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Compliments of  
J. FRANKLIN FORT:

# LEGAL ETHICS

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Address of

HON. JOHN FRANKLIN FORT

GOVERNOR OF NEW JERSEY,

Before the Graduates of the

ALBANY LAW SCHOOL

AT

ALBANY, NEW YORK,

June 3, 1908.

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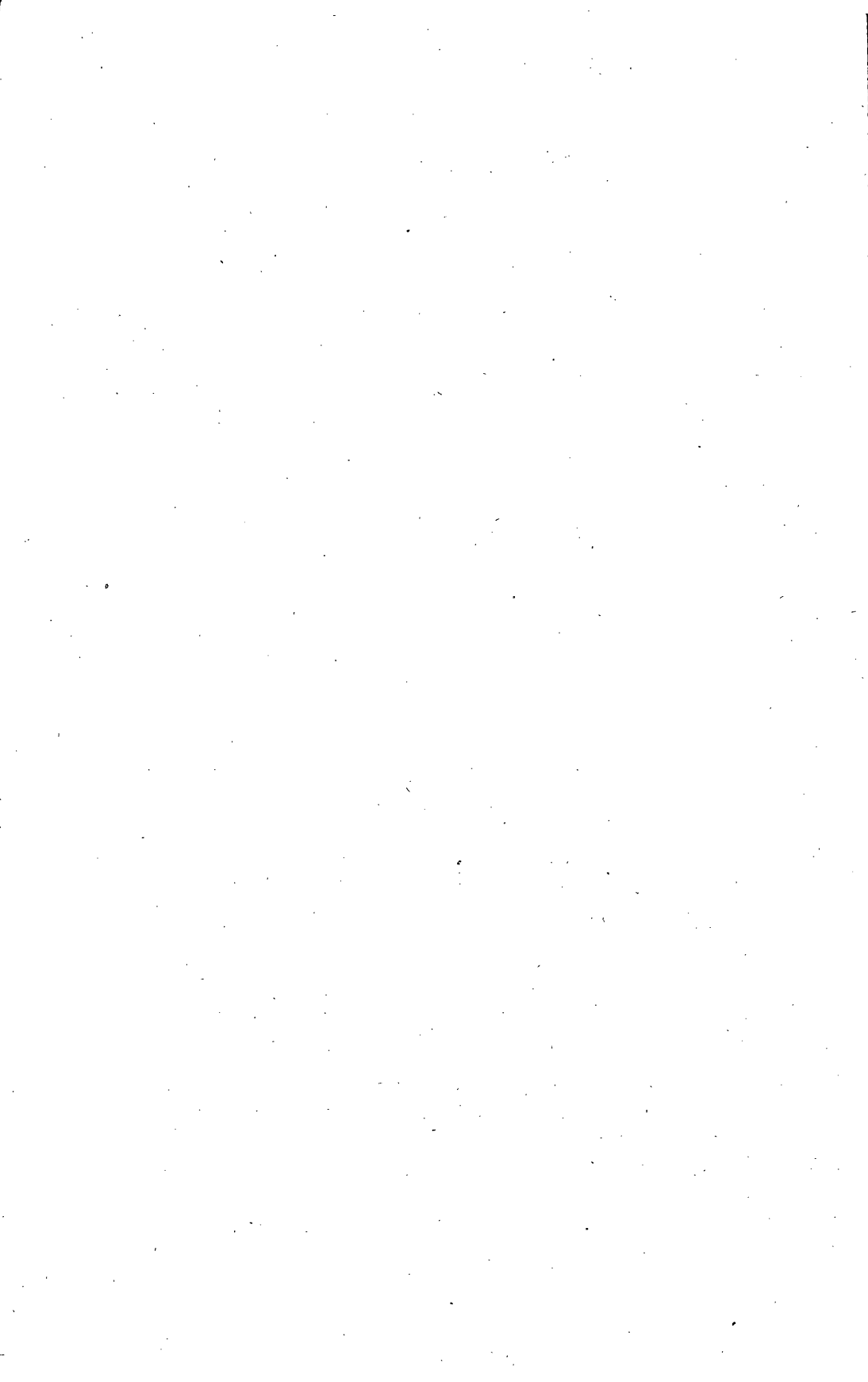
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VAULT



*Gentlemen of the Graduating Class:*

The lawyer is, and must always be, the most widely useful man in the community. Of course this statement is predicated upon the lawyer who always stands for that which is right, and whose integrity and honor command the respect of his fellow citizens.

