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THE LAWYER AND HIS WORK

[Lecture Delivered by Judge George R. Harvey of the Court of First Instance of Manila before the Law Forum of the College of Law, University of the Philippines.]

GENTLEMEN:

I have been invited to talk to you this evening on the subject of "The Lawyer and His Work." As you are all students, I want to say a few words to you as lawyers in the making.

It is to be assumed that a majority of those before me expect to enter upon the practice of law. Before or after your admission to the Bar you will have to select a place in which to practice your profession. The selection of a location and an office and its equipment are of great importance to a young lawyer. Most of you, I dare say, will locate in the provinces where the modern and well-equipped young lawyer is most needed. You are no doubt aware of the fact that very much in the way of success or failure depends upon first impressions. If you make a favorable impression at the beginning, everything will come your way in due time; but if you make an unfavorable impression at the beginning, it may take many years to overcome its results. Patience and hard work are necessary to attain success as a lawyer, and it will be better for you in the end, and you will be better able to maintain your reputation as a successful lawyer, if you are not overwhelmed with business and popularity at the beginning. There is not much likelihood that you will immediately have a large practice. In the legal profession business does not usually come that way; but if you should be the exception, you will do well not to allow your immediate success to spoil your future at the Bar.

After you have chosen a location for the practice of law, you should select a desirable office and fit it up as best you can with the means at your command, because a good location, a pleasant and attractive office, and the best equipment that you can obtain, will have an influence in your favor with the public.

I take it that a majority of you are not troubled with a surplus of this world's goods, and those of you whose means are limited will have, in a way, a decided advantage over those who have large means, because from the beginning the man with limited means will carefully consider every move that he makes with a view to ultimate success.

I do not mean to advise any young lawyer to go into debt; but he should have a respectable office, with a clean, attractive and prosperous appearance, and it should at least be equipped with all the books of frequent use and as many others as he can afford to buy.

Many young lawyers have the idea that with an office, furniture, and books, they need only to sit down and rest and wait for clients to come. There is no excuse for a young lawyer to be idle, even though he has no clients. A prospective client would not get a good impression from finding you idle in your office or loafing on the street, or wasting your time with the "good fellows" in questionable resorts. A young lawyer, and especially one who is a new-comer in the locality, is constantly being scrutinized by the people, and friends and foes will express their opinions, whether good or bad.

There is always work for a lawyer, and when he is in active practice his work is never finished. There is a general opinion among laymen that lawyers have little work to do, but busy lawyers will tell you that their mental labor is hard and exacting and that they find their recreation in suspension of mental effort and some form of physical exertion. Judge John F. Dillon, one of America's great lawyers, once said that when he was a young practitioner he had to make excuses to his wife that he was not able to devote any of his time to what is usually termed "society" because he had to work assiduously to make his reputation, and after he had attained success, his wife told him that he need not work so much; but he told her that he had to work unceasingly in order to maintain his reputation and to protect the interests of his clients. This statement is typical of the life of a successful lawyer.

THE LAWYER'S DUTIES TO THE COURT

There is, perhaps, no profession in which good morals are more imperatively necessary than in the legal profession. There is no field of action in which so many temptations beset the pathway to swerve men from the line of strict integrity—in which so many delicate and difficult questions of duty arise. The young practitioner, at the very beginning of his career, must exercise that caution, prudence, and self-denial, as well as moral courage, which ordinarily pertain to men of more mature experience.

You already know that when you are admitted to the Bar, you will take an oath of office; and in the Philippine Islands you must solemnly swear that you will do no falsehood, nor consent to the same; that you will delay no man for money or malice, but will conduct yourself in the office of a lawyer within the courts according to the best of your knowledge and discretion, with all good fidelity as well to the courts as to your clients. This oath presents a comprehensive summary of the duties of a lawyer admitted to practice. He takes an oath of office, and every lawyer is an officer of the courts in which he practices. Because he is an officer of the courts and his office carries with it great privileges, the legislative branch of the Government

has required that every applicant for admission to the Bar shall produce before the Supreme Court satisfactory testimonials of good moral character and shall satisfactorily pass a proper examination upon all the codes of law and procedure in force in the Philippine Islands and upon such other branches of legal learning as the Supreme Court by general rule shall provide, and has authorized the Supreme Court to regulate admission to the Bar so as to prevent, as far as possible, the admission of unworthy members.

