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LAW AND THE LAYMAN*

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There should be two cardinal objectives of courts in a democracy. One is obvious: courts must accomplish justice. The second, often neglected, is: courts must convince those whom they serve that justice is being accomplished.

From the earliest times, it has been the practice of judges and supporting personnel in the court systems to run the courts without guidance or interference from any other source. Until recent years even the lawyer, theoretically the assistant to the judge, had no part in court management. He assisted only in trials of cases. If the judge presided over the court with fair knowledge of fundamentals of the law, if he had a discerning mind and power of analysis so he might reach the controlling issues of cases, if he kept himself apprised of decisions of higher courts, and if he was honest, he met in full measure what was required of him. The business of the courts might receive scant attention. The judge might, and indeed did, live as a recluse, apart from lawyers, jurors, witnesses, litigants, and others having relations with the courts.

Seventeen years ago, as President of the District of Columbia Bar Association, I made efforts to try to penetrate the judicial veil. I met with frustration. As a practitioner of twenty-five years, I had heard many complaints about the courts. While the judges were honorable, and for the most part were able, business was not being expedited. Litigants complained they were not being given considerate treatment; that costs of litigation had become beyond the reach of many. Jurors insisted their time was being wasted, that they were not being instructed by judges so they were able to know what the judge was saying. Witnesses complained they were being harassed, and had been kept long hours waiting to testify as to undisputed facts. Some had vowed they would never voluntarily serve as witnesses

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again. Auditing accounts of fiduciaries in the courts was being delayed. The courts were requiring investments in United States, state, and municipal bonds, with resulting inadequate income to support the beneficiaries. We had noted malcontent. We had seen ever growing numbers of administrative agencies which were divesting the courts of some of the most important litigation in the land mushrooming in the capital of our nation. Some lawyers felt strongly that both judge and lawyer should bestir themselves in joint efforts to bring about improvements. Therefore, as President of the District of Columbia Bar Association, I ventured to appoint committees of lawyers, members of which were selected with infinite care, to confer with judges of all courts and with the heads of all of the court agencies. Imagine my dismay when one committee chairman after another—with few exceptions—brought back word the judges and the chiefs of the agencies had stated they had nothing to discuss. Some had stated the lawyers were meddling in their affairs; they knew their business and needed no help. It was obvious there was an impenetrable barrier between judge and lawyer. This attitude was not confined to the District of Columbia. Many times since, I have had leaders of the bar in other parts of the nation confide in me similar reproaches to their proposals.

Happily there came a time when a different attitude was manifested. It chanced to occur about the time I emerged from the role of a practicing lawyer to don the robe of a member of the judiciary. In 1938, as you will recall, uniform rules of civil procedure were adopted in United States courts. For twenty-five years, efforts by leading lawyers to accomplish this had proved to be fruitless. In 1938, the Congress of the United States established an Administrative Office of the United States Courts, and made provision that each federal court in the nation must have a judicial conference at least once a year. To these conferences lawyers must be invited and given opportunity to participate. I shall not attempt to recount the many improvements that have ensued in the federal courts. But they have been outstanding.

About this time there also came about decided progress in state courts. In 1937, under the leadership of Arthur T. Vanderbilt, then President of the American Bar Association and now Chief Justice of the Supreme Court of New Jersey, judges, lawyers, and educators worked on an extensive program of mailing suggestions throughout the United States as to what were the most greatly needed improvements in the administration of justice. After selection of the needs, extensive studies and research were made as to the most effective methods of accomplishing the desired results. Recommendations were submitted to and approved by the House of Delegates of the American

Bar Association in 1938.¹ Special committees of judges and lawyers were set up by the American Bar Association in each state of the union. From that date on, they have been engaged in intensive programs of improving the administration of justice—judge and lawyer working together.

But with the accomplishment of cooperation between judge and lawyer, the participation of perhaps the most important figure in the court system has been neglected. The drama in the court setting revolves about the layman. It is he whose controversy or whose business is being considered and decided by the courts. His life sometimes is at stake; often his liberty; often his economic status; day by day affairs of his home. Inefficiencies, inadequacies, delays, and lack of business methods in the courts may be quite as disastrous to him as poor decisions. Is it not reasonable to give him opportunity to speak his views to the judge, the lawyer, and the court attaché who guide his destiny?

