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I Swear to God: Taking Oaths, Seriously

More than ever, democracy is counting on lawyers to uphold the law and support the government. You might not remember signing up for this war, but you did.

By **Marc Garfinkle** | January 19, 2021



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Developed in antiquity—in places unknown—to guarantee the truthfulness of the speaker's words, the taking of oaths is now a universal custom. The need for oaths arose as human society became more complex. Business depended on the viability of promises, and jurisprudence depended on testimony that was true. In time, every political, commercial and jurisprudential body required an effective means to assure its decisions and judgments were based on genuine, truthful evidence.

Despite the importance of Truth, it is elusive. In human efforts to prove truthfulness, we have experimented with trial by fire, by combat, by dunking, by hot irons and by boiling water. Although awkward, these means all revealed the criminal or the liar by leaving truthful or innocent subjects unmarked after a harrowing ordeal. There was even trial by host, reserved for members of the clergy. In this clever proceeding, a cleric who had been accused of a crime would declare his (they were usually men) innocence in a loud and public way before an altar of God. If the cleric had spoken falsely, God would strangle him to death on the spot. This gruesome test effected such honest testimony that no one has died in this grisly ritual since 1163.

From this sort of primitive experimentation evolved the oath—the only procedure ever developed that unflinchingly assures the truthfulness of a speaker's words and binds promise-makers to their covenants. Oaths have been effective ever since antiquity because gods strike dead anyone who uses their names in vain. Saints can't do that, but God usually does it for them, so, if you swore something in the name of your god or patron saint, you had better keep your word. If not, your days were numbered. Oaths are not to be taken lightly.

Lawyers take oaths. Here in New Jersey—and in every other state—lawyers must take an oath of faith and allegiance to the state and federal governments and to their respective constitutions. That oath bears re-reading. It has fewer than 60 words unless you have a complicated name. Called an “oath of office,” but really an oath of allegiance, it is a vow of fealty to the government and fidelity to its laws.

I, (your name), do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people, so help me God.

NJSA 41:1-1

The popular option to affirm has wreaked havoc: oath-breakers are no longer stricken dead on the spot. Enforcement has been relegated to earthly authorities who are prevented by law from doing the full monty. This is unfortunate. Back when gods had a monopoly on oaths, any challenge to the rule of law or the legitimacy of the government would have been confronted by hosts of passionate lawyers charging into the fray. In more modern times, lawyers—fearful of provoking divine strangulation—would have jumped to denounce untruths, to divert insurrectionist currents and to buttress democracy's fragile base, which has always been Truth.

Even in a monarchy, such as Shakespeare's kingdom of Henry VI, lawyers are the first line of defense. When a rogue named Dick the Butcher was fantasizing about overthrowing the regime, he understood the danger posed by the realm's lawyers, who were sworn by oath to defend the government. Thus, he proposed his immortal opening gambit: *First thing we do, let's kill all the lawyers*. Such is the power of oaths.

Ever since attorneys could opt to *affirm*, however, many of us have forgotten our oaths. Look not far. Not only the gang of sycophants that has passed through the White House, but countless other lawyers at every level have incited insurrection and revolt by repeating untruths that run counter to the currents of democracy and the essence of free speech. For over a year, countless more lawyers stood silent in the face of outrageous claims and seditious conversation. In their offices and their living rooms, in government and business, in media and law enforcement, on the internet and on the streets, actively and passively, lawyers were complicit in the failed coup against the U.S. government and Constitutional dominion. On some levels, they were instrumental. It is hard to blame God for what they did, although maybe She should take back the role of enforcer.

In that case, it would behoove us all to know more about the oath we took. What did we mean when we pledged *faith and allegiance*? What is our duty to our government, its courts, and its Constitution when they are threatened? What does it mean to lose democracy? What happens then?

Every age has its threats. Some are novel; some recur. Consider this chilling observation often attributed to Abraham Lincoln:

I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country ... corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed.

Prophetic for sure, but there are countless other threats to our Constitution and to our government, and there is no play book telling us how to respond. Domestic insurrection, foreign attack, financial collapse, mega-rumors, political and corporate corruption, fantastic conspiracies and nihilism are among the many foreseeable dangers. There is a clear and present danger from lawyers who purvey dangerous falsehoods and use the privilege of public office to fan the flames of insurrection.

There are no OAE guidelines or footnotes or comments for any of this, so the burden falls on each of us to understand our oath. Only lawyers are specially trained to recognize the dangers to democracy and to confront them. Only we can stem the rising tide. More than ever, democracy is counting on lawyers to uphold the law and support the government. You might not remember signing up for this war, but you did.

We all took an oath of faith and allegiance. What does it mean to you?

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