To the Marquette Law School, Class of 1970

E. Harold Hallows
ADDRESS

Chief Justice E. Harold Hallows Address

Fellow doctors of law, I am informed the Marquette University Law Class of 1970 is the smartest and best prepared class that has graduated for some time. This court has a high respect for your Alma Mater and the training it gives to its graduates. Along with the University of Wisconsin Law School graduates, Marquette's Law School graduates are permitted to take the attorney's oath without an examination under the auspices of this court. I would be remiss on this occasion if I did not publicly acknowledge my deep gratitude to Marquette University in conferring an honorary doctor of laws degree upon me when you received your doctor's degree last Sunday. I consider it not only a personal honor but one for this court and a recognition of the importance in our life of the legal profession, the teaching of law, and the dedication of our judiciary.

Today is the great occasion to which you have been looking forward for many years. As the result of your efforts, the sacrifices of your parents, and in some cases, the sacrifices of your wives, you have become lawyers and now are allowed to pass the bar, which in old English courts was the railing which separated the spectators from the space in the courtroom occupied by the barristers, witnesses, jury, and judges. You have become lawyers in a very exciting era, at a time of violent dissent, and of a crisis in public discipline—at a time of re-evaluation, not only of our economic and social life but of the law itself and of our judicial system, which you will be concerned with for the rest of your lives. In your law school you learned that neither the Constitution, nor the common law, nor statutory law, is static and that both the Constitution and the common law have within themselves a very vital and energizing principle of life which allow them to heal their own wounds and to grow and to adopt to the ever-changing need of the people who believe in and live under the Constitution and the rule of law.

In this context, I wish, today, to make a few comments upon the attorney's oath, which you have just taken. You have solemnly sworn to support the Constitution of the United States and of the state of Wisconsin. Your oath does not mean lip service. It means you believe in the Constitution, the form of government it has provided, and the rights it has guaranteed to human beings. It means action in the defense of the Constitution. What the Constitution on any day, or in any era, means depends a great deal upon the people who live in that era and who, through the slow process of judicial interpretation, or

*This address was given to the Class of 1970, Marquette University Law School, upon their admission to the State Bar of Wisconsin, May 26, 1970.
through the lower process of amendment, fashion its content and application to secure and protect the basic rights of humanity. Judges and lawyers are not eternal, but they are products of and they reflect the problems of their day.

In performing your duties as an attorney, you have solemnly sworn you will not maintain a suit which to you appears to be unjust. Since the standard is not the objective but subjective, you must be ever watchful that your idea of justice bears a reasonable relationship to reality and objectivity. It is unjust to your client, to your adversary, to the court, and to society, to bring suits or to use the legal process for an unjust cause. Asking a court, however, to reconsider an old doctrine of law in the light of new conditions of society is not an unjust cause. You have solemnly sworn that every defense you assert in a lawsuit will raise a question which is honestly debatable under the law. This, too, is a grave responsibility and a subjective test. It is wrong to use a false or sham defense for any purpose and especially for delaying the cause or in the hope of gaining some advantage for the undeserving client.

By your oath, you have also sworn that in your trial work you will use no means inconsistent with truth and honor. As an advocate, you will desire to win. That is the motive which brings out the truth, but like football, baseball, or any contest, there are rules which must be followed, and the rules governing a lawsuit demand that all means are consistent with truth and honor.

You are not at liberty to mislead the judge or jury by a false statement of fact or law. Neither are you entitled to color the facts or to take liberty with the facts. Many lay people do not understand this, and the image of the lawyer and the judge has suffered. This vice of not fairly presenting the facts is sometimes apparent in appellate work. There is nothing more annoying and dissatisfying to an appellate judge than to have a lawyer state partial facts or facts not supported in the record. Such lawyers earn, and rightly so, a reputation which is not conducive to winning either respect or lawsuits. It is a great injustice to this court and an insult to its integrity to make statements of fact or of law which may be false. We have a difficult time reaching and determining the law question involved without being side-tracked in the process by half truths. It may be that an attorney does not wilfully intend to make a false statement, but proper preparation and a professional attitude would avoid making a false statement negligently. Perhaps you cannot be the most brilliant lawyer, but you can be the most honest.

In order to win a lawsuit, you are not at liberty to destroy the honor or reputation of any witness or party, or even to prejudice the honor of any human being. The trial of a lawsuit is a search for truth,
a winnowing of evidence for the facts. It is not a display of the lawyer's personality, and, at the very least, his conduct in court must not be offensive. There may be a case where the justice of the cause is so great that justice cannot triumph without some depravation of the honor or reputation of a witness or party. In such a case, and only in such a case, are you permitted to advance a fact prejudicial to honor or reputation.

It has always been a proud tradition in the law that the causes of the defenseless or oppressed will not go unanswered or unrepresented. True, many of these causes have been unpopular, but that has not deterred members of the legal profession from representing such causes. In some of these cases, important principles of law have been established. By your oath, you solemnly swore never to reject such a cause for any personal consideration. You are not businessmen, tradesmen, or laborers but professional men—a member of an ancient and honorable profession, and its privileges are entertained with responsibilities.