The responsibilities of the lawyer incident to his profession and education are very grave. He cannot escape them if he would; he should not if he could.

Our form of government—a government under a written Constitution—suggests the necessity of legal interpreters of such an instrument. Paragraphs and phrases in written instruments, whether they be contracts or constitutions, to be properly construed, often require knowledge of law or history long antecedent to the drafting of the paper in which they occur. A good constitution maker or a wise drafter of a contract, uses terms which have long had an accepted meaning and which, if possible, have at least upon one or more occasions received judicial interpretation.

A republic seems to breed lawyers. With us we have a larger proportion of lawyers to the population than any other country. Some years ago Mr. David Dudley Field estimated that the lawyers of

France were about one to each five thousand of population, and of Germany, one to every sixty-five hundred; while in the United States we had about one to every nine hundred. If these estimates still hold true, we are keeping well abreast of our brethren in the clergy.

While it is undoubtedly true that we have this vast army of men who enter the profession, it is equally true that no such percentage of our people are in the active practice of the law. Many take the course of study for the bar and are admitted, with no thought of following the law as a profession. It is done simply for the education it gives, for the better fitting of the recipient for the public duties of citizenship, and for more efficient work in other lines of business.

In the Class of 1872 in this Law School I recall five who did not intend to follow the profession as a life work. In New Jersey we still preserve the distinction between attorney and counselor, and require three years of practice as an attorney before the counselor's degree can be secured. The lawyers who do not adhere to the profession and who do not mean to follow it, of course never come up for counselor. In New Jersey we have, probably, thirty-five hundred attorneys who are now living, but of these less than one thousand are counselors.

A knowledge of the law is so wide in its scope

of usefulness that it attracts to it many thousands who intend to enter public life and know that it will there be helpful, as well as those who see in it a better basis for business skill; or it may be, a foundation upon which to build a better superstructure in theology. So, in the law, we get men who are to be of every pursuit or calling in life. But the men who go out of the profession, soon after admission into it, never make lawyers. They have only skimmed the surface; only entered the door of the temple that is filled with the treasures of ages.

Of course I would not have you think I believed a man could not be striving in the field of statesmanship, or even theology, and not be a good lawyer; and yet I very seriously question whether Webster was the lawyer he would have been had he, like Marshall, devoted himself almost exclusively to the law.

To be in a Constitutional Convention helps a lawyer. To know the minds of the members of the Convention helps to interpret the instrument. To be in the halls of legislation may increase your knowledge of the statute law of your State, but I doubt if it increases your fund of legal acumen to construe a statute.

Modern methods of legislation are not promotive of knowledge as to the growth of the statute law, nor as to the rules governing statutory con-

struction. Our fathers enacted all the legislation governing the law of descent and the alienation of property; the title to lands and the making of wills; the acts for the limitation of actions and the statute of frauds and perjuries; the evidence act and those splendid acts governing executions and judgments; executors and administrators; and for the partition of lands.

Now and then the legislator of our time attempts to amend these statutes, usually for some personal purpose; but the same intelligent thoughtfulness, as to the enactment of statutory law, is not now required—at least seldom exercised—in the halls of legislation as found place there when the fathers adopted these great statutes. But, still I advise the lawyer to go to the legislature, if he can, for a short while. Do not stay there if you wish to succeed as a lawyer. The law is such a jealous master in our day; it requires so much labor to keep abreast of the case and textbook law and fulfill your duty to your client, that the lawyer must determine whether it is success in his profession or in the field of legislation and ultimate statesmanship that he desires. He cannot have both.

In the formative periods of our country, conditions were different from such as we find them to-day. In those times a man could achieve renown as a lawyer, statesman and financier, as did

Alexander Hamilton; but that is not true of our time.

