



ADDRESS delivered by SIR RAYMOND EVERSLED, Master

1 of the Rolls, to the new members of the Bar and their
2 guests at Convocation for Call to the Bar, in Osgoode
3 Hall, Toronto, on Friday, September 14, 1951.

4
5 SIR RAYMOND EVERSLED: Mr. Treasurer, Benchers of
6 the Law Society of Upper Canada, and newly-called members
7 of the Bar of Ontario, I feel somewhat as though I had
8 stepped down from an old painting that came from the
9 Old Country, and I daresay you sympathize with me. But
10 in spite of these marks of archaism -- I refer to my
11 raiment -- I hope that I may be able to give you the
12 benefit of such experience as I have derived, both as
13 a member of the Bar and as a judge, from more than a
14 quarter of a century of membership in the profession of
15 the law; and I believe it to be a great profession.

16 First let me add, to those of the Treasurer, my
17 own most sincere congratulations and good wishes to
18 each and every one of you. My first message to you
19 is that I hope that you will be in all respects happy
20 in your calling; and that, I assure you, is no mere
21 perfunctory observation. You live only one life; at
22 least, there is no reliable evidence to the contrary;
23 and it will therefore be a poor thing for you if you
24 do not find happiness in the profession you have chosen.
25 More than that, as was said by Emerson, no success is
26 possible without enthusiasm. For that reason I am
27 sure that unless you are happy in the work you do, you
28 will not give to yourself or to others the satisfaction
29 which you should give.

30



1 Let me tell you not to be unduly oppressed at
2 any time by what may be said to be the cynical view
3 of our profession. There will be many who will say
4 that a lawyer is but a parasite; and if they have read
5 even small parts of the works of Shakespeare and Dickens,
6 they will no doubt add to what they themselves say
7 pungent quotations therefrom. A less cynical view
8 is -- and you may have heard this -- that the function
9 of a lawyer is to protect people who have been persuaded,
10 by other people whom they do not know, to enter into
11 contracts, which they do not understand, to buy goods
12 which they do not want, with money that they have not
13 got. You may, on some occasion, find that some such
14 experience comes your way; but -- and I use the
15 language of Sir Richard Livingston -- though the evil
16 that society owes to lawyers is great, still the legal
17 profession is a civilizing agency and represents at
18 least the triumph of reason and education over brute
19 force.

20 In truth, in these somewhat anxious days, I think
21 you can and should assume that you have an important
22 and highly responsible part to play. It is all very
23 well to suggest that the law is highly artificial and
24 complex, and that we should all be much better off if
25 juries of our fellow beings were able to say on a
26 given occasion: A was right and B was wrong. But any
27 such system is, in truth, a return to palm-tree justice
28 and the methods of barbarism. In a society which is
29 complex, it is unavoidable that the law also should
30 be complex.



1 The value of the law is in its impartiality and
2 in its certainty. It provides, or it should do so,
3 that the consequences of a particular activity will be
4 certain and foreseeable. That fact requires that you,
5 as members of the profession, should be partakers in
6 the administration of the known body of doctrine. If
7 you do that job properly, you will find that you are
8 a part of a great profession which in truth provides
9 for society its stability and coherence. Let it
10 therefore be your aim to do so.

11 In order that you may achieve that end, it is
12 quite plain that you must retain the confidence of the
13 rest of humanity. In order to do that, it is right
14 that you should avoid allowing the law to become the
15 great mystic. I am quite sure that you will also find
16 that, complex though some of its rules and principles
17 may appear to be, they are in truth well established on
18 the basis of commonsense and on what society, for century
19 after century, has regarded as the just standard. Further-
20 more, in order that you may retain the confidence of
21 the rest of humanity, you must in no regard whatever
22 depart from your professional independence and integrity.
23 Remember always that you are members of a learned
24 profession and as such claim to grasp at, even if you
25 cannot reach, the integrity of scholarship; and there
26 is no higher integrity.

27 Having said that much, may I suggest to you six
28 short sentences of advice, to each of which I will venture
29 to add a word or two of explanation. From what I have
30 already said you will, I am sure, appreciate that my



1 first principle is that never in any circumstance whatever
2 must you deliberately deceive the court. Observance
3 of this principle is your first duty not only to your-
4 selves and to your consciences but also to your class and
5 to the whole profession of which you have now become
6 members. I need hardly add that to deceive the court
7 is a futile thing for one to do in any event. The man
8 at the Bar who is known to be likely to deceive the
9 court is regarded with suspicion by the court; and that
10 state of affairs is good neither for the man nor for
11 his clients. But leaving aside that material considera-
12 tion, I put it to you that the most fundamental duty of
13 all which you owe to your profession and to yourselves
14 is that you should never deliberately deceive the court.
15 Hence that is my first point.