Today, an unfortunate violation of the oath on the part of the attorneys is the failure to maintain due respect of courts of justice and judicial officers. Recently, we have had attorneys contributing to turmoil in a courtroom, and others taking no visible steps to restrain their clients, who had an avowed purpose of destroying our country or at least proving that our judicial process is unworkable and unfair.

It is of great concern to the bench and should be to the bar, as it is to the public, that these lawyers are demeaning the courts, and their conduct tends to lower the prestige of the courts and of our profession. But even of greater importance, these lawyers are undermining the American judicial system, without which we would have no democratic society. True, the courts have the contempt power to deal with such persons and, if necessary, it has and must be used. But the point I make is that the contempt power ought not have to be used. There is no merit in the argument that requiring attorneys to do their duty to uphold the dignity of the courts tends to discourage them from representing unpopular defendants. Defendants, whether charged with a crime or not, cannot ask their lawyers in representing them to depart from the attorney's oath and attempt to make a mockery of the trial. Such defendants are not entitled to such representation or conduct under their right to counsel, and a lawyer has no right to engage in a pyrotechnic display as a trial strategy in a courtroom because he believes in the merits of his client's cause.

Unpopular defendants or those at odds with our society or those who would violently remake the world, even committing crimes to do so, have no special license in the trial of their lawsuit to turn a temple of justice into a 3-ring circus. Courts, in determining justice, can best operate in an atmosphere of calm and dignity which will insure the
protection of the rights of the individual, of society, and of the minority, while counsel for the defense should be zealous in representing their client and should impose every defense which has debatable merit. You, who are particularly concerned with preserving those rights, must be the first to maintain dignity and decorum in the courts.

Besides, since an attorney has a duty primarily to his client, that duty is violated and he does his client no good by not conducting a trial in a dignified and courteous manner. Even if a judge is provoked to some intemperate behavior, a lawyer is not relieved of his duty of respect to the court. His remedy is by a dignified exception and an appeal to the supreme court.

You should not forget that our judicial system cannot be improved by violence and disrespect in the courtroom, any more than the social conditions in our democracy can be improved by a violent revolution. If our democracy is to work, it must have the inherent ability to change itself. This change must come in an orderly fashion from within, not by violent force from without. You lawyers should not lose faith in the judicial process. A trial is a reasoned appeal to the mind of the judge and to the jury.

It is unfortunate that a defendant had to be bound and gagged in a courtroom during the course of his trial and as a last resort removed from the scene until he was ready to act in a reasonable manner. But without dignity, order and decorum in the courtroom, there can be no justice. The judicial process cannot be allowed to be frustrated by the defendant on trial. Some defendants think the public trial under our adversary system, circumscribed by rules of evidence, is itself on trial. While the American people have not been a strictly disciplined society, we can not allow misplaced individualism to shatter our legal process. If we do not make our trial system work, there is no other alternative to settle disputes but ordeal by combat or the law of the jungle.

There will be times when you feel you have been unfairly treated at a trial. You will think you should have won a case which you lost. But there will be times when you will win a case which in your heart you know your ability and your preparation did not justify. But for both particular instances, the trial process was designed for a peaceful resolution of your client's right, and if this was not attained you should direct your energies to rectify the alleged injustice within the trial system—such as improving methods of procedure or taking an appeal to the appellate court.

Of late, this deliberate process of the judicial system reforming itself has created unprecedented safeguards for those accused of crime. It has allowed recovery in many barren areas of torts. You should participate in this continuing development of the law. But another pressing need is reform in the administration of justice. To restore
the faith of the public in the judicial process, our judicial machinery must be made to function with greater speed and efficiency. We need improvement in the administration of our courts, more judges, an intermediate appeal court, better court procedures and calendaring of cases. In this work, you, as young lawyers, must take an active part because if you do not, it is quite likely these needed reforms to make the administration of justice more efficient will be delayed.

Lastly, you young lawyers must instill in the public confidence in the rule of law, confidence in our legal system, confidence in its fairness and justice, confidence in its integrity, and the conviction that the judicial process is the only reasonable solution for the peaceful resolution of conflicts in our democracy. You must teach by good example that there is no lasting freedom if the rule of law is not supreme. Above all, we must recognize our judicial process is and must be so flexible that it is able to accommodate all sorts of litigants, be they the average citizen, or dissenters, or radicals, or revolutionaries, and it has the resiliency to meet any crisis as it arises without suspending or violating any fundamental guaranty or rights of any individual.

I repeat again, in closing, that you men and women are privileged to enter the profession of the law in these exciting times, and we, who have lived in the law for some years, look to you to have the courage and the will to continue its best traditions so that the rule of law will be the bridge to justice, and human beings in this beloved country of ours will live together in peace and equality.