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## Law, Lawyers and Ethics

Hon. Earl Warren

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### Recommended Citation

Hon. Earl Warren, *Law, Lawyers and Ethics*, 23 DePaul L. Rev. 633 (1974)

Available at: <https://via.library.depaul.edu/law-review/vol23/iss2/2>

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## LAW, LAWYERS AND ETHICS: A CHALLENGE TO THE PROFESSION

*As part of the celebration of its seventy-fifth academic year, 1973-74, DePaul University conferred upon the Honorable Earl Warren the degree of Doctor of Laws, honoris causa, in recognition of his judicial leadership, especially in the advancement of individual rights. Chief Justice Warren's comments at that convocation, which follow, serve to illustrate the continuing influence of his leadership. He challenges the profession to respond more effectively to "erosion from within" by entering upon an era of renewed professional commitment to our basic freedoms embodied in the Bill of Rights.*

*In the two other essays which follow, Dean Robert B. McKay and Professor Jon R. Waltz elaborate on the convocation theme. In his comments, Dean McKay notes the vital role of the law schools in advancing the recommitment called for by Chief Justice Warren. Professor Waltz considers the impact of recent events which further the public's already suspicious attitude toward the legal community as a whole.*

## LAW, LAWYERS AND ETHICS

*Honorable Earl Warren\**

CEREMONIES of this kind are always exciting for me. I believe in recognizing anniversaries, particularly those which involve the lives of nations and educational institutions.

They afford an opportunity to reflect upon the original concept of such institutions, the progress that has been made since the beginning, the mistakes of the past, the challenges of the present, and our vision for the future. In short, they encourage us to take inventory and orient our thinking constructively toward the future.

Ours is still a young Nation and, of necessity, so are our educational institutions. But we are a mature society, and our penchant for organization in the interest of human betterment gives added importance to the experience acquired in shorter spaces of time than in older nations.

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\* Chief Justice of the United States, retired.

Address delivered at a Special Convocation of DePaul University College of Law, Chicago, Illinois, December 6, 1973.

This is your seventy-fifth anniversary. In the perspective of history, it is a short span of time, but in the life of a pulsating university that has kept pace with the dynamics of a great and growing city such as Chicago, it is an excellent time to stop long enough to review the past and contemplate the future. Particularly is that true of a school of law.

As populations expand and change from largely rural life to urban life, and our economies become largely industrial and interstate as distinguished from being agricultural and local in character, the life style of our people change; our human relations are altered by complexity; and government expands geometrically to keep pace with the ever-changing problems occasioned thereby.

Seventy-five years ago, the United States had seventy-five million people.<sup>1</sup> Today it has two hundred ten million.<sup>2</sup> Then Illinois had a population of slightly more than four million people.<sup>3</sup> Today it has more than eleven million.<sup>4</sup>

Perhaps this can be more dramatically shown by quoting the expenditures of the federal government at that time and today. In 1898, its expenditures were 434 million dollars.<sup>5</sup> Last year they amounted to 234 billion,<sup>6</sup> and the number of civilian employees alone numbered 2,674,000.<sup>7</sup> State and local government in those intervening years proliferated in like degree.

I quote these figures, not by way of complaint, because generally speaking that is the price we pay to maintain a civilized society under modern conditions. I cite them merely to show that the law must expand in both size and concept to keep pace.

Three quarters of a century ago, compared with today, the law was a simple organism. Law schools were few in number and small in size. Most lawyers received their legal education through an apprenticeship in some practitioner's office. The curriculum of the

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1. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 5 (1974) [hereinafter cited as STATISTICAL ABSTRACT].

2. *Id.*

3. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES 12 (1961) [hereinafter cited as HISTORICAL STATISTICS].

4. STATISTICAL ABSTRACT, *supra* note 1, at 14.

5. HISTORICAL STATISTICS, *supra* note 3, at 718.

6. STATISTICAL ABSTRACT, *supra* note 1, at 389.

7. STATISTICAL ABSTRACT, *supra* note 1, at 403.

law schools was confined to a few subjects—property, contracts, torts, criminal law, pleading, equity, corporations, negotiable instruments, and constitutional law. Again, by comparison, the courses were simple. There was no tax law except the ad valorem tax on private property and excise taxes on luxuries. There were no income or inheritance taxes.