The oath of an attorney requires fidelity to the courts, and a court is a Government institution organized for the purpose of administering justice; it will therefore be your duty as an officer of the court to aid in administering justice, and this should always be consistent with your client. In order that you may do your full duty to the court and to your client, it is necessary that you should be an honest man. Unfortunately, we have men in our profession who do not measure up to this standard, and they are the cause of much reproach and scorn as members of such. They do not practice law because they love the administration of justice, but for the money they make out of it, and sometimes they take delight in thwarting justice. The lawyer who does that debases his profession and abuses the inestimable privileges conferred upon him, and he can never be a truly great lawyer.

A lawyer should be particularly cautious, in all his relations with the court, not to deceive, impose upon, or mislead the court, and to make no statement of fact which he does not know or verily believe to be true, and to assert no proposition of law that he cannot sustain by respectable authority or logical reasoning. One false step by a young lawyer may forfeit the confidence of the court and that of his professional brethren, and a feeling of distrust thus occasioned may never be overcome.

THE LAWYER'S DUTY TO OTHER LAWYERS

Much of the success of a lawyer depends upon the good or bad opinion of his professional associates. He must have their respect and confidence to aid him in securing and maintaining the confidence of the public. He must be faithful in keeping every promise and punctual in keeping appointments. If a lawyer does not enjoy the confidence of his professional brethren, he will be constantly embarrassed because of the precautions taken by them in dealing with him, when such are not taken with others. The young lawyer will find by experience that the good opinion of his brother lawyers is of more importance than that of the rest of the public. The best clients will eventually indorse the opinion of a lawyer that is entertained of him by his associates of the Bar, unless there be some glaring defect or weakness affecting his standing.

THE LAWYER'S DUTY TO CLIENT

The question of fidelity to the client is the most difficult one in the consideration of the duties of a lawyer. He is legally responsible to his client only for gross negligence in the performance of his duties. It is difficult to fix any rule by which to

determine what is negligence. It has been laid down that if the ordinary and average degree of diligence and skill could be determined, it would furnish the true rule. Though such be the extent of legal liability, that of moral responsibility is wider. Entire devotion to the interests of the client, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability—these are the higher points, which can only satisfy the truly conscientious practitioner.

It is a common accusation by critics of our profession that lawyers are as often the ministers of injustice as of justice. It is apparent that there must be a right and a wrong side to every lawsuit, but there may be right and wrong on both sides. In the majority of cases it must be apparent to even a layman that one side or the other has the justice of the cause; and yet one lawyer or the other will maintain, often with the appearance of sincerity and earnestness, that side which he must know to be unjust and be aware that his contention will result in a wrong to the adverse party. But it is to be noted that one's ideas of abstract justice are not always supported by the law, and an opinion as to the right and wrong of a case may be erroneous because of a misunderstanding or misstatement of the facts. Every lawsuit is to be decided by the court according to the evidence and upon the principles of law applicable thereto. A court is not vested with any arbitrary discretion to determine a cause in accordance with its own notions of justice, but upon the secure principles of law, and justice according to law. It is better that a few particular cases of hardship and injustice should be endured, when arising from defect or lack of evidence or because of the unbending character of some strict rule of law, than that general insecurity should pervade the community because of the arbitrary discretion of the judge. It is this which has blighted the countries of the Orient as much as unjust laws and arbitrary executive and administrative officials.