The juror is an important figure in the courts. In some instances, his decisions are of equal importance to those of the judge. We hear many laments of counsel and litigant that all too often the well-qualified juror will be excused from serving because he brings forward good reasons why he should not be taken from his business. But it is a known fact that many citizens have found their duties as jurors to be harassing and annoying by reason of bad conditions in the courts. They have not been comfortably housed; they have had no opportunity to employ their long waiting hours between trials; some have been miserably underpaid and the "white collar men" have been caused to suffer financial hardships they can ill afford. In many instances jurors have been poorly instructed. Sometimes they have been projected into jury service with no advance instruction at all. In such cases, unless they have had previous experience, they are completely confused. Where is the forum in which these troubles may be aired? And where is the forum in which judge and lawyer may build up the public spirit which will induce good and true peers to serve as jurors? Is it not reasonable to bring judges, lawyers, and leading laymen from all walks of life into conferences on these subjects?

The witness in the court system is another layman who has his troubles. He has been known to be pushed around in the courthouse. He has had to be in attendance long hours with no opportunity to employ his time. On occasion, it has been rumored that lawyers have given him a hard time when testifying. Why should he volunteer to testify, even though he knows important facts? During my law practice, I had no end of trouble getting witnesses. They feared the court,

1. See VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION* 513 (1949).

the judge, and the lawyer. They despised the experience through which they must go. Is not there some way to correct this? Can we afford to have eye witnesses whose testimony may be essential to justice continually seek to evade testifying for want of concerted efforts to improve the situation of witnesses? What better place than meetings between judges, lawyers, laymen, and laywomen of high estate?

Courts conduct big business. We administer estates in receivership, bankruptcy, estates of decedents, estates of incompetents. Accounts are stated and audited. Investments are supervised. Fees, small and large, are determined. The performance of these duties requires not only business ability, but dispatch. It also requires the maintenance of correct records. We cannot afford to let business methods in courts become obsolete. We cannot afford to have the supporting personnel of courts inadequate either in numbers or in ability. What better place to turn for good business practice than to leading business men? Is it not certain that if we judges and lawyers called into our courts the services of bankers, businessmen, and perhaps industrialists, we would be able to transform completely business methods of courts to a point of outstanding efficiency?

Doctors, psychiatrists, alienists, and others of healing professions have much business in the courts. It has been rumored that doctors are not overly fond of lawyers and that occasionally a lawyer finds fault with those of the medical profession. Yet each profession is essential to promoting justice. There are those of each profession who are men of the highest character and by nature friendly. Where may their differences or fancied hostilities better be resolved than in wholesome conferences between judges, lawyers, and laymen?

We of the bench know the courts touch every phase of life. Business, professional, and human problems of every conceivable kind will be brought before judges for decision. This of course makes it important that a judge be a versatile person; he should be learned, but more than learned, he should be wise and understanding. He should know human traits. He should know business. He should be kept advised of trends in society. How may he be thus equipped? Or if by nature he happens to be the rare person who is already so equipped, how may he maintain his versatility if he lives in a remote spot apart from those whom he is called to serve day by day? We gain learning by studies. But we gain wisdom and understanding by the human touch.

When judicial conferences are held, when judges and lawyers meet to discuss affairs of laymen in the courts, laymen and laywomen should be part of the conferences. They should serve on committees with judges and lawyers to improve court procedures and administra-

tion. This participation by well-chosen representatives of every walk of life will substantially promote the accomplishment of justice.

