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COURTESY AND FRIENDSHIP IN THE PRACTICE OF THE LAW†

[An Address]

HONORABLE BURR W. JONES*

I APPRECIATE the honor conferred upon me by your request to address you on this occasion. Nor do I forget that other honor when I was asked to deliver the address on the dedication of your dignified and beautiful law building; a building so suggestive of the halls of legal learning wherein old England's great lawyers and judges helped to lay the foundations of the system of law which is our own rich inheritance.

Although I am now old, I was once young, standing at the threshold of our profession like you who are here tonight, and I think I can understand your hopes and anxieties and fears as you are about to enter on the long and strenuous but fascinating road which leads to the goal of your ambition.

As I stand near the close of a long and active but rather happy life in the profession you have chosen, it has seemed to me that I might be of greater service by drawing somewhat on my own experience and the observations I have made than by discussing some legal problem or some so-called popular reform which might in a few years be condemned as a mere stumbling block in the way of progress.

If I indulge in giving some advice it will be free, and like most free legal advice, probably of little value. But if two or three of you remember a little of it, and sometimes act upon it to your advantage, I ought to be well content.

Unlike many who have made addresses to law students, I shall say but little about those qualities of industry and honesty which are vital to any lasting success in your profession.

I have known your professors, living and dead, so well that I know they have not failed to warn you of the disaster sure to follow from any departure from those cardinal virtues. I will only say in this regard that any young man who is not reasonably certain that he can follow those paths would do well to renounce any ambition to lead the

† This address was given by the Honorable Burr W. Jones at the Annual Law Banquet of the Marquette University Law School, held at the Hotel Pfister, Milwaukee, May 19, 1928.

* See Editorial Comment Section.

lawyer's life. In that case he would do well to choose some easier road to worldly success; one beset by fewer temptations leading from the straight and narrow road of rectitude.

And so I have chosen to speak of some of those qualities and habits not so vital to success, and yet which may play a very important part in contributing to happiness and success in the lawyer's life.

If you study as you ought to, the lives of distinguished lawyers and judges, you will find that as a rule they were gentlemen. I do not mean that they were versed in all the arts of the drawing-room and polite society, because many of them cared very little for those accomplishments. But I do mean that either by nature or by self-training, they were courteous to their fellowmen.

It is the popular conception, perhaps the true one, that the able and successful trial lawyer must be a fighter; that his life is one of battle and contention. I have known lawyers who seemed to act upon the theory that legal warfare is inconsistent with courtesy and gentlemanly manners in the court room and I have seen them fail of the high success which might have been within their reach. It is true that a client may sometimes gloat over the abuse which his lawyer hurls at the adverse attorney or party. For a moment even a jury may enjoy the excitement caused by such wordy encounters. But as a rule, both jurors and judges think of the legal profession as a learned profession, and that this conception should not be a mere fiction. When the time comes for rendering the verdict or the judgment they have more respect for, and more confidence in the fairminded gentleman than for him who deals in epithets and abuse.

There may be occasions when you may think that the judge is biased against you personally, or stupid. Rarely you may be right in such belief; much more often you will be wrong; but whether right or wrong you will not aid your client's cause by showing to the judge that you suspect him of prejudice or stupidity. If you must express your emotions it will be better to suppress them until you can see and tell your wives in strict confidence, provided they are close-mouthed.

In the excitement of trials you will often be tempted to ridicule or denounce opposing counsel; such ridicule and denunciation seldom help to win a case; but they are potent to make an enemy. A biting witticism at the expense of an adversary may bring laughter from the spectators; but it may also bring a crushing rejoinder. Nels Wheeler was a veteran lawyer in this state and at one time a partner of Justice Marshall. While arguing a case, a young lawyer referred to him as "my bald-headed friend." Wheeler bided his time and in reply said—"it is true I am bald-headed, but I thank God that like my opponent I am not bald-headed on the inside."

You can afford to be rather sparing of your epithets in the court room. It is safer to bestow on your adversary a compliment if it is well deserved. He will remember it. The jury will be pleased by your courtesy and fairness, and it may be "bread cast upon the waters." Probably there is no English lawyer of our generation who has won more brilliant success at the bar than F. C. Smith, now Lord Birkenhead. It is related that early in his practice he praised in court the brief of an opponent, one of a large firm. The compliment so pleased the solicitor and his friends that his firm sent cases to Smith yielding him thousands of pounds at times when the money was very welcome.

