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## The Lawyer as Public Citizen [Speech]

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## **Robert E. Scott's 2009 Graduation Address**

By Robert E. Scott

May 17, 2009

***The following address was given to J.D. and LL.M. graduates at the Law School's Diploma Ceremony on May 17.***

### ***The Lawyer as Public Citizen***

Dean Butler, members of the faculty, parents and friends, and members of the graduating class of 2009: Congratulations! This is a wonderful day for all of you and one you will cherish the rest of your professional lives. I am delighted to be here today, and I do promise to do my job - to talk for a few minutes (and only for a few minutes) on a topic that will engage your attention. But having attended numerous law school graduations, I also know one thing: by tomorrow none of you will remember a single word I've said. You won't even remember my name. Someone will ask you several years from now: who was your graduation speaker: "I don't know; some guy from another law school." What did he talk about? "Got me!" This presents a bit of a problem. So, I want to begin by asking each of you a question, a question that I do want each of you to remember whenever you think of this day. The question is this: *Can you be trusted!*

Before you answer too quickly, "Sure! I'm an honest person," listen to me for a few minutes because I will be talking about a different sort of trust - a public trust that is honored by a special kind of lawyer, the lawyer who serves as a public citizen.

Now that is a serious topic. But I intend to get to the point in a somewhat unusual manner by examining one of the most significant cultural phenomena of our time: lawyer jokes. I have long been interested in the sociology of lawyer jokes. What do they tell us about the way society (including the legal profession) views lawyers and the legal system? And, what can we as lawyers do to change some of the undesirable features of the current environment?

There are all kinds of lawyer jokes. Some merely reflect conditions in the marketplace at any point in time. Here is a good example, one that evokes our current economic situation:



*A lawyer needs to hire a plumber. The plumber comes and fixes a broken water pipe. Then, he sends the lawyer a bill for \$180 for 45 minutes work. The lawyer was outraged - and he calls the plumber on the phone. "What in the world is going on?," he says, "I don't charge \$250 per hour." "Well," said the plumber, "neither did I when I practiced law."*

This joke tells us that the market has become saturated with lawyers. I hear this complaint often (mostly from other lawyers). My response has always been the same: there may be too many lawyers, but there aren't too many good lawyers.

My principal focus today, however, is not with the quantity of lawyers but with the quality (although the two may not be completely unrelated). Survey data tell us that lawyers are viewed less favorably than almost all other professions. Teachers (including law professors) have an 84% approval rate, judges are approved by 77%, doctors are at 71%. Lawyers, on the other hand, have an approval rating of less than 40%, beating out only journalists, investment bankers and politicians. Why is that? Given the high approval granted to law professors and judges, clearly the answer does not lie in a decline in respect for law in general or the American justice system in particular. Rather, the focus seems to be on the way that legally trained people practice their profession. The data reveal a significant increase over the past two decades in three negative perceptions about practicing lawyers: First, that lawyers lack care and compassion for others. Second, that lawyers are greedy. And third, that lawyers are rapacious (they will do anything to win).

The good news, if there is such a thing, is that the same surveys report that clients are fairly satisfied with the legal services they receive from their lawyers. Competence, therefore, is not the issue. Rather, the issue is the growing perception that there is a fundamental incongruence between what lawyers do and the public trust.

Well let's examine each of those three negative perceptions:

### **1. Law is not a caring profession**

*A man is on his death bed and he summons his three best friends, a minister, an accountant and a lawyer. "Some years ago," the man says, "I lent each of you \$5,000." Each friend nodded in agreement. "All I need so as to die in peace," he says, "is the knowledge that each of you will repay that obligation when I die." Each of his friends solemnly promises to do so. Shortly thereafter, the man did die and his three friends all came to his funeral. One by one they approached the casket. First, came*



*the minister and he laid \$4,000 in cash on the casket and he said, "Dear friend, I promised to repay the full \$5,000, but I know you will understand because I gave the remaining \$1,000 to the poor." Then came the accountant. He placed \$3,000 cash on the casket and he said, "Dear friend, I promised to repay the full \$5,000 but I know you will understand. You owed me \$2,000 and so I offset your debt against mine." Finally, the lawyer approached the casket. He said, "Dear friend, I apologize for the others. I intend to fulfill my obligation in full. Here is my check for \$5,000, payable to you."*

Lawyers like this joke, because it reveals the craft and gamesmanship of lawyering. But it also reveals a fundamental problem with many lawyers. We fail to appreciate and account for the moral and emotional, the human dimension. Too often, we present ourselves as insiders who can manipulate the system. In short, if given the choice we prefer to be seen as clever but slick rather than be seen as dull but reliable. To borrow from President Obama's recent comment, too many of us lack empathy.

## **2. Lawyers are greedy**

This is an old perception, but once again its incidence is on the rise:

*"Before I take your case," said the lawyer, "you will have to give me a \$200 retainer." "All right," agreed the client, and he handed the lawyer \$200 in cash. "Thank you," the lawyer replied as he pocketed the cash, "This entitles you to two questions." The client was outraged: "What! \$200 for just two questions! Isn't that awfully high?" "Yes, I suppose it is," said the lawyer. "Now, what's your second question?"*

Most lawyers believe that this one is a bad rap. In fact, the evidence is that lawyers as a group are more honest and more philanthropic than any other professional group. The perception of greed stems from the belief that lawyers do not contribute to social productivity; that we are a parasitic lot that always take our slice of the pie but don't make the pie any larger. This perception ignores all the planning and transactional work that lawyers do and focuses too much on litigation and its attendant costs even though over 75% of what lawyers do consists of transactional assistance. But nevertheless, that still begs the question: Why does this misperception persist (and even grow)? To answer that question, we need to realize that both of the preceding perceptions - that lawyers are greedy and don't care - are, in reality, only different aspects of the third common perception; and here, finally, is the heart of the matter.