To some, this proposal will seem to be idealistic and impractical. Law is full of technicalities and technical language. How can the layman assist? There are two answers to this question. One is that for every technical problem that arises in the courts there are many thousands of human and business problems with which the layman is fully familiar. The second answer is that the proposal has passed the experimental stage and has met with astonishing success in a thorough tryout. I refer to what we have been able to accomplish in the District of Columbia. Ten years ago, a reorganization was effected of a committee of the American Bar Association whose program was to improve the administration of justice. This committee was, and now is, made up of judges, lawyers, laymen, and laywomen. Judges on the committee are from the United States Circuit Court of Appeals, the United States District Court, the Municipal Court of Appeals, the Municipal Court, and the Juvenile Court. The lawyers on the committee consist of the President of the District of Columbia Bar Association, Presidents of the Women's Bar Association, the Federal Bar Association, and the Junior Section, and other leading lawyer representatives, carefully chosen from different fields of practice. The laymen and laywomen have been chosen from every part of business, professional, and social life. We have three editors and one publisher of newspapers, every major newspaper being represented. We have a bank president, the president of an insurance company, the President of the Washington Board of Trade, representatives of utilities, labor organizations, penal institutions, public and private schools and universities, and doctors, dentists, and psychiatrists. Men and women of all races. If we have overlooked any group, we seek to obtain an outstanding person from that group. The committee meets at the call of the chairman about once every six or eight weeks. At these meetings committees usually report recommendations as to a project and often a plan of action is outlined. We usually try to concentrate on a few programs at a time. The attendance is remarkable. The interest is pointed. Newspaper reporters never fail to cover the meetings.

Each year, when the Judicial Conference for the District of Columbia is held, all members of this committee are invited to attend. Almost every year at least one layman is assigned a subject for discussion before the Conference. Thus the layman is an actual participant with the judge and lawyer in court procedures and management. His voice is heard and it is potent.

For more than ten years our United States District Court for the

District of Columbia endured shocking conditions in an old court structure. Judges were scattered in three buildings. Agencies of the court were scattered in ten different buildings. The confusion and inconvenience to judges, lawyers, jurors, witnesses, litigants, not to speak of dangers of escape of those charged with crime, was serious in the extreme. Judges, lawyers, and bar association representatives made efforts to get a new court house. But notwithstanding efforts repeated year by year, no results were obtained. We were tempted once more to protest our voteless city. Then came the time when the laymen were brought into the efforts.

One member of our committee, a bank president, a figure outstanding not only in the District of Columbia but also in the nation, spoke vehemently before the Judicial Conference on the need of a new court house for the District. A member of Congress on the Public Buildings Committee was persuaded to speak and did so most effectively. The newspaper members of our committee gave full news coverage to these forceful addresses. The newspapers went further. They had photographs made and published showing some of the appalling conditions. They wrote editorials. Reporters in Congress were alerted and those reporters spoke time and again to congressmen and senators as to the needs. Individual laymen talked to individual congressmen, both in the House and the Senate. Time and again the program stalled, but after relentless efforts we obtained a magnificent new courthouse at a cost of fifteen million dollars. An economical Republican Congress gave it to us when every leader in Congress, at one time or another, had said there was no possible chance for action at that time. One congressman told me he had never, in all his years in Congress, seen an enterprise have so many effective friends. Today this fine structure serves the cause of justice far more effectively than was possible before its authorization. It is no exaggeration to say that, without the help of the laymen on our committee, this building would be no more than a dream.

The next striking assistance of laity came when the architect was planning the building. We appointed, from our committee, a group of leaders in business to make suggestions to the architect. Our jurors' lounge, sleeping quarters for jurors, our witnesses' lounge, and conference rooms for litigants have been photographed and have been enthusiastically written about in news articles and magazines, both locally and nationally. I must tell you of one feature of our jurors' lounge. It not only is beautiful and commodious, but it has available private office rooms where jurors may work, if they wish, during idling hours. Lately, we have provided parking spaces for jurors; the Board of Trade has made a gift of a television set for the jurors' lounge. Many jurors have expressed appreciation of this treatment.

Without the study and planning of the laymen of our committee, this new court house would be without these striking conveniences.