In the early years of your practice you will often wonder why this or that client has honored you by seeking your aid. In the first year of my own practice there came to me within a few months about a dozen clients from one corner of my county. Their cases were, in one sense, of little importance, but they were brought by my clients who to me were shrined in that halo which hovers around the heads of early clients. I became curious to know how that neighborhood, and no other, had discovered my greatness, and on a little inquiry I found that an honest, talkative Norwegian village blacksmith, for whom I had tried a little case, at his anvil, and on the street corners, in season and out of season, had sung my praises. The mystery was solved.

In the early days of your legal career, the Rockefellers, the U. S. Steel Company and the General Motors Company are not likely to be your clients. Some even of your own relatives may be somewhat modest and a little slow in advertising your greatness as a lawyer. It may be your barber, your bootblack or your laundry man who will be your most earnest backer, and your honest friends, whether of high or low degree, are not to be scorned. I know of no one who has more need of friends than the poor young lawyer starting out on his great adventure, and so I am counseling you that you cultivate the gentle art of making friends rather than that of making enemies.

As an Oriental poet said:

"He who has a thousand friends has not a friend to spare;
And he who has one enemy shall meet him everywhere."

You must not fancy that I am urging you to become mere timid time servers, or the slaves of expediency. Still, strategy is just as important in the conduct of law suits as in military campaigns. But there is a wide gulf between legitimate strategy and the trickery of the shyster. You may have cases in which fraud and corruption deserve to be denounced with all the earnestness you can command. There may be times when in seeking to expose fraud or perjury you will find it your duty to handle without mercy lying witnesses. But even then you will better succeed by a calm demeanor than by noise

and bluster. The bulldozing method steels the witness against you and tends to win for him the sympathy of the jury. There may be times when you believe that the judge is expressing prematurely and too hastily views which are erroneous and dangerous to your cause. Every lawyer of long experience has more than once had to meet such a crisis. It is one which may call on you firmly and courageously, with all the resources at your command, but always *respectfully*, to combat the mistaken view.

Life is short but there is always time for courtesy. Nor is it inconsistent with manly courage. I am commending it not only because it brings and holds you friends and contributes to worldly success (and I mistrust you all now and then cast a weather eye in that direction), but because it leads to happy and useful lives.

I am commending—

“That best part of a good man’s life,
His little nameless unremembered acts
Of kindness and of love.”

You will need your friends, not only at the beginning, but until the end of your career, whether you are rich or poor. One may court his millions in lands and stocks and bonds, but if he has no friends he is poor indeed. So cultivate your friendships, remembering that you cannot have a friend unless you be one. You may not all be great lawyers, but you each have it in your power to form such friendships as shall give zest to your hours of recreation; solace in your times of trouble; cheer in your loneliness; gladness through life’s journey, and be among the choicest treasures of your declining years.

You will need other indispensable friends of a different kind—among those will be your law books. You may not always find them fascinating or exciting; but it goes without saying that you will be devoted to them since they will be in your civil battles both your weapons and your shields. If you lay them down your adversaries will use them to your destruction. But I assume that you hope to be more than mere dry-as-dust lawyers. In order to be accomplished lawyers you must not entirely overlook those interesting paths which beckon you into other fields of learning and literature, where you will not linger too long, but long enough to be stimulated and refreshed.

You will need some recreations, it is true, but if you hope to be leaders in your communities and your profession, golfing, fishing, hunting, and billiards and dancing and the movies should not absorb all your leisure hours. While you are young, poverty, that blessed stimulus to endeavor, may limit your activity in these indulgencies; when you are old, arthritis and rheumatism and gout may interfere.

But whether you are rich or poor, young or old, sick or well, that

rich inheritance in the form of history, philosophy, poetry and fiction which the gifted sons and daughters of all the ages have bequeathed us, will be at your command. The volumes containing those treasures should also be your intimate friends. You will find them constant when other friends may have deserted you or gone to the other world. You will find them silent when you are tired of chattering; but ready at your will to tell of the thrilling, mysterious secrets in science and romance of all the ages past. Unlike some other well meaning friends, they will not over chide you for your faults. Like your dog, they will be faithful though neglected or abused.

