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Beyond Commencement

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BEYOND COMMENCEMENT*

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Black's Law Dictionary defines a lawyer as: "A person versed in the law". Within a few weeks, many of you will exhibit your name upon a shingle, and just beneath it, print the word "Lawyer", or "Attorney at Law". This will indicate to the public that you are a person versed in the law. People in need of legal assistance, seeing your shingle, will take it for granted, since the State of South Carolina has given you a license to practice, that you are capable of advancing and protecting their interest, both by counselling them at your office, and by representing them in court in the trial of cases on both the civil and criminal side.

This places upon you a very heavy responsibility. That responsibility may oftentimes take on proportions similar to the responsibility which a doctor has when he must advise his patient whether he should undergo a serious surgical operation. Many of you, or some members of your family, may have at some time, had to say to your doctor, in effect, "I must take your recommendation because my own opinion in a medical matter is not worthy of trust." In like fashion, you will be called upon to advise clients what to include in important legal documents, whether to settle a case or go to court, or whether to plead guilty or ask for a trial by jury, because "their opinion in a legal matter is not worthy of trust."

In preparation for assuming this serious responsibility, you have had the advantages of one of the best law schools in this country. I know that you fully appreciate the fact that your work here has been merely the beginning of preparation for the public service you are about to enter. Your ultimate success in the pursuit of the law will largely depend upon the way you continue your study and the pursuit of knowledge during the next four or five years. Unfortunately, we at the law do not have what corresponds to internship for young doctors, and so the experience, corresponding to internship,

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which you will receive in the next few years will depend entirely upon what you make of it. Experience is virtually thrust upon a medical school graduate through internship. If you are to receive the equivalent of an internship, in most cases it must come through self-discipline.

There are two reasons why it would be advantageous for you to acquire much experience soon, even with little compensation, if necessary. First, because the sooner you get experience the longer you can benefit from it. And secondly, the capacity to grow in knowledge is greater now than it ever will be.

I am glad that the law school today affords to its students far more practical training than was the case when I graduated twenty-one years ago. Those in authority have come to realize more forcefully the fact that knowledge of the theory of the law alone does not equip a young lawyer to proceed to the practice of his profession. But even so, the capacity of any school is greatly limited in the giving of practical training. This means that you must now supplement your knowledge by learning to actually try cases skillfully on the floor of the courtroom. This will not come easy. There are two basic ways in which you can acquire this skill. The first is by trial of cases yourself. But this is a very slow process, because there is actually comparatively little trial work to be done. This is sometimes shocking to a young attorney, because I think every law student dreams of the day when he can appear in the courtroom before the judge and the jury and an audience, and participate in the trial of cases. But I would estimate that only one out of every twelve cases filed in the Court reaches the trial stage. The others are settled. This means that the administration of justice is taking place more largely in the lawyer's office than in the courthouse.

The other way to learn to try cases is to watch other attorneys try them. There is usually no better place that a beginning attorney can spend his time than in the courtroom observing how attorneys who have been at the practice for many years, handle their cases; and in that regard, I have often thought that it was a waste of time to go into court to observe for short intervals in the middle of the trial of a case, because more often this just serves to confuse one, and if any genuine benefit is to be received from watching the trial of a case, the same should be observed from beginning to end.

Even though a tremendous majority of the cases must be, and will be ended by way of settlement, rather than by way of trial, that does not mean that it is unimportant for a person to learn to try cases skillfully. Ability to try a case well and forcefully is a lawyer's best weapon to force a settlement advantageous to his client. It will not take your adversary attorney long to learn how convincingly you can present a matter to the judge and jury. Your ability to bring about a settlement advantageous to your client, whether he be the plaintiff or the defendant, will take on a proportion adjusted greatly by how effectively your adversary believes you can represent your client against him.

To illustrate to you the complexion of a full week of civil court, recently the county bar association, in a court over which I presided, set for trial thirty cases. Four of them were continued for cause, five were ended by a jury verdict, one resulted in a mistrial, and twenty of them were settled by agreement of counsel. That represents a fairly typical week of civil court.

A typical week of criminal court might be the acceptance of thirty-five guilty pleas, and five jury trials. This would vary in proportion to the size of the county.

And so we see that the operation of the trial docket on the civil side must be largely on settlements, and on the criminal side, must be largely by guilty pleas.

In the matter of settlements on the civil side of the court, you will become largely an appraiser of claims, for one cannot very well settle claims for either side unless he knows how to appraise them.

You may be concerned for a while by the fact that some of your best friends do not employ you. I think this of you because it was true of me, and I was sometimes inclined to become disgruntled with friends whom I actually had every reason to believe might seek my services. But when I attempted to analyze the situation, I appreciated the fact that perhaps my friend was entitled to feel towards me the way I would feel towards a doctor if I needed one. I came to realize that if I needed an operation — even a comparatively simple one, like an appendectomy — that I would want some doctor who had performed that kind of operation on many people before he got to me. In like fashion, I came to realize

that my friend in need of a lawyer might be entirely justified in saying to himself, "I believe I would prefer to have some lawyer who has already attended to many other cases of a similar nature attend to this one for me." This realization helped me to understand the situation. Fortunately, after one has practiced for a while, people will, by reason of seniority, come to believe that you have had a great deal of experience, whether you have or not.