A lawyer is not merely the agent of his client but, as before noted, is an officer of the court. A party in a lawsuit has the right to have his case decided in accordance with the law and the evidence, and to have every view of the question at issue presented to the court. This is the office and duty of the lawyer or advocate. He is not morally responsible for the act of his client in maintaining an unjust cause, unless he has mislead his client by improper advice, nor for the error of the court, if it should fall into error, in deciding the case in his favor. Many questions of justice and injustice, law and injustice, right or wrong and injustice, are difficult to decide, and courts render divergent decisions on the same or similar questions; therefore, the court has the right to hear both sides of a case, and it is the duty and office of counsel to assist the court by doing that which the client in person, for want of learning, experience, and address, is unable to do in a proper manner. This view of the office and duty of an attorney may be a satisfactory answer to any sweeping objection to his work in general, but it does not follow that all causes are to be taken by the lawyer indiscriminately. He has an undoubted right to refuse a retainer and decline to be concerned in a cause. This discretion, however, is to be wisely and justly

exercised with a view to the promotion of the interests of justice; and when an attorney has once accepted the cause of his client, he has no right to retire from it without the client's consent and the approval of the court.

Every man accused of crime has the right to a trial according to law; if guilty, he should not be convicted and sentenced to punishment except after a fair trial and upon legal evidence, and in accordance with the forms prescribed by law for the security of life and liberty. However guilty he may be, the accused in a criminal case is presumed to be innocent until his guilt is proved by the evidence beyond a reasonable doubt, and he is entitled to the benefit of counsel to conduct his defense, to cross-examine the witnesses for the prosecution, to scrutinize with legal knowledge and acumen the forms and proceedings, to present his defense in an intelligible manner, to suggest all those reasonable doubts which may arise from the evidence, and to see that his trial and conviction or acquittal are according to law. In the event that a prisoner is unable to employ a lawyer, it is the duty of the court, at his request, to assign counsel for him, and the counsel thus named by the court cannot decline the office. A lawyer may in good conscience exert all his ability, learning, and ingenuity in the defense of a person accused of crime, to the end that no injustice be done him, even though the attorney may be perfectly assured in his own mind of the guilt of his client; but it is a very different matter to accept employment as private prosecutor in a case against a man whom he knows or believes to be innocent. Prosecutions in criminal cases are conducted by public officers who act in the performance of their sworn duty as such. It ought to be a very clear case, indeed, to induce an honest lawyer to act on behalf of private interests in a criminal prosecution.

No lawyer may with propriety and good conscience express to the court his belief in the justice of his client's cause contrary to the fact. The occasions are very rare in which an attorney ought to throw the weight of his private opinion into the scales in favor of the side which he represents. If that opinion has been formed on a statement of facts not in evidence, it ought not to be heard; if on the evidence only, it is enough to show from the evidence the legal and moral grounds on which such opinion rests. In Whewell's Elements of Moral and Political Science, Vol. 1, p. 259, he says:

"Some moralists have ranked with the cases in which convention supersedes the general rule of truth, an advocate asserting the justice, or his belief in the justice, of his client's cause. Those who contend for such indulgence argue that the profession is an instrument for the administration of justice; he is to do all he can for his client; the application of laws is a matter of great complexity and difficulty; that the right administration of them in doubtful cases is best provided for if the arguments on each side are urged with the utmost force. The advocate is not the judge.

"This may be all well, if the advocate let it be so understood. But if in pleading he assert his belief that his cause is just when he believes it unjust, he offends against truth, as any other man would do who in like manner made a like assertion.

"Every man when he advocates a case in which morality is concerned, has an influence upon his hearers, which arises from the belief that he shares the moral sentiments of all mankind. This influence of his supposed morality is one of his possessions, which, like all his possessions, he is bound to use for moral ends. If he mix up his character as an advocate with his character as a moral agent, using his moral influence for the advocate's purpose, he acts immorally. He makes the moral rule subordinate to the professional rule. He sells to his client not only his skill and learning, but himself. He make it the supreme object of his life to be not a good man, but a successful lawyer.

"There belong to him, moreover, moral ends which regard his profession; namely, to make it an institution fitted to promote morality. To raise and purify the character of the profession, so that it may answer the ends of justice without requiring insincerity in the advocate, is a proper aim for a good man who is a lawyer; a purpose on which he may well and worthily employ his efforts and influence."