Generally speaking, I think it is true in all the States (I know it is true in a State in which the judiciary is appointive) that elevation to the bench does not come to a lawyer through the legislative halls. This statement is largely true covering the whole history of the Supreme Court of the United States. This is one of the most encouraging statements that can be made for the profession. You cannot all be judges, but every lawyer should make his knowledge of the law such that his learning would fit him to be a judge.

There is another high ideal for a lawyer. That is try to equip yourself so that you feel that you are able to instruct the judge. It must be admitted, and it is not a matter for serious regret or great humiliation, that there are some judges, even in our day, who are not as deeply learned in the law as some of the lawyers who appear in cases before them.

It is a commonly accepted axiom that the text-books and reports are the repositories of the law. In a large measure this, of course, is true. But, in a more general and real sense the bar is the great repository of the law. If every text-book published and every opinion written were by some sudden calamity destroyed—(and some might be found who were pessimistic enough to question

such an event being a calamity)—the enlightened intelligence of the American bar could reproduce and preserve every legal or equitable principle of value.

In a republic founded upon a written Constitution, the law and its administration is everything. To make good laws is of no concern to the people, if they are not enforced and intelligently construed. The lawyer, therefore, is the man, above all others, with an opportunity for the greatest usefulness. His position makes it of the highest importance that he maintain his integrity, independence, courage and honor, always at a high altitude in civic affairs.

The ethics of the legal fraternity is probably the least understood of any of the learned professions, and the lawyer the most unfairly criticised, because of the public misconception of the real duty and honor of a lawyer. The most commendable thing in a lawyer is zeal for his client, whether his client be right or wrong. It is often hard to convince the lay mind that this code of civic righteousness is right. But it is and he lacks honorable professional instinct who fails to observe it. It is as sacred a duty as any enjoined by the Constitution of the country that no man shall be convicted save by "due process of law." A lawyer taking a case, and he is justified in taking any case and making a legal and honest defence,

is bound in honor to give to his client his legal ability. He does not give to him any promise that he will assert any personal belief as to his client's integrity, or as to the justice of his cause. He only agrees to place before the court the law applicable to the facts as he understands it, and the facts before the jury in such way as seem to support his client's defence. This view does not justify his suggesting a defence or urging one which he knows is false and a mere scheme devised to defeat justice.

The ethical rules that should govern a lawyer in trials and in his office are quite different, because the relation is quite different. In the court there is a public side to the situation, and duty to the administration of justice and its good repute in the community, must always be kept in mind. If you lower the standards of ideals in the trial, you, just by so much, help to promote public disrespect, not only for yourself and the profession, but for the administration of justice. Too many practitioners forget this fact in the trial of causes.

May I give you a few rules to govern your conduct of a trial in court:

First. Never, no matter what the provocation, be discourteous to the court.

Second. Never endeavor to get the judge to rule a question admissible which you believe inadmissi-

ble, with the hope, or for any other purpose, of securing a reversal if you lose the case.

Third. Never try to be friendly with the jury; if you can avoid it, never look at them except when addressing them or necessarily bringing something to their attention.

Fourth. Never try to get into, or allow your adversary to get you into, a quarrel, or discourteous wrangle with him.

Fifth. Never show ill-temper; avoid it as you would a pestilence. You never know how it may affect another or your client's interests.

Sixth. Never testify in a cause you are conducting, except it be to prove some documents that are merely formal.

Seventh. Never characterize any statement of a witness you are cross examining during the examination. Conduct your case regularly and reserve all comment for the argument.

Eighth. Never make a prolix examination into minute details, thereby exhausting the patience of the court or jury, or both.

Ninth. Never ask questions that suggest an answer.

Tenth. Never brow-beat a witness or yell at him.

Eleventh. Never be cynical, sarcastic or offensive while examining witnesses. Reserve all that for the argument.

Twelfth. Never call attention to or remark upon any deformity of person in a witness, or your opponent, which is due to natural causes or misfortune. In nothing can you harm your client's case more.

Thirteenth. Never take a moment's unnecessary time in putting your case in, or in the argument.

Fourteenth. Never misquote the law to the court or attempt to misstate the facts to the jury.

In your office conduct your business as any other honorable upright business man should do, maintaining at all times, with all whom you meet, your self respect and independence.