Naturally in determining which of these silent friends shall be your favorites, in large degree your own taste and judgment must be your guide. I will, however, venture this suggestion: that you will not go amiss if you read the lives of the great lawyers and judges of England and America who have contributed so much to the system of jurisprudence under which we live.

Well written lives of Alexander Hamilton, John Marshall, Daniel Webster and Abraham Lincoln would throw a flood of light on the first century of American history. One would there find portrayed the struggle for independence and its causes; the long campaign for union and constitutional government; the irrepressible conflict between the slave states and the free; the attempts at compromise and the great inevitable Civil War.

If you read the lives of such men as Lord Mansfield and Romilly and Erskine, you will find vivid pictures of the growth of the common law, of the efforts to reform abuses and the long struggle for free speech and a free press.

You might also study with profit the lives of some of the eminent lawyers and judges of Wisconsin. I say this because we have had in our own state lawyers who, if their homes had been on British soil, might have won distinction in Westminster Hall; and judges who, if the opportunity had been given them, might have honored the highest judicial tribunal in our land.

If in your leisure hours you pursue such a course of reading you will be encouraged by the fact that as a rule the great lawyers and judges began their careers without wealth or the prestige of family distinction; that many of them began in poverty. And may I interject that while a moderate fortune has some advantages toward the end of a lawyer's life, it is a serious handicap at the beginning.

You will find in this reading enough of the dramatic to excite your keenest interest, since in the drama of their lives there was often sorrow and disappointment as well as joy and triumph. Such a study as

I suggest will stimulate you to emulate them and to keep alive the high ideals without which your lives will end in disappointment.

Since I well know that I cannot live again in this world, my eighty-two years, I spend no time in considering whether I should like to try the experiment. But I am very certain that if I were to have the opportunity, with the background of my past experience, I could correct many mistakes. I will only speak of one which is relevant to this discussion.

Doubtless, I would want a large library and would want to taste many books, but I should firmly resolve to really read comparatively few; and I should read those many times. I know that I have spent too much time in reading in a desultory way—far too many books; time which might have been better spent in reading and trying to master some of those classics in ancient and modern literature which have borne the test of time and have blessed, and are still blessing those in many lands who love the beautiful and good in human life.

So, since I am lavish in my free advice, harmless because you are not likely to follow it, I would suggest that you allow the best sellers of the week or month to wait and ripen a little before you devour them. It is true they are often pleasant subjects of conversation but you should give your wives a little chance to talk, and concerning many of these best sellers, she and her friends can tell you all you really need to know. You will find that the great lawyers and great orators have been familiar with the supreme masters in literature, including their Bible, and especially the Bible, and that in molding public opinion, they have drawn far more from those fountains than from the literature of the passing hour.

Doubtless some of you are anxiously deliberating on the choice of the city in which you shall begin your legal career. I shall venture no advice on that subject partly because I do not deem it of such vast importance as you may fancy.

It is doubtless true that seemingly unimportant events often greatly change or direct one's course in life; and when you are old and reflect on the past, you will be surprised that this little incident or that, as some retainer, some friendship, some appointment or election to office, has so strongly influenced your whole career. But if you are blessed with fair ability, with industry and integrity, no such circumstance as the location of your first shingle shall block your way to success.

The bar of the great cities is constantly being heavily recruited from the ranks of lawyers who have shown their mettle in the smaller towns. In the great cities, all the way from New York to San Francisco, will be found lawyers of distinction who started life in small Wisconsin towns. I might illustrate the point by naming some of Wisconsin's

distinguished jurists; some of whom began their work in small cities and others in Milwaukee. I will only suggest that on this subject you use your best judgment, but lose no sleep. The census of your first place of abode will not make nor mar your career. I do advise, however, and strongly urge that wherever you go, you identify yourselves with the community in which you live; that you zealously take your part in your church, in the clubs which you may join, in the committees on which you serve, and in your political party, so long as you are sure it is the right party.

