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John D. Wickhem

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AS YOU BEGIN YOUR PROFESSIONAL LIFE*

HON. JOHN D. WICKHEM

This night is the beginning of your professional life. It marks a stage in your progress towards professional competency and one which you have arrived at with understandable satisfaction. The law course is difficult and has made heavy demands upon your time and efforts. The law schools of today are ruthless in their testing of students to the end that those with inadequate talents may not suffer and make their clients suffer by a long career of ineptness at the bar. The fact that you have survived this scrutiny means that you are of the elect and that there are some presumptions in favor of your ultimate success; hence, a justifiable feeling of relief as you sit here tonight.

Without wishing to cast any gloom I feel impelled to paraphrase one of Justice Cardozo's addresses in which he warned a newly graduated law class that escape from the scrutiny of the professors does not mean permanent escape from scrutiny. At the bar you will, of course, be watched by your associates, by the trial courts and by your clients and their standards will be even more severe than those which you have been required to meet up to this time. If you go from the bar to the trial bench you will be watched by the bar and the appellate courts, and if you should escape to the appellate bench you will add the trial courts to your critics, and in addition that most relentless of all critics—the law review.

If there is never to be a time in your life, from here in, when you will not be under scrutiny and subject to criticism, so also there will never be a time in your lives from here on at which you can say, "I have now learned the law; from here in I can rest on the stock of trade which my accumulated learning constitutes and spend my life giving quick inevitably accurate answers to clients and courts alike." If you are worth your salt in the profession you will never know a day, no matter how hard you work and no matter how much experience you have, when you will not be haunted by a sense of the inadequacy of your wisdom and learning and knowledge. So far in law school you have studied and perhaps grasped a few general principles; you have learned

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to think in a legal fashion and have some familiarity with the sources of law so that you can make a search into its actual state in a given jurisdiction. You have studied the principles in so-called "subjects" like contracts, torts, evidence and the like, and these subjects in turn have been selected from the vast field of the law and constitute but a tiny percentage of its volume. You have therefore studied a few of the important rules in a few of the subjects of the law. The principles as you have learned them are general and any generality involves omissions. As you come to use these general principles you will find that these omissions make difficult their application and you will be required to make a constant, a life-long study of sub-principles to be derived from more generally stated rules in order that particular cases may have a fair and just solution. As times change new problems come up; you will be required to re-examine old principles to see if they have any present vitality and to grasp at imperfectly or dimly perceived new principles to meet and solve new problems.

As you begin your practice what can one long in the profession tell you that will help you along the way? Many of the things I might say are so obvious as to be trite. The law is a profession and not a business. You must live up to the ideals of honesty and decency that are codified by laws of ethics and to the established rules of decent conduct; you must be industrious; you must dispatch your work carefully; you must not put off tasks that should be done today. You must appreciate that the lawyer's greatest work is done in the office in counseling and in advising; in the careful handling of every sort of business transaction so that your work may not be the foundation later of a leading case. You must not take pride in the fact that you have won a brilliant victory in court in a matter that never except for your carelessness or incompetency would have come into litigation at all.

The foregoing are the obvious things that every law student should and doubtless does understand without being told. If he has character and stamina and determination he will discharge these functions properly. If he fails it will not be because he does not know his duty, but because he is not up to a task that he sees.

What I propose to say tonight concerns certain aspects of the legal profession in its relation to the welfare of the country at large and to the administration of justice in particular. We live today in a complicated civilization with a delicately balanced economy resulting in multitudes of government regulations, hard problems and crises that are constantly exposing our fallibility and testing what capacities we have. Our response has been a highly developed technology and an intense specialization. While the specialist is necessary if we are to make material progress and to advance the frontiers of our knowledge, he is generally developed at the expense of comprehensive understanding