I have but three rules for you in the office:

First. Never mingle your client's money with your own.

Second. Never borrow money from a client.

Third. Never under any circumstances forget that you are a gentleman.

At all times and in all places keep steadfastly in mind the fact that the law is a profession and not a business or trade. Never engage in any business outside, either alone or with others, if you can avoid it. You will have all that you can do to keep conversant with the law and conserve the rights and interests of your clients, without seeking other employments. You will frequently be tempted by your clients, or by the information you get from

them, to join with them in enterprises which seem to promise pecuniary profits. Many such never materialize as expected, but whether they do or not, each time you yield you, by that much, injure your professional ideals.

The lawyer who contents himself with a steady growth in the profession and the legitimate income which it brings him, is more sure of a reasonable competence than the one who seeks pecuniary gain in schemes outside the profession, and is also certain to have less of care, worry or trouble.

Promptness in all your work is a prime factor in satisfying clients. The modern business man has no time to wait while you dine with friends a half hour or more after the time you appoint to meet him for consultation. Nor will he be contented if you fail to be ready with the agreement or instrument you promised at a definite time.

The age in which we are living is one of vital activity; it brooks no delays; it requires expeditious action, prompt fulfillment of promises. The lawyer who always does what he says at the time he agrees, will in the end outstrip in the profession even his more brilliant or skillful brethren.

Make your charges reasonable and commensurate with the work you have done. Base them not on the fact that your client has the ability to pay. Avoid contingent fees. The danger to the profession in that class of business is that it com-

mercializes it and the lawyer forgets his client and sometimes the fact that the thing he is in the cause for, is justice, and sets his eyes only on the cash that he sees at the end of the litigation. Of necessity this is destructive of all ethical principles and must lower the ideals of the honorable practitioner. I wish it were possible to secure a statute in every State prohibiting a contingent fee except upon a petition to the court in the given case in which, for good reasons, the court might allow it and in its allowance fix the fee that may be taken if the issue in the case be a successful one. More than that, it would be well for the profession if disbarment were provided for the taking of an excessive percentage of a client's verdict in a cause, whether taken under antecedent contract or otherwise. Nothing in our time has so lowered the standing of the lawyer with his client or so injured the good repute of the profession with the public, as the extortionate contingent fees exacted by some greedy and unscrupulous members of the bar.

It is regrettable that the English common law doctrine of champarty and maintenance prevails in the legal proceedings of so few, if any, of the States. No one not interested in the cause should be permitted to assist in the prosecution or defence of a suit, nor should a bargain to receive from the plaintiff a part of the land, debt or thing sued for,

be allowed. If the profession expects to maintain its high standing for honor and to continue to hold the confidence of the public, it will need to aid in the enactment of stringent statutes looking to the enforcement of these common law principles.

I have as little respect for the lawyer who wrongfully takes money from his client, under the guise of a contingent fee, as I have for the highwayman who throttles his victim and rifles his pockets of his cash. The criminal law should treat them both alike.

Another thing the lawyer must always keep in mind is that he is always an agent or trustee, and never the principal. You are always to represent, never to be. The funds that come to your management come as a trust. For your client you act as agent. You stand for and with him. If the fund or case is lost, it is his loss. The trust and agency are both sacred and to be guarded with scrupulous care and indefatigable zeal. A client should be able to say of the lawyer in the words of Malachi: "The law of truth was in his mouth and iniquity was not found in his lips; he walked with me in peace and equity."

Rules cannot make lawyers men of intelligence or honor. The Bar Associations of eleven States of this Republic have adopted a "code of ethics." Other State associations are considering such a code. Several States, notably Washington, have

adopted a stringent oath for attorneys which in effect amounts to a code of ethics. But all this is of little avail for the profession, unless each lawyer shall strive fervently to adhere to the lawyers' prayer of Dr. Samuel Johnson. "Enable me, if it be Thy will, to attain such knowledge as may qualify me to direct the doubtful and instruct the ignorant, to prevent wrongs and terminate contentions; and grant that I may use the knowledge which I shall attain to Thy glory."

