PHILIPPINE LAW JOURNAL

VOL. VII AUGUST, 1927 No. 1

LEGAL EDUCATION AND PRACTICE [1]

BY HON. GEORGE R. HARVEY
Judge of the Court of First Instance of Manila

There is perhaps no subject which interests more deeply a large proportion of mankind than education. People in general have come to accept the statement that "knowledge is power" as a truism, and it is almost universally considered that ignorance is undesirable. Indeed, so objectionable is ignorance that men are generally ashamed to admit that it belongs to them individually or collectively. But merely knowing a thing is not sufficient, because knowledge is *not* power unless it can be transformed into terms of power-producing energy.

It has been said that education comprehends all that "disciplines and enlightens the understanding, corrects the temper, cultivates the taste and forms the manners and habits." Also it has been defined as "knowing something of everything and everything of something", but this standard is quite impossible. The average student, when asked for a definition of education, will answer that it is the acquisition of useful knowledge. As a matter of fact, education is the training that quickens, strengthens and discovers how to use our intellectual powers, and knowledge is a by-product of education. The more we train these powers and bring them into proper activity, the more easily and abundantly we may acquire and accumulate knowledge.

There are two groups or circles of theorists who differ from each other as to the true function of education in modern society: One group insists that colleges should become vocational institutions, and that efficiency in action should be put above the power to think, and that capacity to do some particular thing should be put above mental culture. The other group stresses the training of the mind and contends that true education is the power to think thoroughly and deeply and to appreciate and enjoy great thoughts, and that character is the product of mental training, and that usefulness can be better learned in the school of experience. We may with certainty say that

1 An address delivered at the convocation of the College of Law, University of the Philippines, on July 28, 1927.

neither of these extremes is right with reference to the education of the lawyer, but that a middle course should be pursued in the training of men and women for the legal profession. The law is a separate and independent field of knowledge, and it must be taught and studied as such. Both the study and the practice of law require the application of legal principles to all other fields of human knowledge, and this can be more effectively done by the lawyer with a trained mind, accustomed to making inquiry into the relation of cause and effect and applying the principles of logic.

The practice of law is classed as a learned profession. Careful preparation is necessary by means of hard, close, accurate and constant study. We find the sources of the law in codes, statutes and precedents. The law student cannot know all the written law nor all the precedents which make up the so-called unwritten or common law. For this reason it is advisable to study and master the principles of law as they are expounded in leading cases and set forth in textbooks, and the law student should be able to find the cases which expound the legal principles that may be specially applicable in any given case.

The student days of the lawyer are not limited to his school and college life. There he learns how to study, and he must be a student as long as he is a lawyer. This kind of work calls for a retentive memory, intellectual vigor, reasoning power, and a vast fund of general information upon the every-day affairs of men and government. The lawyer should be able to adapt himself to the quick acquisition of knowledge, which must be sufficiently accurate and detailed to enable him to advise his clients and to sustain or defend his position in any given case.

Any person has the right to study law and become a lawyer, and any person is entitled to protection in that right. But the right of the people to have a well qualified and worthy Bar upon which to call for service in private and public affairs is a matter of higher concern.

The experience of educators and lawyers during a period of many years has demonstrated that the best foundation for the legal profession is a thorough general education, whether it be acquired in college or by study and observation in the school of experience. Generally speaking, the best preparation is to be had in colleges and universities of recognized standing.

It is not to be expected that the student will remember and be able to make practical use of all that he may learn in college and university, but the would-be lawyer will acquire a mental

training and a facility in expression that may be useful to him in his profession. This training and facility in the exercise of the mental faculties may mean the difference between success and failure in the practice of law. In fact, it may be safely asserted that for no other profession is a thorough general education more necessary than for that of the law. The successful practice of law now requires a wider range of knowledge, a keener perception of the relations between men and events and more highly developed reasoning powers than in former times. The world has become more profoundly scientific and erudite, and the lawyer as the adjuster of the complex relations of men and events cannot properly fulfill his mission unless he becomes better and better qualified by education and experience to deal with the varied affairs of his fellowmen.