and sound overall judgment. The specialist sees his minute field as the most important item in the world. He frequently has little competency outside of his field. There is a constant dearth of persons who have a sufficiently comprehensive understanding to put together in a way useful to society the discoveries and the findings of the specialist. As a result our technological development has outstripped our social development. Specialization has invaded the professions of medicine, engineering and law. The lawyer as an ordinary specialist tends to become a super-specialist. In my judgment one of the greatest forces in a successful society under present conditions is the lawyer who develops and maintains a competent understanding of the law as a whole. This is true because the lawyer is the only professional person—indeed, the only person who has to take into his office and to solve a cross-section of the problems besetting his particular community. He cannot choose his cases—he takes what comes to him. The cases run across every conceivable specialty from medicine to engineering and accounting. He has to be able to know enough accounting on occasion to handle the facts of a tax case; enough metallurgy on occasion competently to handle a boiler explosion case; enough medicine to handle a malpractice case. The work of the surveyor falls within his field in real estate cases; that of the handwriting expert in cases on wills and commercial paper; that of the banker in the numerous cases that can affect commercial transactions. He has no choice; he must know, and comprehend enough of these matters to advise and to carry on effective litigation. He is in the best position of any person in the community to evaluate and to put into its proper place the learning and skills of other specialists and so he has a correspondingly greater responsibility whether it be as a trial lawyer, a counsellor, or public official, to see that this specialized learning takes a useful and not a distorted place in the community. He can accomplish this only by a continuous process of speculation and study over the whole field of the law and human knowledge generally. This is a hard task but one that must be assumed and in general discharged if the legal profession is to make a generally useful contribution to a better way of life. It is the only safeguard that we have against foolish measures which are effective to solve a particular evil, but whose evil repercussions come from wholly unanticipated directions.

While a lawyer's responsibility to the community is frequently discharged in public office and at the counsel table, his most direct public service is as an officer of the court. No court, whatever its function or rank, can be greatly superior in the quality of its work to the bar which practices before it. If cases are not well briefed, if facts are not fairly and intelligently adduced, if the members of the bar do not generally meet their professional duties with integrity the courts will give back

warped images of justice. In matters involving legislation which considered as a whole represents the conscience of the community and the decision of a democracy as to the proper rules to guide human conduct, the lawyer must sense the ultimate purpose and interest of the people and interpret this to the court. Where the court has no legislation to guide it, the lawyer must by his profound understanding of the traditions of the law, the customs of the people and the common conscience of the community be able to assist the functions of the court because he is much closer to the everyday life of people than is the judge. By reason of the character of its training and its experience the bar is the place from which the soundest suggestions should come as to new rules of law to meet changed conditions and to assist the courts in maintaining that fine balance which must always obtain between certainty and sound changes. Otherwise, the law will either fall into confusion or be committed to blind and futile experiments in the name of progress.

In this connection let me say what frequently needs to be said concerning the position of an advocate. We have always had a choice of two fundamentally different methods of administering justice in litigated matters. The first is the so-called inquisitorial method in which the state relegates to itself the responsibility and duty of ascertaining the facts, and declaring the law involved in a controversy without assistance from the parties. The claimed advantage of such a system is that it assures an impartial discovery of the facts and application of legal rules free from the frequently extravagant claims of competing parties. It has usually been rejected because the tribunals devised to carry it out have ultimately come to be affected with political bias or with bureaucratic indifference, and in any case it operates less efficiently in the absence of assistance which competent lawyers can give. The experience of mankind has been that justice is best served by setting up an impartial tribunal and then leaving to the parties with the assistance of their lawyers the responsibility of adducing the facts favorable to their position and the arguments for a favorable rule applicable to these facts. It has been determined that the self-interest of parties is apt to bring before the court all of the facts and all of the fairly debatable legal contentions, leaving to a fair and unbiased judge, or judge and jury, ascertainment of the facts and selection of the rule of law which justice calls for in the particular case. This is the Anglo-American system and you are to become a part of it. Although it is the considered judgment of mankind that this system is the best that can be devised, it has many inherent disadvantages. The self-interest that leads a party and his advocate to produce evidence favorable to him may result in biased or even perjured testimony; in unfair trial tactics that will throw the scales of justice out of balance or in specious arguments that may result in unsound rules of law and

open a Pandora's box of evil consequences over the years. It may result in occasional success by reason of the ability of counsel rather than the justice of a cause.