Another project initiated and carried into effect by laymen of our committee has involved the building of interest in jury service. I have mentioned the complaints of many lawyers and litigants that our courts have not been getting representative jurors; that often the middle-class person, and possibly the person who holds a high position, will beg to be excused for business reasons or because of the loss of income caused by jury service. I have heard lawyers and occasionally judges plaintively refer to panels of jurors as being made up principally of morons. While we must allow for exaggerations of colorful men of the law, we must admit that many of our best citizens do bypass jury service. Our committee, of course, has been mindful of the fine lectures on civic duty customarily given by judges to those called for jury service, and it also has been mindful that often the judge will firmly deny requests to be excused. But these measures have not proved to be fully successful. Usually only the fingers of one hand, possibly only one finger, need be used to count the leading persons in a community who are on a jury. A subcommittee of laymen and lawyers gave the matter study and came up with a recommendation that a solution of this problem might be found through education. This might awaken interest in jury service. It was proposed by these laymen that there be introduced in the high grades of the public school system a course supplementing the teaching of the history of the development of jury service by teaching what constitutes jury service. Judges, lawyers, and educators collaborated with the public school system in preparing a text on this subject. Within the past year this text has been adopted, and the course is now being taught in the public schools. Classes of students have been brought to our court to observe both the selection and instruction of jurors as well as the trial of cases. The interest in this program has been intense. No wise mind needs to be reminded that improvement in any project will be most effectively obtained through approach to the youths who soon will be called to take over service in any field. We have no doubt that in a few years the requests to be excused from jury service will grow less and less. In any event, the youths of the District of Columbia are being well-instructed as to jury service before they are called to perform this vitally important work of obtaining justice. Without the laymen of our committee, this fine service would never have been rendered.

Laymen have been of tremendous assistance to the courts in the matter of preparing instructions to jurors as to the nature of their duties. For some years, various jurors' manuals have been written by learned judges for distribution to jurors. But all too often the texts have been complex, lengthy, tiresome, and not readily understood. The

judges and lawyers on our committee in the District of Columbia worked for many weeks preparing a text for a manual which would be clear, concise, and readily understood by every type of juror. Before the draft was adopted, it was circulated among all laymen on our committee and they, in turn, were asked to distribute the text to every type of individual—taxicab drivers, servants, elevator operators, workmen in all fields, as well as those of higher education and experience—for the purpose of having them state whether any part of the text was not clear. The responses were numerous, and many changes were made in the text to promote clarity and brevity. The text is attractively presented in a booklet with a few photographs. The reading time of the text is about four minutes. Jurors eagerly seek to obtain these booklets. There is no question but that laymen made a valuable contribution to this production by telling us of the legal profession how to write plainly and understandingly.

I might mention a few of the many other projects that have been accomplished by help of the laymen in the District of Columbia. A committee of distinguished laymen worked out an elaborate and brilliantly conceived plan for court-approved investments of fiduciaries to take the place of long-outmoded rules requiring investments in government bonds which did not yield adequate income. The plan was adopted by our court and has met with widespread approval—so much so that since its adoption a number of other jurisdictions which had hesitated to adopt the “prudent man” investment rule have copied our plan. Through help of the laymen, we have made magnificent progress in the District of Columbia in improving conditions in traffic courts. It was due to the laymen that it was made possible to have the Model Youth Correction Act made applicable to the District of Columbia. Laymen have assisted in laying plans, extensive in nature, for rehabilitation of prisoners convicted of crime. We have had a group of laymen extensively study the supporting personnel requirements of our court, the manner of handling business in the courts, and the physical equipment or lack of equipment to carry on our business effectively. Six business leaders, at my request, made a two-week study of the business conditions in our court. They performed a remarkable job after long and constant study. Their efforts were instrumental in our being able to get increased appropriations from Congress for our court. Whenever our judges, lawyers, and laymen have worked together helpfully and harmoniously, the results have been gratifying; and many skeptics who originally thought the whole program was fanciful have become acknowledged converts.

In the District of Columbia the laymen know they have a part in the court program. They are proud of it. No one can deny that they have been responsible to a major extent in improving court conditions.

In the beginning of this discussion, I suggested that one of the cardinal objectives of courts is to convince those whom they serve that justice is being accomplished. This is another way of saying that we of the courts must have good public relations.

Many organizations today give much thought and expend large sums of money in order to build and to maintain good public relations. This is regarded as important, if not essential, to the success of the enterprise. The day of the magnate who once said, "The public be damned," has long since passed. Our nation has found it of importance to the maintenance of our democratic form of government to propagandize its virtues through "The Voice of America." For years it has been the practice of the President of the United States to address Congress on the state of the union. In this address, he keeps the public apprised of what his administration has accomplished and tells of its future plans. One of the finest accomplishments of J. Edgar Hoover's Federal Bureau of Investigation has been its public relations. The Bureau not only does a magnificent job in detecting and suppressing crime; its good work is made known by press, radio, motion pictures, and other means of communication.