The basis of all ethics is right impulses. If we make the sordid things of life our ideals, we shall never attain unto any degree of perfection. Money we may get, possibly high standing and temporary honor, but the professional ideals will find no place in our life.

We must keep steadfastly in mind whose and whom we are, our relation to the State, to the judicial department of government and our priesthood in the temple of justice.

As we shall have great and right principled lawyers, so we shall have a learned, courageous and impartial judiciary.

When our fathers adopted the Constitution of this Republic in 1787, they, for the first time, in civil government, made the three branches of government: legislative, executive and judicial, co-ordinate and co-equal. In this they exhibited the

most vital principle of republican government and made possible its maintenance forever.

In Great Britain the parliament is supreme. It may abolish even the executive and judicial branches of government. *Magna Charta* contained no clause for an independent judiciary. It was a demand by the people for more power in parliament. If this republic is to live and abide it will be because of the co-ordinate and co-equal power of the judiciary under the written Constitution. In the last analysis in this lies the strength of the nation. The man who fails to realize this fact fails to read aright the signs of the times. If the judiciary fails us, if the public lose respect for the profession and the impartiality of the judges of our courts, the end is not far to see.

Defend the court at all times from unjust or ill-considered criticism. Assist in preserving to it all its powers—the powers which centuries of conservatism in other countries, and over a century and a quarter under a republican form of government in our own country—have shown to be wise, safe and for the strengthening of the nation.

The man or set of men who attempt to put their hand on the judicial branch of government, with a view to curtail its independence or powers, strike a dangerous blow at republican institutions and at the life, liberty and pursuit of happiness of the

individual guaranteed by the written Constitution given us by our fathers.

The legislature, and in a large measure the Executive also, are considered, and rightly so, popular branches of government—always elective; expected to respond to the popular approval and voice the public sentiment of the hour. The judiciary is not so. It must not become so. The strength of the judiciary, and the assurance of the continuance of the civil liberty which we enjoy in the republic, depends upon the independence, courage and absolute disregard of all matters of public sentiment by the judicial arm of the nation. That is what the judiciary is for; to hold the scales of justice; to administer the unrelenting law against all criticism, fawning or demands; to stand between the ill-advised citizen and his real rights, that he may be protected against himself; that the liberty and legal rights which he enjoys, under our Constitution, shall not be taken away from him either by his own act or by the act of another. I doubt if the republic of the United States would have stood the test of a century's existence except for the judicial department of our government. The future of the republic is absolutely in its hands. It is in this field of the administration of the people's rights and remedies that the lawyer finds his life work and should exert his abilities to the utmost. In the performance of

these duties there is no place for the coward, the time server, or the man who loves gain more than liberty and the rights of property.

There are no ideals too high for such a profession; there are no principles too ennobling for the lawyer to emulate; there are no aims in all the vaulting ambitions of man more honorable than those which lead us to strive to keep the fountains of justice pure. On our doing our part rests the foundations of the temple of justice. If we fail, it must fall, and if it fall, the end is not far distant.

Ours is a great people. The republic our fathers builded as a model for the nations of the earth is to-day the greatest the world has ever known. To preserve it in all its purity and to perpetuate it with ever-increasing glory is our sacred duty. Upon the lawyer of learning and integrity, more than upon any other class of men, does our future as a nation depend.

Contemplate your responsibilities with courage; fulfill your mission with honor, and strive always to have the legal profession take the highest possible rank among those whose benefactions tend to promote good government and the uplift of the human race. Thus, and thus only, can each of us truly exemplify the possibilities of our profession in moulding the well-being of organized society and promoting the happiness of all mankind.

Such an ideal life and practice here may not bring you all the reward you would desire in this present time, but it will; as Kipling puts it:

“ When earth’s last picture is painted,  
And the tubes are twisted and dried,  
When the oldest colours have faded,  
And the youngest critic has died,  
We shall rest, and, faith, we shall need it—  
Lie down for an aeon or two,  
Till the Master of all good workmen  
Shall put us to work anew.

And only the Master shall praise us,  
And only the Master shall blame,  
And no one shall work for money, and  
No one shall work for fame.  
But each, for the joy of the working,  
And each in his separate star,  
Shall draw the Thing as he sees It  
For the God of Things as They Are.”