Now, it is clear enough that every advocate has a duty to present his client's case in as favorable a light as the facts will permit. He has a right to argue for rules of law that are grounded in fairly debatable reason, leaving it to the judge or to the tribunal to find the facts and to appraise the validity of his argument. More than this he cannot do. You are as truly a minister of justice as is the court, and you fail in that ministry if by trick or devious method you distort the facts or by specious argument distort the law.

Not only for the purpose of expediting and efficiently administering justice but to put proper checks upon possible evils of the advocate system many rules of procedure have been devised. These are designed to prevent delays and to insure fair trials; to impede the excessive zeal of lawyers and clients and to see that the scales of justice are properly balanced. These rules like all human activities can be wise or foolish. If the purpose of the rules is forgotten by judges and lawyers they can degenerate into mere red tape and succeed only in producing injustice through technicalities and delays. It is your duty as an officer of the court to see that the rules of procedure are kept responsive to the ends they are created to serve and never to resist a change merely because you have learned a rule and have made it an effective part of your tactics or strategy, if in fact it has lost its vitality and is producing evil conditions in the administration of justice.

From what I have said thus far I may have created the impression that a lawyer is a sort of eleemosynary institution with duties but without any particular rights—indeed with responsibilities almost too grave for a human being to undertake. I do not mean to create this impression. You must earn your living by the law. If your services measure up to the high standards of our profession they should be decently compensated, and you do yourself and your fellow members of the bar a great disservice if you do not exact this compensation. Let it be a fair compensation and a professional one. Deal with your client not at arm's length, but in a fiduciary capacity.

Let me say a final word for your comfort. You will have failures and successes but you should develop at the outset of your professional life a philosophy which will enable you to live with yourself and your problems. Give to the practice everything you have of ability and character and industry. Having done this, put your failures out of your mind and take up the next matter on your calendar. You are fallible and some of your professional losses may result from your lack of skill or capacity. If you have done the best you can, remember that your client hired a fallible human being to get him out of the trouble that

he as a fallible human being got into, and that he must bear the risk of that fallibility. Never let this philosophy lead to indifference but on the other hand, you must never so worry about your past mistakes as to lose faith in your judgment. All that can come out of this will be an incapacity to make decisions and a disinclination to take responsibility and when you come to that state you are no longer competent to practice law. Give conscientious attention to your professional problems, decide them, assume the responsibility for your decision and then put the matter out of your mind. In this way only can you serve your client and preserve your peace of mind, your professional competency and perhaps your sanity.

I wish for you the sort of success in the practice of law that I have heretofore outlined, and if you make the effort, whether you fully reach your goal or not, I wish you such material rewards and satisfactions as cannot fail to come from a conscientious practice of the law. In the words of Chief Justice Ryan:

"It is said that he that girdeth on his harness, should not boast himself, as he that putteth it off. That depends, perhaps, on the conditions under which it is put on and taken off. In the battle of life, we all stumble, we are all maimed. Few, if any, lay down their arms, in that battle, without sense of failure or defeat. It is fit to lay off that armor, at the call of the trumpet, cheerfully but humbly. It is better for society that the young should put it on joyfully and hopefully, at least, if not boastfully, as a bridegroom puts on his wedding garment. I trust that you are so putting on your professional armor; resolute and full of confidence, that in your day at the bar, order shall be preserved, law ameliorated, civilization raised, justice truly administered. . . I pray that when all of our great profession, you of your generation and we of ours, shall stand in turn before the bar of the great and final Judge, the alpha and omega of all law and all judgment, we may be each found to have so contributed to the administration of justice here, that we may find mercy there."