**3. Lawyers are rapacious, that is, we are excessively partisan and we manipulate the legal system without any concern for right and wrong.**

Here come the shark jokes:

*A lawyer and his wife were taking an ocean cruise. A storm hit the ship and the lawyer fell overboard. The situation looked perilous; but then, just as the lawyer was about to drown, eight sharks appeared out of nowhere and formed a two-lane escort for the lawyer and helped him all the way back to the ship. "It was a miracle," the lawyer told his wife as he was hauled back on deck. "No dear," she replied, "Just professional courtesy."*

This perception that we are rapacious is one for which both sides are to blame. In fact, the public is deeply conflicted on this point. In general the public feels that lawyers are too partisan, but when people are asked what is the most positive aspect of lawyers, the leading response is that their first priority is to their client. A lawyer friend of mine explains the contradiction this way: law is the only profession where there is another lawyer on the other side trying to prevent you from accomplishing your goals. Imagine how you would feel about doctors, he says, if during open heart surgery there were another doctor there in the operating room trying to ensure that the operation failed. In other words, lawyers are applauded for satisfying their own clients interests, and condemned when they are seeking to satisfy the interests of the other side. The question, then, is this: how can lawyers teach the public about the nature of the social system that produces these profound contradictions?

I have a tentative prescription to offer: This prescription starts with the ideal of the lawyer as a public citizen. As with all ideas, the commitment to public trust that lies at the core of our professional identity can be easily discounted (and it often is), but, nevertheless, it remains our greatest collective responsibility. But to make this idea work in the world, we need first to understand what has happened to our profession. Within the span of my professional life, the practice of law has evolved from a "professional calling" to the efficient delivery of skilled services in a competitive market. This evolution has had several effects. On the upside, it has dramatically increased the compensation lawyers earn. But on the down side, it has caused the attributes of wise judgment, civility, and tolerance for the views of others to seem less valued both by clients and by lawyers alike. A first step, therefore, is for all of us to adopt as a role model the lawyer who promotes the public trust by the manner in which he or she practices law. By this I mean the lawyer who practices law



in a self-consciously patient and thoughtful way, one who takes the time to educate her client about the nature of the legal process and the reasons for its complexity and uncertainty. This is how we, as lawyers, can educate the public about the nature of civic community and thereby enhance people's willingness to accept and contribute to the rules of that community.

A citizen lawyer thus performs an enormous public service in contributing to the ability of the collective enterprise to function. A rapacious lawyer, on the other hand, who takes a highly partisan view of a client's cause and explains all adversity as due to corruption or stupidity, contributes to society's dissolution. So far it seems easy: all of us would prefer to be the former to the latter. But here is the rub. Many clients may prefer the rapacious lawyer to the citizen lawyer. And so, a lawyer who practices as a public citizen may suffer a loss of income and of professional opportunities over the short term.

But not for very long. The citizen lawyer will be the one who is ultimately successful in a community, not only because of the style of her practice but because that style leads her to adopt a broader understanding of what it means to lead a professional life. She will be successful because the community will come to understand that this lawyer is a person who can be trusted, who speaks with the public interest in mind. This is the single quality shared by all really successful lawyers.

It is not always easy to practice law in this way. There are many temptations to practice law in the rapacious style, and to tell the client what the client wants to hear. It is important, therefore, that all of us recognize that each one of us serves the public interest simply by resisting the temptations to practice in a way that creates short term advantage. Even as we promote the value of a commitment to public service careers, we must assert as well the importance of a commitment to a professional life well lived; a life whose satisfactions come in the knowledge that day after day, even in the performance of routine tasks, a good lawyer can and does promote the public trust.

So, today, I ask each of you to nurture within yourselves this ideal of the citizen lawyer. You have all learned the law of Corporations, Tax and Evidence. You are skilled in the doctrines of the law. But each of you have learned even more valuable lessons that don't appear on any of your transcripts. Simply by observation you have learned from your favorite teachers - the ones with whom you have established a personal connection - some of the qualities of character that sustain a professional



life. This mentoring began in law school, but it must continue in practice. I have been a teacher all my professional life. If I have learned one thing about how people learn, it is this. One person can teach the Uniform Commercial Code or Bankruptcy law to a large group of students. But you can only teach the lessons of life one on one. I grew up in India where my father worked with Frank Laubach, one of the great pioneers of world literacy. Laubach's motto was "each one teach one." If each of us adopted that simple motto as our mantra for fulfilling our professional responsibility, we would be well on the way toward changing the course of our profession.

Will these efforts solve the problem entirely? Of course not. Popular attitudes toward lawyers will always be profoundly contradictory. Popular culture views the lawyer's craft-oriented and client-oriented perspective as an abandonment of the lawyer's duty to justice. But we know this popular view is simplistic. It fails to recognize that we all live in a diverse, pluralistic culture in which individuals and groups struggle to achieve recognition for their private perspectives. As lawyers, we have no special answers to these larger social conflicts, rather we can only speak for specific sides of these struggles. But, at the end of the day, each of us can continue to take great pride in one bedrock truth: lawyers are the essential actors in transforming this bubbling social conflict into peaceful change - a change that is fashioned, by lawyers, into miraculously durable institutions.

The profession you are entering is indeed an honorable calling; and it is one that demands your full allegiance. And so, the next time someone asks you: Can you be trusted? I hope each of you will say, simply, "Yes!"