16 My second point is that, subject to the prior
17 consideration which I have just mentioned, your whole
18 duty is to fight for your clients to the utmost of your
19 ability. No personal consideration, no offer of a more
20 highly paid brief, no matter of convenience, no
21 consideration of feeling unwell, or no other consideration
22 whatever must stand in the way of your whole duty to
23 do your best for your clients.

24 Those are two quite obvious things, but there are
25 perhaps occasions when the obvious is worth stating.
26 At any rate, I have now stated them and you will, I hope,
27 forgive me if you regard them as platitudinous. Indeed,
28 you may perhaps think all my six points, of which
29 four now remain to be stated, to be somewhat of that
30 character.

My next point is, on the face of it, perhaps



1 the most obvious of them all. It consists of the two
2 words: Speak up. It is a most remarkable thing that
3 there are many who appear not to appreciate the fact
4 that the best argument ever thought out is quite futile
5 if nobody at all can hear it. There will no doubt be
6 times when you will feel some irritation at the behaviour
7 of the judge. You will regard him as obtuse, impatient,
8 deaf, old, and otherwise unfitted for the job. It is
9 possible, though not certain, that you will be right.
10 But you must remember that your remedy is the higher
11 court. Your duty is to win the case for your client. In
12 order to do that, it is really most important to note
13 whether the judge hears what you are saying.

14 Most judges, however decrepit they may be, are
15 still capable of giving some sort of sign that they
16 cannot hear what you are saying. I think most judges
17 are kindly men who rather dislike having to say in open
18 court: "Mr. so and so, I am sorry but I cannot hear what
19 you are saying." Hence they are inclined to give well-
20 known signs to indicate that they are not hearing.
21 I accordingly suggest that you watch the judge because,
22 for better or for worse, he is going to decide the case.
23 For that reason keep in his good books, if you can. You
24 will succeed in doing so in direct proportion to the
25 extent to which you make yourself audible.

26 Do forgive me for having mentioned that matter.
27 I am now a judge of seven years' standing; and it is
28 indeed astonishing to me to note how apparently lacking
29 in sensitiveness some members of the Bar can be: for
30 it is lack of sensitiveness which allows a man to address



any person or group of persons without himself being
1 aware of whether he or they can hear him. Thus my
2 third point is: Speak up.

3 My fourth point is like unto the third in that
4 it also consists of two words: Stand up. You may perhaps
5 think this is a foible of my own; but I may tell you that
6 I have consulted my brethren on the Bench about the
7 matter. I think that all judges would agree that the
8 counsel who adopts a sloppy attitude -- one who, if you
9 like, puts his hands in his trousers' pockets, his feet
10 on the desk, and so on -- is far less attractive to
11 listen to than one who stands upright. I think there
12 is good sense in this point, for those who are far better
13 qualified than am I to speak on such matters have told
14 me -- and I think they would tell you the same -- that
15 if you stand upright, in what used to be called a
16 soldier-like position, your whole mind and all your
17 physical qualities will be at their best and not at
18 their worst.

19 A man who looks tidy and stands tidily probably
20 has a tidy mind and a tidy argument. Again, it is
21 perhaps a matter of doing what will please the judge.
22 But again, that is what you are there to do. However
23 much you may think you are superior to the judge,
24 intellectually or otherwise, that consideration will be
25 no satisfaction whatever to your client if he loses
26 the case.

27 So much for the fourth point. My fifth point I
28 will perhaps expand slightly, though you may think that
29 the title of it is small recommendation for any
30 expansion. The title is: Be brief. Again I fear



1 I am repeating, but let me say that it is no good to
2 go on and on just for the sake of doing so. If you
3 cannot make your argument good by putting it properly,
4 it is on the whole unlikely that you will make it good
5 by a process of attrition. In that respect I believe
6 that advocacy differs from the science of advertising;
7 for I am told that if you tell people often enough that
8 they ought to buy somebody's pills or somebody's salts
9 they will ultimately be persuaded that that is the thing
10 to do. But judges, by and large, are not quite so
11 susceptible.

12 It may, of course, be most desirable to put your
13 point more than once; in that event, it will be all the
14 better if, in putting it the second time, you can make
15 the approach by a slightly different route from that
16 taken when putting it the first time. But repetition
17 more than once ceases to be prudent and is apt to be
18 regarded as insulting. Therefore try always to
19 formulate your argument precisely.