PREPARATION FOR TRIAL

After you have "hung out your shingle" as a lawyer a man may come to you and ask you to take his case. Such act on his part is a compliment to you, and you want him to know that you appreciate the confidence that he may have in you. He will want to tell you everything which he may think has a bearing upon the case, and which you ought to know. His mental training may be deficient, and his idea of what is material or immaterial may not be in accordance with the teachings of Greenleaf or Wigmore; but everybody likes to be listened to attentively, and much of your success at the Bar will depend upon your ability to listen to your client and his witnesses. He may want to tell you a great deal that you will not care to hear, but do not tell him that you have no time to listen to him, because you must have the time, and it is your business to listen to his story. Afterwards you may ask him pertinent questions, and be able to determine to your own satisfaction what is material and relevant and what is not, but remember that you may not be altogether competent when you first begin the practice of law to determine with certainty what is material and what is not. You may not agree with your client, and the court may not agree with you. It is therefore well to take down what your client says, and what his witnesses say, and file it in your office for future reference. After getting all possible information from your client, you may think that he has a good case, and you may want to file a suit at once, and your client may be pleased to have you proceed without delay; but you want to proceed with care and caution, for while it costs only a few pesos to file a lawsuit, it is sometimes not so easy to get out of one. Most young lawyers are anxious to get into court, and are later more anxious to get out. A lawsuit is a very expensive luxury at times, and people of small means cannot afford to litigate except in cases of necessity. There are two sides to every case, and there are few cases that cannot wait a few days after they have come into your

hands. It might be well to talk with your client and ascertain whether or not he has made any effort to settle the question out of court. He might be willing to have you undertake a compromise or settlement, and if you should succeed in your effort to the satisfaction of both parties, you might thereafter have two clients instead of one, and in this way you will win the respect and confidence of the best people in the community, and you will have the satisfaction of having done the right thing and saved your client the loss of time and money.

There are cases, however, that cannot wait. There are exigencies which require immediate action. In cases of attachment, injunction, and other extraordinary remedies, in order to prevent irreparable injury, you cannot take the time to talk of compromise or settlement out of court. You must commence your action and do the best you can.

After you have heard your client's story you may find that his statement is encumbered with a great mass of facts, and out of this you will have to sift the essential facts, and in doing this it would be well for you to write them down. In the first place, when you write carefully you think and express yourself more accurately and logically than when you talk at random; and in the second place, if you think and write with precision, you will have a more perfect conception of your case. Therefore, it is advisable to write down what you think to be the essential facts and propositions of law involved. This work may be of inestimable value to you in the trial, and in the appeal, if one be taken by either side, and in other later cases of the same character.

After you are convinced in your own mind of the justice of your client's case, and that he is entitled under the law to win, you will have to convince the court that your faith is well founded and that your contention is correct. Judges are not always easy to convince, especially when you have to convince them against their will. Some judges may have preconceived notions of what is just and right and will not be convinced unless you read the law to them. You will have to work up your case, and it may be safer for you to assume that the court does not know anything about the law of the case, and you should prepare yourself as if you expected the case to make your reputation. Lawyers have different ways of preparing cases. Some quote all that they can find in the text-books on the subject and leave the decisions alone upon which the text-books are based. Text-books are not the best authority on disputed questions of law. If you want to support your propositions of law by authorities, it is better to go to the original decisions of the courts and quote from them and not fill your brief or memorandum with quotations from text-books which may not be accurate and reliable.

Some young lawyers, and older ones, too, write down their propositions of law, followed by a list of cases. Will the judge look up those cases and sift out the meat of the decisions that support the proposition? He may not have the time. Judges are usually very busy people, especially in Manila. If you want the cases cited by

you to be considered by the court, it would be well for you to analyze each case or each class of cases, state briefly the essential facts that have a bearing upon your proposition and the holding of the court upon those facts in so far as it affects your case. You will assist the court very materially by analyzing your authorities in this way, and by pursuing this method in supporting your propositions and contentions you may even convince the judge against his will that you are right and that your client has the law and justice on his side.

In the development of the evidence in your case it is important that you should know your facts, and a most important factor in the proofs is the testimony of the witnesses. You will know precisely what is in the documentary evidence, but you can never know what a witness will say unless you first talk with him. You should never place a witness upon the stand until you have seen him and talked with him. In calling him to the stand you vouch for his credibility and you will not be permitted to impeach his veracity. If you know in advance just what the witness knows about the case, you will be in a position to ask him the proper questions and avoid useless and irrelevant questions. This method will enable you to be prompt, concise, and orderly in the production of your evidence, and you may make a good impression upon the court and the public and your opponent will not have the seeming advantage of having his objections to improper and immaterial questions and answers sustained by the court.