The public relations of our courts sometimes have been good, but all too often they have been bad. We have read news and magazine articles criticizing the courts. We have looked at many motion pictures which have depicted silly and sometimes dishonest court proceedings. Some criticisms have been justified, but many have not. Courts have suffered bitter censure for unpopular positions they have been compelled to take, positions which were absolutely sound in law and were necessary for the welfare of individual and nation. When judges have been subjected to the sting of false and misleading statements, it is shocking to them as individuals. This in itself may not be so important, but it is important in the extreme when the prestige of their courts is hurt. Let me make clear we have no fault with just criticisms. Citizens have the right to criticize. Indeed, one object of bringing citizens to confer with lawyers and judges is to get constructive criticism. But we like criticisms to be just and to be based on facts.

I have been amazed on two occasions lately to have prominent men tell me they judge conditions in a community by what the taxicab driver or the barber tells them. One of these prominent men told me he was certain there was serious juvenile delinquency in Washington because a taxicab driver had told him there was. The other told me that judges should do far more work; a taxi driver had reminded him the job of a judge was a cinch, since he worked from ten until three and did practically nothing on week-ends. You and I know the average person, taxicab driver, barber, or lady hairdresser, often will draw his conclusions from one or more distorted pieces of information. When

has a judge had the opportunity to point out the strong points of the courts, the long, tedious hours of research, study, and meditation which daily are spent out of court sessions in trying to do justice in vexatious cases? I had the opportunity on one occasion and I embraced it. I was testifying before a committee in Congress in support of an appeal for three new judges in our court. I knew full well the loose talk about the few hours judges spent on the bench (we usually hold court from ten until four) and I knew some malicious persons had talked about idling hours. I also knew the frightful pressures many of us had undergone. So I assembled and took before the committee in Congress part of the material a judge should read. I produced from a huge satchel the opinions of the Supreme Court of the United States for one year; the opinions of our Circuit Court of Appeals for the same period; the written opinions of our own court; the voluminous reports and communications sent us the past year by our Court Administrator; the American Bar Association Journals; our District of Columbia Bar Association Journals; the Federal Bar Association Journals. I described these as part of the judges' homework. The news photographers flocked to the Capitol; the chairman of the committee gave permission to take pictures. I got my three new judges. But, equally as important, I received many comments during the ensuing weeks as to what stupendous reading and studying judges must do.

Judges have often gone through blood, sweat, and tears to produce a decision of major importance; the product has been a work of art, but it has been obscured and lost within multitudinous other decisions. But let a judge make a foolish, unguarded remark and he is likely to find widespread and hurtful comment by the press. This is not altogether the fault of the press; it is the failure of good public relations.

I can realize how some of my conservative friends of the bench and the bar will throw up their hands in horror at my suggestion that the courts must have better public relations. But though I walk where angels fear to tread, I do so advisedly. Never at any stage in the history of the law has the lawyer been more conscious of the importance of good public relations than today. Of course, I do not advocate that a judge or a lawyer should become a publicity seeker; or that in any instance he should seek to have praises heaped on himself. Such a judge or a lawyer is as distasteful to me as he is to any person. I abhor a minister or a priest who propagandizes himself, but I am devoted to one who teaches the words of God diligently, talks of God, when he sitteth in his house, when he walketh by the way, when he lieth down; and when he riseth up.

: Some years ago, I awoke one morning to find emblazoned across the front page of a leading newspaper the statement that a congressman

had lashed out against what he called light sentences imposed by judges of our court, saying they were responsible for frightful crime conditions in our city. On investigating the source of his information, I ascertained the representative of a government agency had testified that our sentences were light in comparison to those imposed in other jurisdictions. What he had said was taken as true, whereas he had carelessly or recklessly testified untruthfully. In fact, our sentences demonstrably had been considerably higher than those imposed in other jurisdictions. What the witness had done had been to use the minimum terms our judges had been forced by law to fix regarding eligibility for parole to compare with the maximum sentences imposed in other jurisdictions; he stupidly, negligently, or dishonestly had not used for comparison any of the actual sentences we had imposed. The harm had been done. It was not good news to point out this foolish error, so the correcting article was obscured in remote pages of the press.