20 Nothing is more likely to lead to prolixity than
21 a failure to have formulated in your own mind the point
22 you want to make. I have often had the thought -- and
23 I give it to you for what it is worth -- that the time
24 is well spent in writing down your opening and closing
25 observations in a speech and in studying each word in
26 the sentences. If you can start your speech with a
27 clear and attractive presentation of the case, the effect
28 will last throughout the argument; unless, of course,
29 you go on for so long that the beginning is forgotten.
30 I remember a man who, after repeating an argument for
the n'th time, eventually observed that perhaps ~~their~~



1 Their Lordships would remember that he had put the
2 point before. To this observation the president replied:
3 "Yes, we remember it quite well; but it was so many days
4 ago we think you may have forgotten." In all serious-
5 ness, however, may I say to you that I am sure you will
6 find that the writing out of the first and the last
7 few sentences of your speech, and a careful study of
8 them, will produce such good results as to be well
9 worth the trouble taken. How many times have you heard
10 people who are never quite able to sit down because,
11 through having failed to formulate their sentences
12 precisely, they are never satisfied with those they have
13 just spoken and must therefore put the matter all over
14 again in order to pick up something they have forgotten.

15 What I have said as to speeches is equally true
16 as to examinations and cross-examinations. Let me say
17 just a word about cross-examination. To the layman,
18 of course, that has the greatest and the most histrionic
19 appeal. Nothing is so tremendous in its effect or so
20 attractive to the hearer as a really brilliant
21 cross-examination. Brilliance in cross-examination
22 is a desirable objective, but it is not given to all
23 to be able to achieve it. Indeed it may be achieved
24 only by long years of experience. I cannot suggest
25 any particular method. Everyone's own individuality
26 will eventually emerge as he develops his style of
27 cross-examination. We cannot all be great cross-examin-
28 ers.

29 I might just tell you the old story -- you
30 probably have heard it -- about Sir Edward Carson; for



1 in England, as in Ontario, the name of Carson has been
2 the badge of great advocacy. When I began my career,
3 Edward Carson was the most formidable advocate of the
4 day. Of him it was said that he built around his
5 client a shield which it was impossible to penetrate.
6 This particular and notable cross-examination to which
7 I have reference consisted of two questions. The
8 witness had really nothing much to contribute, but
9 he was of a somewhat pontifical character and Carson
10 desired to prick the bubble. His first question was :
11 "Sir, are you a habitual drinker?" To this question
12 the witness, in great indignation, was foolish enough
13 to answer: "That, sir, is my business." Quick as a
14 flash Sir Edward said: "And have you any other business?"
15 (Laughter)

16 Not all of us can achieve that particular brevity
17 and style. I can say this, however, and it is relevant
18 to the heading under discussion. If carried on for a
19 long enough time, any cross-examination can utterly
20 destroy itself. I have heard people cross-examine a
21 witness on the other side for such a length of time that,
22 eventually, the witness has succeeded in bringing out
23 every single point that had been omitted in his
24 examination in chief and ~~that~~ mere wordiness has
25 destroyed any possible points which the cross-examiner
26 had gained. So, in cross-examining, always err on
27 the side of brevity. It is also not a bad rule never
28 to ask any question in cross-examination unless you know,
29 or have good reason to think you know, what the answer
30 to that question really is.

I would venture to recommend that you pay to



1 examination in chief more attention than is commonly
2 advised. That is your opportunity for doing your client
3 the greatest service that you possibly can do him. Do
4 not forget that the client is probably in a wholly
5 strange atmosphere, that he is nervous, and that he is
6 finding that questions are being put in language with
7 which he is quite unfamiliar. If his own counsel, looking
8 severely at him over the top of his spectacles, simply
9 puts a series of questions in stilted language, it is
10 quite likely that the witness will not do himself anything
11 like justice and that he will indeed get more and more
12 nervous and agitated as the examination proceeds. If
13 the worst comes to the worst, you can only hope that the
14 man on the other side will cross-examine him for such a
15 great length of time that he will do what you yourself
16 ought to have done.

