled “The Lost Lawyer: Failing Ideals of the Legal Profession,” writes that character is “an ensemble of settled dispositions—of habitual feelings and desires. To have a character of a certain sort is to possess a set of such dispositions that is identifiable and distinct.”¹² Lawyers must aspire to count among their character traits civility and courteousness.

Civil discourse in the face of disagreement makes up the large part of what lawyers do. In the current October-November 2022 edition of the American Bar Association Journal, the new ABA President, New York attorney, Deborah Enix-Ross, urged lawyers to “agree to disagree.” According to President Enix-Ross, “agree[ing] to disagree is what lawyers do around negotiation tables every day. [Lawyers] do it in mediation, in arbitration and in courtrooms after a judge has heard both sides and issued a ruling.”¹³

President Enix-Ross writes that “Lawyers can model the behavior we wish to see.”¹⁴ The President encourages lawyers “to model generosity in our thoughts and behaviors as we respect views beyond those that give us immediate comfort and self-assurance.”¹⁵ Following the

¹¹ See KRONMAN, supra note 8, at 15 (arguing that the lawyer-statesman ideal “is more than a clever knack or skill. It is, most fundamentally, a trait of character.”).

¹² KRONMAN, 15.

¹³ Deborah Enix-Ross, Agree to Disagree: Civics, civility and collaboration can guide us to a better society, 108 ABA J. 6, 6 (2022).

¹⁴ Id.

¹⁵ Id.



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President's guidance, a new lawyer will be well on their way to properly inhabiting their new Office.

Today, you join a noble and honorable profession, which for many centuries has rendered service to the public. The profession has done so by performing its dual role as advocates, on the one hand, and administrators of justice, on the other. But the profession is also a model of civil discourse outside the courtroom. The Lawyer's Office is, as the great Vermonter Josiah Benton reminds us, a dignified one. As you embark on your respective careers, remember that yours' is an Office, ennobled directly by the People of Vermont and that it is the public you are serving, by attending to the lawyer's dual roles in the courtroom and modeling civil discourse outside the courtroom.

Remember also the example of my late friend Joan Wing, a great Vermonter and a great lawyer who scrupulously performed her dual role as a lawyer, and modeled civility outside of the courtroom for others. By so doing, she served the public every day both in-court and out-of-court. May her example inspire and instruct you as it has me.

Congratulations to each of you and to your families on your admission to the bar and to the Office of Lawyer.