There was no Federal Reserve System, no Federal Deposit Insurance, no Federal Home Loan Bank Board, no Securities and Exchange Commission, and no antitrust laws except the Sherman Antitrust Law of 1890, which really was not activated until after the turn of the century. There was no Labor Relations Act recognizing the right of working people to organize for the purpose of collective bargaining. The Interstate Commerce Commission, enacted in 1887, did not become viable until after the turn of the century. There was no Federal Communications Commission, no Federal Power Commission, no Federal Trade Commission, and, of course, no Civil Aeronautics Board, no Atomic Energy Commission, and no National Aeronautics and Space Administration.

Each of these and many others have since been established and have opened up new vistas of the law that call for greater knowledge and keener insight into the great problems which brought these institutions into being. There are thousands of laws, regulations, and decisions of courts and agencies which give meaning to them. As a result, it is impossible for a lawyer to be a specialist in all of these branches of the law, and we find that ordinarily lawyers specialize in one or more of these areas. This specialization, of necessity, tends to segmentize the law and, to some extent, emphasizes the mechanics of law as distinguished from a broad sense of justice acquired from familiarity with the legal problems of people of different walks of life in a variety of situations.

This is not an attack on specialization—an essential in present-day society. It is an appeal to all lawyers, whether specialists or not, to overcome the tendency of the profession to develop as a craft rather than as an instrument of justice.

Recently our profession has suffered a great blow because of the conduct of lawyers who are public officials in high places, and it has caused deep resentment throughout the Nation.

We have witnessed the resignation of the Vice-President and his acknowledgement of guilt in defrauding the Government for failure to pay income taxes on moneys allegedly paid to him as bribes by Government contractors.

We learn that the recent Attorney General of the United States is under indictment for perjury and obstruction of justice in connection with a charge of preventing the orderly prosecution of an alleged multimillion dollar swindler and fugitive from justice.

The former official counsel to the President has pled guilty to obstruction of justice in concealing evidence of burglary conceived and executed by members of the White House staff, several of whom have been convicted of the burglary of rival campaign headquarters, and we have heard others from the White House staff confess their guilt of obstructing justice in connection with the burglary of a doctor's office. One of the most powerful men in the White House, until recently, is under indictment in connection with that burglary, and another is under investigation for alleged criminal conduct.

The Chairman of the fund-raising activities in the campaign for the re-election of the President, himself a recent member of the Cabinet, is under indictment for perjury and obstructing justice. Others on his staff, mostly former White House staff members, have admitted or been convicted of felonious conduct, while others are under investigation.

The personal lawyer of the President and many others are under criminal investigation for activities connected with the President's personal and political finances.

Our President, himself a lawyer, is beleaguered in all of these White House revelations, compendiously known as Watergate.

Not only is all of this hurting our country badly at home and abroad, but it is disastrous to our profession because most of these people are lawyers who have been entrusted with some of the greatest responsibilities in the Government of the United States.

About all of this, the retiring President of the American Bar Association has written:<sup>8</sup>

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8. Address by Robert W. Meserve, Opening Session, American Bar Ass'n Annual Convention, August, 1973, reprinted in 59 A.B.A.J. 985 (1973).

The Watergate scandal, its ramifications still unfolding is certain to rank as a dark episode in our political history. It has posed serious challenges to the legal profession because lawyers in high places are among those linked with it and because the faith of the American people in the justice system and in the governmental structure itself, are at stake.

He goes on to say:

Many Americans and most lawyers have been brought by the Watergate affair to remember once again the importance of fundamental constitutional principles and of morality in public life—of the meaning of the protections assured to each citizen by our Bill of Rights.

He further states that:

[T]he number of lawyers, many formerly of distinction in our profession, accused of implication in the greatest political scandal in American history, continues to grow—some having confessed their complicity in conduct in violation of law and common decency, let alone ethics.

After stating his abiding faith in the great majority of lawyers, he concludes:

Yet I suspect that my personal knowledge that this is true is not accepted today by many of our fellow citizens and that the lawyer in America is more generally disliked and distrusted than ever before in the history of our profession in the United States, to the sorrow of hundreds of thousands of moral, ethical and law-abiding judges and lawyers of this land.

This is strong language, but in light of recent disclosures cannot be faulted. And it is no stronger than the words of his incumbent successor in voicing his contempt for those who have thus degraded the profession. His words are equally cogent, and only lack of time prevents me from quoting them to you.

I agree with the sentiments quoted above, and believe they should be seriously considered by all lawyers and students of the law. They point out that our profession serves more than special interests and mere craftsmanship. It serves a cause, and that cause is justice.