I need hardly say that you should keep alive your interest in your Alma Mater and your association with its alumni. Of course you will love your work and your books, but that does not mean that you are to be cynically indifferent to the welfare of the community in which you live. Your activities in its behalf will bring you friends, and friends will bring you clients; moreover, such activities will only be your answer to the call of duty. Those activities will not be tedious while you are young, but may be burdensome when you are old. Besides, when you are old your money will probably be more welcomed than your work. As lawyers, members of a great profession with the background of training you have had, it will be expected that you will be more than average men; that you should be, is due to the state which has protected you; to your professors who have worked for you and who will not forget in pride or disappointment to watch your course in life. It is due to the fond parents who have made for you their sacrifices.

And so, as the years go on, like the average man you will be expected to perform not only the common duties of life, like the payment of taxes without too much grumbling (they may not weigh heavily on you for the first year or two), but to face the more complicated problems of your community and state to which the ordinary man gives little thought.

You may meet the pessimists who will tell you with solemn satisfaction that the golden age of your chosen profession is in the past; that scientific and industrial pursuits now promise richer rewards and afford finer fields for realizing the ambition of young men who have had intellectual training and are willing to work and wait. While I shall enter into no comparisons of this kind, and while I rejoice that other professions offer rich rewards for intellectual work, it seems to me that never in the history of the world has there been such promise of success for the well-equipped young lawyer as today. You hear now and then of a vast fortune quickly made by some new captain of industry. You hear less of equally gifted but less fortunate adventurers who have fallen by the wayside. Nor is it to be overlooked

that none of these great fortunes are made, and none of these great combinations of industry are effected without the lawyer's aid.

Perhaps it is safe to say that the lawyers may be trusted to remember that for their own compensation they are entitled to a modest share in the good fortune of their clients. With the myriad of statutes seeking to control capital and the great corporations, they find themselves as dependent on their lawyers as are sick men on their doctors. As I have already said, your first retainers are not likely to come from the great corporations; perhaps not from the less gigantic corporations which operate in every county. But while the older and more experienced lawyers are intent on the affairs of big business they will be leaving to you the kind of work on which they as young lawyers began their career. Moreover, they are not immortal. So be patient and fear not. Your time will come.

Daniel Webster and Rufus Choate were conceded to be among the greatest lawyers of their generation, but they left only modest estates. Joseph H. Choate and Chauncey Depew, as well as several other lawyers who have gone to the better world within the past year or two, left estates counted in the millions. They were certainly no greater lawyers. They simply had better opportunities. They lived in days of bigger business and larger fees; a time more favorable for financial prosperity; but a time no more favorable than your own.

Perhaps I ought to apologize for any allusion to money making as an incentive to your work; still, lawyers are human. They need clothes and bread and butter, and in these days, perhaps an automobile. And so they are not all averse to having a little money, that base commodity which almost every human being in greater or less degree desires. But the profession you have chosen does not offer the glittering prize of great wealth. As you have doubtless heard, most lawyers work hard, live well and die poor. The plutocrats in the profession are rare exceptions. It does, however, offer inducements which, it seems to me, for young men anxious to lead an intellectual life, are far more to be prized than worldly wealth.

Our profession is the surest avenue to the opportunity to render public advice. This is attested by the fact that in this country for the last 150 years, in far greater degree than any other class, lawyers have been chosen by the people for the highest offices of trust. Often such services are rendered at the expense of great financial sacrifice, but the reward comes in the consciousness of service for the public good.

In the sharp contest with other minds as keen as your own, your mental faculties will be kept awake. There will be such infinite variety in your labor that after the first few years you will expect every day

as you go to your work to find new and interesting problems to be solved. You will find every stimulus to the intellectual life, and the intellectual life brings such happiness as no other life can yield.

And now we older lawyers congratulate you that you are nearly prepared to receive your degrees from your Alma Mater. This means that you have at least for some years shown steadfastness and persistence. They are priceless assets in the lawyer's career. May they long abide with you. We welcome you as candidates for entrance into our great profession. Come with all your youthful enthusiasm. May it never wane. You will need it all in maintaining the right and fighting wrong.

For many generations illustrious lawyers and judges, beyond the seas and in our own land, have been slowly framing the system of jurisprudence under which we live. It is not a perfect system, but it is the best the world has ever known. It will be your high duty to help to cherish and preserve that system to the end that justice may be done and that free government may survive.