The education and training of the lawyer should be such as to create in his mind a higher conception of his profession than that of a mere money-making business. It should produce lofty standards of ethics and service. Education in the law is narrow and limited when it stresses the knowledge of legal principles and neglects their relation to moral principles. The lawyer should be able to help in solving the moral problems which interest the human race as well as to uphold the cause of private justice. He should, if possible, have the qualities of the statesman and the politician, of the sage and the philosopher, of the teacher and the writer, and of the soldier and the diplomat.

Much has been said by laymen in relation to the integrity of lawyers, and the propensity of individual lawyers to sell their learning and influence for money. The lawyer has nothing to sell but service. The quality and character of his service will be responsive to the demand. If there be a market for high-minded, ethical, honorable service, lawyers will be forthcoming to supply that market. If a portion of the business and professional world so conduct its business affairs as to create a demand for the crook, the shyster and the pettifogger, it is certain that a portion of the legal profession will adjust itself to that demand, and that condition will obtain to some extent in spite of the most lofty ethical doctrines which may be taught by the schools.

Judge George Sharswood, author of a notable work on Professional Ethics, has truly said of the legal profession that—

> "There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and

> mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."

These wise words, if pondered and heeded, will be a light unto the path of every lawyer, in whatever line of duty he may be engaged.

It is the ostensible purpose of every student of law to prepare himself to take part in the administration of justice. With honesty of purpose, there can be no higher aspiration in life. Civilization cannot be preserved without government, and the latter cannot exist without the means of administering justice. The principal purpose of government is to see that justice is given unto the people and that their rights of person and property are preserved according to law. Blackstone has defined *law* as a rule of action prescribed by the supreme power of a state, commanding what is right and prohibiting what is wrong. Another great jurist has defined law as a system for the just regulation of men's conduct in their relations with one another, with the community, and with the state.

Legal controversies grow out of the dealings of men with one another in the varied lines of human activity, and this fact makes the practice of law interesting to any one who has the right bent of mind. For the purpose of administering justice, courts are created with the power to determine controversies involving private and public interests, with agencies at their command to enforce their judgments, orders and decrees. Public and private affairs are growing more and more complex every day. New inventions, new ideals of government, new utilities, and new modes of living call for new legal principles, or at least for a new application of established principles to new subjects and conditions. Lawyers are being called upon more and more as time goes on to bear the burdens of solving these new problems, and their education and training must pace with the demands made upon them. This call for higher service by lawyers and jurists can only be met by men and women whose foundations are broadly and firmly laid and whose professional lives are consecrated to the highest ideals of ethics and service. In fact, the constantly shifting and changing duties of the practicing lawyer make it necessary for him to have more or less information about all fundamentals of human activities and of all avenues of human thought, research and knowledge.

There is not a large measure of exactness in the law. For this reason it may not properly be classified as a science. For

the same reason we have many dissenting opinions of the higher courts. The rules of human conduct declared and established by human will have no assurance of permanency. The higher courts sometimes reverse former decisions when convinced that a change of the rule previously laid down is consonant with changed conditions or is considered necessary for any other reason. A statutory rule of conduct in one generation may be repealed or be a dead letter in the next. Every nation has its characteristics, as the people may be influenced by climate, latitude, economic conditions, and other causes which advance or retard the mental, moral and physical development of the population. It is but natural, therefore, that the laws of one nation should be different from those of other nations. Even in the great American Union the laws of the several states are in many respects radically different. They are also changing so rapidly in each and all of the states that it is impossible for any lawyer to keep up with all the changes. Legislative bodies, at home and abroad, are busy making new laws and amending old ones, and the courts are working early and late in declaring new principles and applying old ones to new conditions in their efforts to readjust law and social order to meet the changing needs of modern civilization.