In these days, when Government is so large, so pervasive, yet so secretive, it is at times difficult to distinguish between the cause and the particular job at hand in the high reaches of Government. It is even difficult as private practitioners at times to see in the facts of a complicated tax problem, an antitrust case, an Interstate Commerce or Securities and Exchange Commission case, the relevance or the importance to individual Americans of first amendment rights to speak, write or assemble in protest against Govern-

ment action; the right under the fourth amendment to be secure in our homes and our businesses against unreasonable searches and seizures; the protection under the fifth amendment against self-incrimination; or to the rights of due process and equal protection of the laws.

These and other constitutional protections based upon the lessons of history are the only guarantee we have of our free way of life.

Other nations have paper rights but little freedom of the individual as we understand that word. Let me quote from the Constitution of the U.S.S.R. to indicate how different life is in two countries both of which pledge freedom of the individual in their constitutions. The Russian Constitution of 1936, as amended in 1965, contains the following provisions:

Article 125. In conformity with the interests of the working people, and in order to strengthen the Socialist system, the citizens of the U.S.S.R. are guaranteed by law; (a) freedom of speech; (b) freedom of the press; (c) freedom of assembly including the holding of mass meetings; (d) freedom of street expressions and demonstrations.

Article 124. In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens.

Article 127. Citizens of the U.S.S.R. are guaranteed inviolability of the person. No person shall be placed under arrest except by decision of a court of law or with the sanction of a procurator.

Article 122. Women in the U.S.S.R. are accorded all rights on an equal footing with men in all spheres of economic, government, cultural, political and other social activity.<sup>9</sup>

You are as well aware as I am of the difference in the life styles of the individual in that country and ours, and there is no need for elaboration by me.

But this is only an example. Other countries, many of them only recently, have abandoned their vaunted democratic processes and have supplanted them with military juntas which maintain the trappings of freedom, but none of its substance. We recognize them as part of the "free world," but their far right treatment of the individual is no nearer to our concept of freedom than that of the nations of the far left.

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9. 3 A. PEASLEE, CONSTITUTIONS OF NATIONS 1005 (3d rev. ed. 1968).

We have been able to preserve our freedoms because our people, remembering the lessons of history, have enshrined the Bill of Rights in their hearts as well as in our Constitution, and until recently have believed that their high public officials were honestly committed to the preservation of those rights.

But Government, as has so recently been demonstrated, has become so large and so complex that an administration can conceal from the public major acts which erode those rights to the point of great danger. Watergate aside—with its burglaries, wiretapping, perjury and obstruction—let me give you one horrendous example of the danger of such concealment.

For well over a year, our military made thousands of air raids in a little neutral country, concealing the facts from the American people by false news releases and the giving of untruthful testimony before committees of the Congress, and covering it all up by falsifying the operational records of the Armed Forces. Thousands of poor Indochina peasants were dispossessed of their homes and killed, and many of our own soldiers along with them. Yet the American people knew nothing about it until it was flushed out by Congress long after the fact, and even then only because of an inquiring and courageous press.

The erosion of our basic rights in instances such as this, when coupled with the acts of Watergate, should stimulate every judge, lawyer, every law school, and every student in America to intensify his or her dedication to the Bill of Rights, the sheet anchor of our freedom.

In modern history, more freedom has been lost through erosion from within than from outside aggression. When this is accomplished through secrecy within the Government, it becomes even more deadly than when it is done by *tour de force*, where people can at least know the danger and oppose it piecemeal before it is too late.

We must learn from the lesson of Watergate because it has been wisely said that those who fail to learn the lessons of history are destined to relive them. The trauma of such an experience must not be revisited upon our Nation because it would result in further deterioration that we cannot afford.



Wouldn't it be reassuring then if we could come out of Watergate with a new commitment to the rights of man through a modern Magna Charta for governmental conduct supplementing that which grew out of the abuses of King John more than seven hundred fifty years ago?

Wouldn't it be wonderful if we could enter our third century of national existence which begins less than three years from now with such a reorientation and recommitment?

This could be done if the more than 300,000 lawyers would put their shoulders to the wheel. Particularly is this true when we realize that the one thousand students at DePaul University College of Law and the other 82,000 students in all other law schools in the United States, in the normal course of events, should be lawyers at that time. With the youthful energy they possess and with their ideals for a better administration of justice, they alone could move mountains. I hope they will undertake it.

It affords the best available insurance for a satisfying legal career and the only guarantee of a life of freedom for your generation and for those who are to follow you.

I earnestly hope that both of these blessings will be your destiny.