Another utterly baseless representation along the same lines was made in Congress recently. In that instance, however, press representatives, whose bosses had sat in conference with our judges time and again in our American Bar Association program, had come to know of the conscientious efforts to carry on the courts and withheld any publication until they checked the facts with me. The facts were favorable to our court, and this time the prominent news article pointed them out, rather than the untrue facts. The reputation of our court was saved.

I can tell you of an instance when a president of a bank and an insurance executive who had attended our meetings of judges, lawyers, and laymen told me they were pleased beyond words to find the tremendous savings of time and costs which had been brought about by efficient pre-trial procedure. Time and time again within the past eight years we have had recognition of progressive steps taken in the courts of our city by news articles, editorials, and citizens' groups. I had not fully appreciated the significance of this until a high official told me his department had noted with intense interest the excellent program of bringing about good will toward the courts in the District of Columbia. Shortly after this, I had a New York editor tell me that our court was the talk of news editors in New York City because of the promptness in bringing to trial prominent criminal cases arising in the courts of the District of Columbia. We had worked against terrific odds to establish a new method of assigning criminal cases, but at length it had proved highly successful. The information came to the New York editor through the laymen on our committee of judges, lawyers, and laymen in the District of Columbia.

In the eight years our group has met together in the District of

Columbia, we have built up splendid relations between courts and the press; between judges and lawyers on the one hand and citizens on the other. To be sure, we meet with criticisms; some of them are constructive and are helpful; others are not. In respect of the latter, the judge and the lawyer have their forum to explain their invalidity and to hold public confidence. There is no better opportunity to build good public relations between courts and citizens than in programs of cooperation between judges, lawyers, and citizens to improve the judicial machinery. I can assure you that when bankers, newsmen, business magnates, doctors, utilities executives, educators, and humanitarians see busy judges and lawyers giving their time, their extra efforts, and their study in cooperating to develop improvements in court procedures, confidence in the courts inevitably will increase.

In organizing any program of cooperation with laymen, it is essential that the judge take the initiative. The layman will not seek to be let into judicial councils. When invited to speak at a judicial conference of United States judges one layman said, "It never occurred to me that any one of you would be interested in hearing what I would have to say. I had come to believe, I'm afraid, that your world was yours and mine was mine, and never the twain could meet." Another guest layman stated he had adopted as a cardinal precept of his conduct the avoidance of all contact with courts and those judges who "adorn the pedestals contained within their noble architecture." A woman editor of a national magazine warned me that if our proposal was to succeed, we must inspire leading jurists to issue invitations to those outside the practice of law. When invitations of the judge have been extended, the layman has responded. I cannot recall any single instance in which a layman or laywoman has failed to respond.

On one occasion an inspired king, when asked by his God what it was he most desired, replied, "an understanding heart" to judge his people. This pleased his God and he was given not only the wisdom of an understanding heart, but in addition, wealth, power, and glory. It may be that God has favored some judges by natural endowment with wisdom and understanding. But there are few of us who have achieved the greatest wisdom unless we have walked with kings without losing the common touch. We are better judges because we have come to know human beings; because we have shared, as well as solved, their problems; we have cleared their misunderstandings. When judges keep themselves in line with the progress of business, science, and professions other than their own, when they feel the heart-throb of the litigant and are conscious of his problems, they will not lose the confidence of their fellow men. When judges, lawyers, and laymen reason together and work together in a common enterprise to build the structure of justice, democracies inevitably will thrive and

their courts will endure in the affection and esteem of those whom they are charged to serve.

My appeal to the progressive judges of your state is that you will call to your service, in helping solve the formidable problems that arise in the courts, men and women from every walk of life, benefiting at once by their assistance and at the same time by building their faith and confidence in you and in the great cause of justice which it has fallen to your lot and to mine to serve.