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WHEN IGNORANCE IS NOT BLISS

ALBERT H. MILLER*

Myself when young did eagerly frequent
Doctor and Saint, and heard great argument
About it and about;
But evermore came out
By the same door as in I went.

"The notary will please swear the witness." And I was the notary! A thunderbolt could not have given me a jar more terrific than was packed in those seven words of polite request addressed to me.

They were taking depositions. I was a young lawyer fresh out of college, well educated and well trained. At least most people, including myself, thought so.

I had just been admitted to the Bar, having passed an extremely difficult two-day written bar examination conducted by the Supreme Court of my state. Many failed it. My grade was a fraction of a per cent under or above 94,—I forget exactly. But I stood out well enough as college classes go, to attract the attention of the Chief Justice and win from him a recommendation for an opening in a very fine law office in a neighboring city of the same state.

The opening was offered me. I took it. And my, how I wanted to make good!

Imagine my delight when the head of the firm informed me my first day that I was to act as notary at the taking of some depositions. Perhaps he noticed the flush of pleasure come over my face. At any rate, he was quick to add that I would have nothing to do except to look wise, as the other side was not to be represented. Notaries at the taking of depositions were only scenery anyway, he went on to say.

But I looked up the law nevertheless, for fear the scenery might have to be shifted. The statutes were fragmentary. I did not learn much.

The day came. A friendly lawyer or two appeared, also a judge from Canada, and the clients. We ushered them into the office library. The momentousness of it all, and the prominent position I held in the important event, filled me with pride, coupled with not a little awe.

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The appointed hour having arrived, the head of the firm remarked something about getting started, and turning my way addressed to me those seven frightful words—"The notary will please swear the witness."

If he had told me to climb out the tenth story window at my right, and fly to the moon, I could have complied just as easily. I had not the slightest idea how to swear anybody.

There I stood, thoroughly familiar with all the important legal principles, competent, insofar as that knowledge went, to sit on the Supreme Bench of my state and apply them, a university man, a college graduate, born and bred of a family of lawyers for generations back, but a miserable fizzle on my first job.

I looked at the witness. The witness looked at me. Expectancy was writ on both our faces. Not a word came from either of us. The room became stilled—a breathless silence fell like a pall, almost as unto death. I lived years in that second or two. Finally I gathered myself together enough to ask him if he swore—he said he did—one of the lawyers chimed in and helped me a little—I gulped once or twice and sat down—with a flush on my youthful cheeks that was not born of pleasure.

Needless to say, while that first witness was being examined I got ahold of a hitherto despised justice of the Peace Assistant (Swan's Treatise) that was on the shelves, and committed the form of oath before the next witness was called.

Twenty years have past since then—twenty years of the rough and tumble of general practice. But time has not dimmed the memories of my embarrassment—nor made me forgetful of what it all meant.

My next duty was to carry out this peremptory order, viz.: "Look up Robinson vs. Sloane. If the decree is on, issue Order of Sale."

Three jobs in one! Look up Robinson v. Sloane! Where? How? See if the decree is on! On what? Where would it be, if it was not on something? But it might be in something! What is a decree anyway? I had never seen one. I felt that it had something to do with the ultimate decision of a case, just what, I was not quite sure. So I plunged into the books, and got a pretty fair idea.

Issue Order of Sale! Could anything be more explicit? Or more meaningless! What is an Order of Sale? Who was I, that I might issue one? Would I have to get up a petition of many signers, or draft a petition of many parts? Again I went to the books. What little industry I had was once more rewarded. A praecipe was required. I knew what that was. Meager experience gained in my brother's and my uncle's law offices had taught me that.
Instinct told me to now go to the courthouse. I did. There I met a young lawyer friend of mine by the name of Hahn. He had a year's start on me, and showed me how to run the indices to the Dockets to ascertain the style and number of my case, where to find the decree and the praecipe docket, etc. In all my experience I do not think I have ever met a man whom I thought was so learned. And what Hahn showed me, ended my troubles for that day. But confidence in my general equipment as a lawyer had received another severe jolt.

I had studied everything assigned to me in college. What my superiors set before me, I worked at. I conceived it my business to obey orders. When they said "study this," I studied it. Or "now take up this," I did so.

But I never had sense enough in college to know that there were thousands of things which I would have observed, without having been told to observe them. I remember one of my classmates who failed in an examination, largely because he missed a point in an examination question that involved a ruling on a demurrer. And he then afterwards told me that he did not know what a demurrer was. And here he had been studying law for two years and had read of demurrers every day. And he did not have enough interest in his work to take down the dictionary or ask his professor what a demurrer was.

My next experience as a young lawyer came in the next morning or so following my experience in looking up the status of a case on the docket. This next experience was when I found on my desk a memorandum statement of a case pending in an Appellate Court. The memorandum was quite complete, and closed with the request that I prepare a brief in support of the contentions of our client.