Every young lawyer, and older ones too, should bear in mind that there are very few witnesses, except trained business men and men of liberal education, who can tell an absolutely straight story of an occurrence. In preparation for trial it is sometimes necessary to cross-examine very carefully your own witnesses with a view to getting the exact truth from them so far as possible. It is the duty of a lawyer to find out precisely what his witnesses know, and to see that they tell what they know and nothing more. Now, that is something that requires experience in dealing with dull witnesses and it requires a great deal of patience. However stupid some witnesses may seem to be, it is a fact that most people are honest and want to tell the truth. It is legitimate to train a witness to tell the truth of what he knows about a case, but not to educate a witness to twist or distort the facts or to testify falsely. That would be grave misconduct on the part of a lawyer.

Many witnesses do not express themselves with clearness; their language may convey some idea not intended. Misunderstandings constantly arise between good-intentioned people. It is therefore important that a lawyer should talk with his witnesses and assist them in so far as possible in telling the truth. Sometimes the most important and intelligent witnesses in a case will become confused on cross-examination and will answer "I don't know," or give incoherent answers to questions about matters that they know as well as they know their names. In the case of some witnesses this can only be avoided by properly training them to tell the truth and not allow themselves to become confused or frightened while on the witness stand.

A lawyer should study his case with a view to the presentation of his evidence in the most logical and orderly way. The evidence itself, as it is presented in court, may be a most effective argument, if it be properly presented. You should never call a witness out of order, if it can be avoided, because it may break the logical order of proof and interfere with the proper development of the facts.

The plaintiff always has the opening of the case. It is a great advantage to the court, and perhaps to the plaintiff, for his attorney to make a concise statement of his case to the court, what his claim is, how he expects to prove it, the law on the subject, and the remedy or judgment sought to be obtained. This kind of work is good training for a young lawyer, and it gives him experience in stating his cases in the briefest and clearest possible way. This training might well be acquired by young lawyers while waiting for clients; then when the clients come they will have the experience that will enable them to state their cases without prolixity and unnecessary loss of time. A young lawyer may be a genius, and he may have memorized the codes and statutes, but he cannot practice law on genius and a good memory; a lot of hard work is necessary and mental training in expressing his ideas is indispensable.

In the preparation and trial of cases there will be times when your patience and temper will be sorely tested. Whether you feel like it or not, it is much to your advantage to be calm and serene; always be courteous to the court and to your opponent. You may feel inclined to throw something at one or the other, but you must not do it. If the court is rude or harsh with you, return good for evil and thus heap coals of fire upon his head; if the opposing counsel should be discourteous, do not appear to take notice of it, but keep your temper and maintain the respect of the court and you will make your opponent feel ashamed of himself. Do not characterize the argument of your opponent as ridiculous or absurd, but demonstrate to him and to the court that it is so, and treat him with the most courteous consideration, and you may win by it.

Now, gentlemen, I have very briefly stated some of my views relating to the work of the lawyer. The most essential thing for every young lawyer is to maintain his honor and integrity at a high standard. Do not attempt anything that you know is wrong, and do not prostitute your intellect for gain. As Shakespeare has said—

> "This above all; to thine own self be true,
> And it must follow, as the night the day,
> Thou canst not then be false to any man."

When a lawyer is true to himself, his mind and conscience will lead him in the right direction and he will be able to look honestly and squarely at any proposition, and not be influenced to take up one side with the same alacrity as the other. It is essential that a great lawyer should have a fine sense of justice, and he cannot have that and prostitute his intellect for gain. In many close cases the legal principles

applicable are so finely balanced that nothing but a very nice and discriminating sense of justice and right will enable a lawyer to come to a just and fair determination in the matter. Therefore, in conclusion, may I counsel you to follow the leadings of truth and cultivate that fine sense of justice and "thou canst not then be false to any man."