There is much talk among laymen about the technicalities of the law, and it is sometimes asserted that the courts are slaves to technicalities, resulting in delay and perpetuation of litigation. There may have been in time past some basis for this criticism, and even now all grounds therefore have not been eliminated; but the courts are more and more disregarding technicalities other than binding statutory rules, when to do so does not affect the substantial rights of the parties, and are proceeding with greater directness to a consideration of the merits of controversies. The legislature prescribes the court procedure, with the exception of a few minor rules of court, and the judges must observe the statutory procedure. This sometimes involves delays, and one side or the other may take advantage of every opportunity to secure delay. A simple judicial procedure is desirable, and with the help of the Legislature in reducing the periods prescribed for different purposes in the course of a lawsuit, and with the cooperation of duly qualified lawyers in the conduct of cases, the judges may more effectively speed up procedure in our Philippine courts.

The just, equitable and impartial exercise of judicial power is one of the most important duties to be performed in the administration of organized government and these duties are usually performed by lawyers. The courts of justice are created

by the constitution or other fundamental law, or by the legislature in pursuance of fundamental law. Practically everywhere under the American Flag, including our own country, the Philippines, the courts are working overtime in their efforts to keep abreast of the demands of public duty. Speedy justice is every man's right, and in many cases a delay of justice is equivalent to a denial thereof. If a court is not efficient, the fault is in human frailty. If sufficient courts are not provided, the fault lies with the Legislature. A failure to provide courts enough for the prompt dispatch of judicial business is poor economy. The money expended for the maintenance of the courts is but a small proportion of the governmental expenditures, and the amount required to provide the necessary courts for the prompt dispatch of judicial business will be found to be negligible in comparison with the constantly increasing expenditures of the other departments of any progressive government.

Judges are not better than other men, but they occupy a position of peculiar advantage to their mental development and moral uplift. A judge comes in contact with every phase of humanity,—with all its quarrels and bickerings, its hates and envies, its bigotry and prejudice, its mercenary motives and the purpose to triumph regardless of right. No matter how honestly, intelligently and impartially judicial duties may be performed, the losing party in a cause is seldom able to understand how any court, with full knowledge of the facts and an intelligent notion of the law, could possibly have decided against him, and for that reason he is apt to indulge in unjust criticism, even reflecting upon the ability and honesty of the court. The lawyer on the losing side in a controversy may imagine that such a miscarriage of justice will utimately undermine the very foundations of government, but when he wins his next case he at once recognizes the ability, learning and integrity of the court and concludes that the stability of the government is not in danger.

Judicial ethics do not permit a judge to enter into a personal controversy with his critics, but on the contrary require him to suffer criticisms in silence and to rest his reputation for honesty, ability and fairness upon the opinion that he has written and the judgment that he has pronounced. Indeed, courts and judges are not above criticism. They perform a public service, and the manner of its performance is a matter of public interest and of private concern. When the court has performed its duty, and its jurisdiction is ended, the judge should not be afraid of criticism based upon an intelligent understanding of the facts in controversy and some knowledge of the law applic-

able thereto. Criticism based upon ignorance or prejudice or partisan purpose is most reprehensible, and is destructive of public confidence. It is of vital importance to the life of the nation that confidence in the courts should be maintained. The lawyer or layman who unjustly seeks to destroy the confidence of the people in their tribunals of justice is striking a blow at the most stabilizing force of the government.

The confidence of the people in their courts is often affected by a few individual judges. A judge may not compel the respect of the public, but he may by the quality of his service win its respect. If a judge possess the mental and moral requirements of his position, measured by human standards, he should have little cause to complain of the public's estimate of his ability and the quality of his service.

Section 34 of the Canons of Judicial Ethics, adopted by the American Bar Association at its annual meeting in 1924, contains a very complete summary of judicial obligations, as follows:

> "In every particular his (the judge's) conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointments as a public trust; he should not allow other affairs or his private interests to interfere with his prompt and proper performance of his judicial duties nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

This is a large undertaking for any human being to live up to, but the ideal judge must possess every one of these virtues. If a judge on the bench can approximate these qualities in a reasonable degree, he may not only deserve, but may actually enjoy, the friendship, confidence and respect of the people whom he serves.