Experience is important in the handling of law business, but there are other important virtues also. In some of these you can equal or excel any senior member of your bar. A young lawyer has more energy, more enthusiasm, and more time to devote to his case. He can exhibit sincerity equal to that of any other person, no matter how long a member of the bar. - - Integrity is the greatest qualification which any attorney can have, and in this you can equal any other. - - Application of these virtues and characteristics oftentimes overcomes the experience of older practitioners, and results in surprising the adversary, and in giving to a beginner much good publicity in the community.

You are now becoming a part of the machinery for the administration of justice in this State. It is the duty of all of us who perform public services, as part of that machinery, to give some time and thought and effort to its improvement. We of the bench and bar believe in stare decisis. The fact that changes in law and in government in this nation come slowly has been one of the stabilizing factors which has made this country great, and has resulted in our nation being the finest on the face of the globe today. At the law, there are two great dangers. First, that there might not be any change at all, and second, that changes might come too rapidly. But it is the middle-of-the-road line of thought, in between, which appreciates the fact that the law, and the administration of justice, is a slowly growing instrumentality for the adjustment of rights of a civilized people. So long as we have inevitable changes in our social, economic and political lives, the demand for changes in law, and in the administration of justice by which we resolve our conflicts in court, is equally inevitable.

In your lifetime you have probably observed more change in standards of living, and ways of life, than any other graduating class heretofore has ever experienced. Even as the super-

market has replaced the corner grocery store, the tractor has replaced the mule, the wonder drugs have replaced the dough pill, so the administration of justice and the procedures in court must likewise advance.

There are many things which the bench and bar are doing today principally because it was done that way in England two or three centuries ago, which should be changed. Change must come largely as a result of the energy, enthusiasm and thought on the part of the younger practitioners. Oftentimes, the senior practitioners are completely satisfied with customs and procedures, and assume a sort of attitude to the effect that, "I don't want to be bothered with any change."

I think, for example, of the old practice of placing a prisoner in the dock in order to arraign him. By custom in this State, we place one charged with the commission of a felony in the dock and have the clerk read the indictment to him. After he has indicated that he is not guilty, the clerk asks him, "How will you be tried" (just as though his answer would make any difference). And miraculously, all the defendants choose the same way for trial. Upon advice of counsel they say they will be tried "By God and my country." I am happy to observe that many of the newer courthouses are eliminating the dock altogether in spite of the fact that Circuit Court Rule number 35 states " . . . upon the trial of any person charged with an offense for which the law requires that he should be arraigned, the prisoner shall be placed in the dock."

Many of the forms for indictment in this State must have been brought over on the Mayflower, and no one has bothered to change them since. The defendant, standing there in the dock by his counsel, might hear an indictment which reads like this:

> The Grand Jury Presents:
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> That John Doe on the 27th day of October in the year of our Lord one thousand nine hundred and fifty-seven with force and arms, at Richland County Court House in the County of Richland and State of South Carolina, in and upon one Richard Roe feloniously, wilfully and of his malice aforethought, did make an assault, and that the said John Doe him the said Richard Roe then and there feloniously, wilfully and of his malice aforethought

with one Pistol did shoot and wound; giving to the said Richard Roe thereby and upon the body of him the said Richard Roe one mortal wound; of which said mortal wound the said Richard Roe died.

And so the Jurors aforesaid, upon their oath aforesaid, do say that the said John Doe him the said Richard Roe then and there, in the manner and by the means aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder against the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

It was customary hundreds of years ago to allege that the crime occurred "with force and arms at the courthouse", and accordingly, to this day our indictments read the same way. I was amused to learn recently that a jury found a defendant "not guilty" because the solicitor had not proved that the incident took place at the courthouse as the indictment alleged.

The Judicial Council, recently created by the legislature, is charged generally with the duty of studying the administration of justice and its improvement in this State; I am happy to be able to report to you that the council is making much progress which should prove very beneficial to you in your practice. Until recently, no real serious study had been given to the rules of civil procedure in this State since the adoption of the Code for Practice 88 years ago. Our study revealed that the rules controlling the procedure on the civil side alone, involved more than 70 court rules and more than 300 code sections, found in four volumes of the Code and eight titles. The council has proposed to the legislature the adoption of a completely new set of rules, numbering 85, patterned largely after the Federal civil rules of procedure, which were promulgated in 1938. Some fifteen or twenty states have already taken similar steps, and if the legislature accepts the recommendation of the council, the rules of both the State and the Federal courts will be basically the same, and will be printed and distributed in a convenient usable pamphlet.

In that regard, I could give to you no better suggestion than that you master the rules of civil procedure. The rules should never be considered an end within themselves, but the use of them is the instrument by which one can accomplish the ulti-

mate goal, which is a just determination of the case. One would not dare attempt to engage in a game of football or basketball or tennis, without knowing the rules of the game. It is similarly important that you know the rules of the court if you expect to compete with your adversary and represent your client well.

It is with much joy that I welcome each of you to the law.

To each of you, I extend a hearty congratulation upon your graduation today. You have proven your qualifications and ability by completing the course while others beginning with you have not stood the rigid tests of the school and have abandoned the pursuit of the law. You are perhaps equipped to perform more public services than the graduates of any other professional school. A complex society needs these services more than ever before.

May God bless each of you in your new undertaking.