A brief! I had never seen one. To be sure, I had a general idea of what one was. But I had no specific knowledge on the subject, no skeleton outline in my mind or on paper, no definite notions one way or the other, good, bad or indifferent, as to what method of treatment was best.

Here I was up against it again. But time was precious. In due course it was completed. I took it in to the member of the firm who had requested it. This was at about 4:30 in the afternoon. He left at 4:45. I saw him go.

The thought occurred to me that he must have taken my brief home with him. He must have!

But—well—finally the temptation was too great. I went in his room to find out. There was my brief—very comfortably reposing in the wastebasket.

'Tis said there is no suffering equal to the pains of an undelivered speech. It may be so. Personally I would substitute an unread brief
I was crestfallen, down-hearted—somewhat rebellious, too. There I was, shoved out into the world bearing the crest of a lawyer, when I was not a lawyer at all. Three common, ordinary things had been asked of me, and I had not the slightest idea how to go at any one of them. I just simply did not have any advance information about them at all, one way or the other. To all practical intents and purposes, I did not know anything.

I went out to the little room where I was living. I sat down on the chair and put my feet up on a little desk that I had had moved in. This was before suppertime, and I sat there staring into space until after midnight.

All young lawyers come to that time. It is the bridge over the chasm of their ignorance. If they cross it without stumbling, they are safe on the other shore. But cross it they must.

I had found that a great field of the law was like a book of Seven Seals to me. I saw that if I were to be a lawyer I would have to learn how to be one. It was quite evident that I would have to wade into the books, and keep on wading into them. My college course was not the end of my studying—it was the beginning.

II

A young lawyer should study brief-making and master it; get out the practice books and learn the practical phases of trying law suits—watch the big lawyers try cases and become familiar with their methods.

The machinery of the courts is a life study. It cannot be learned in one day or in one year.

Likewise is the machinery of the office of tremendous importance. How should you open a conference (a) with a client or (b) with a witness? How should you file your papers? How should you keep a record of the time you spend on a case? How may you maintain a rotating calendar and daily work sheet so that matters will not get buried in your files?

A lawyer must have in mind a deep, abiding knowledge of the art of brief-making. He should have a skeleton outline of a brief committed to memory.

He should know what it means to state the history of his case, and where and how to state it.

He should know what is meant by the statement of facts in a brief. There should be no confusion in his mind between the facts and the history. He should know how to marshall his facts, how to state them convincingly, what is meant by cross-references, the danger of overstatement and the fallacies of understatement in certain instances.
He should know what is meant by a specification of errors. He should know that he must separately, completely, succinctly and clearly state each one in itself, and where, when and how.

He should know what points of argument are, and how and where to state them.

He should know how to then present his argument, when and how to give citations, the value of italics, the danger of overdoing emphasis, the relative values of inductive and deductive reasoning, etc.

He should know that courts require briefs of a certain size, drawn up in a certain way on certain paper with a certain size type, and all that. He need not know what size and ways and type are required. But he should know that there are rules on those points. So much for brief making.

Our young lawyer should realize the value of knowledge on the subject of office accounting. The least he should know on that subject is that a system of accounting is required. If he has not been taught a system, he should be taught to gain some knowledge on this subject from the first young accountant friend whom he meets, when he has started in the practice.

A lawyer should make a study of office routine. He should adapt himself to the best manner in which to keep a record of the work he does. He should know how much or how little to charge for his work, after he does it, and how to write up a statement for services rendered. He should learn how to maintain a rotating calendar so that the matters that he must attend to at sometime in the future, automatically come to his attention on that calendar.

He should have some very definite notions as to what his clients expect of him. The viewpoint of the successful practitioner involves the mental attitude of finding a lawful way whereby his client's proposed plan may be legitimately carried out. Anybody can find reasons for not doing something. And many a lawyer loses a good client by pointing out to the client the many reasons why the client cannot do thus and so. What the client wants is to be directed along the road which will lead him to his destination, and not from it.

These problems present themselves to different lawyers in different ways. Our legal education is never completed. It is a daily exercise.

There is a way of giving instruction in all these various phases of the practical side of practicing law, that is indeed most successful. Instruction must be given to the old by the young, and to the young by the old. The exchange of ideas is vitally important.

Then too, there is a flood of legal publications coming in continually, which must be examined, new decisions are constantly being reported, new law being made, old law being modified.
An office meeting held every morning promptly, say at 8:10 and closing at 8:40, gives the opportunity for this exchange of ideas. And at these same meetings the new decisions can be gone over, giving everybody the benefit of the discussion that follows.

Such office meetings will pay the firm that conducts them. And likewise does it reward handsomely the young men who are privileged to attend. For it makes lawyers of them years ahead of their time. And the older lawyers—well it keeps them young.