17 Try always to remember that the witness is in an
18 unfamiliar situation. There are many people -- and this
19 is one of the justifications for your profession -- who,
20 great though their education may be and great though
21 their intelligence may be, are themselves quite inarticu-
22 late. It is your duty to try to let your witness tell
23 his story in a way which is natural to him. Take great
24 pains to do that; for if the witness gives a good
25 impression from the start, that is something which the
26 ordinary mortal judge will appreciate and it is something
27 which the other side will find it quite difficult to
28 overcome. Accordingly, as I say, take great trouble
29 with your examination in chief. Remember that you are
30 there to do your client justice and, if possible, to let



1 him do himself justice.

2 My final word of advice is: Argue and do not
3 quote. Sometimes there is a temptation to quote long
4 passages from judgments; but such quotations are really
5 somewhat disturbing to the judge. You may think that
6 I am here as a kind of protagonist of the society for
7 the protection of judges, but I am not, really. I am
8 merely telling you what I have already told you, namely
9 that your duty is to persuade the judge.

10 Judges must try to make an intelligible note of
11 what is said by counsel and to apprehend the point that
12 is being made. A good argument should stand up on its
13 own legs without the necessity for any references from
14 authorities. You do not need to cite decisions of the
15 House of Lords or of the Supreme Court of Canada in order
16 to make good the proposition that the night follows
17 the day, although you will probably find that many
18 judges, at some time or another in some of their judgments,
19 have so asserted.

20 Make your argument sound and satisfactory in
21 itself, and present it. If the judges are good ones --
22 as are all the judges in Ontario -- they will tell you
23 whether the proposition is one which, to their minds,
24 requires the support of authority, and you will be
25 prepared to deal with it. But let the argument speak
26 for itself and persuade of itself.

27 You will find that such a practice has this
28 great advantage. I know not to what extent in this
29 province the judges of the high court or of the supreme
30 court are apt to intervene in the course of counsel's



1 argument by the asking of questions, pertinent or
2 otherwise. Should you be asked questions, if your
3 argument has been thought out and if you are satisfied
4 that it is sound, you will find no difficulty in answer-
5 ing. But if, on the other hand, your argument consists
6 of a series of quotations, you will find that the effect
7 of questions is very seriously to put you off your stride.
8 That is another reason for doing what I suggest is
9 the obvious thing to do. Present your case as an
10 argument which will stand up and persuade of itself.

11 I think you will find that many judges will, in
12 the course of your argument, say to you: Then is your
13 point so and so? I have often done that myself. It is
14 a very good way of communication between the Bench and
15 the Bar. Many judges can never resist the temptation --
16 and I myself am guilty often enough -- of putting a
17 point to counsel in order to demolish the argument and to
18 show how much more intelligent are those on the Bench
19 than are those at the Bar. But on the whole, if you
20 put such a question, it is unlikely that counsel will
21 fall flat upon his face and say, "I never thought of
22 that before; of course that is the end of my case." On
23 the other hand, it will often be extremely useful, both
24 to the arguing counsel and to the Bench, if the question
25 is put: If I get your argument correctly, is it so
26 and so?

27 If you have not thought out the argument you may,
28 of course, find that question to be an exceedingly
29 dangerous one; you may feel embarrassed by it and you may
30 find difficulty in answering it at all; or what is worse,



1 you may give an answer which you think will please
2 the judge and find out, ten minutes afterwards, that
3 you have prejudiced yourself beyond all possible recovery
4 Because I regard this point to be of such great
5 importance, I repeat what I have said. Think out your
6 argument and present it as an argument standing up
7 of itself, having your authorities there to buttress
8 any point which may seem doubtful to the Bench or to you,
9 or as a piece of ammunition with which to demolish the
10 other side when their turn comes.

11 Those are my six suggestions. To recapitulate
12 them, they are as follows:

- 13 1. Never deceive the court.
- 14 2. Fight for your clients.
- 15 3. Speak up.
- 16 4. Stand up.
- 17 5. Be brief.
- 18 6. Argue; do not quote.

19 As I have already said, you will probably think
20 them all to be platitudinous; but forgive me if that
21 is so. My own experience has impressed upon my mind
22 more and more the value of these six quite simple
23 propositions.

24 Now, by way of conclusion, I return whence I
25 have strayed, to repeat to you my good wishes for a
26 happy and successful career and, if I can, to impress
27 upon you a realization of the great and responsible
28 work for the happiness of society which it will be in
29 your power to perform. As I have done on similar
30 occasions previously, I should like to give a



1 in my country. I refer to Erskine who defended
2 Tom Paine. It was murmured against Erskine that a
3 man of his position should not so demean himself as to
4 appear for a character so lacking in respectability.
5 To that challenge which, in his opinion, struck at the
6 very root of the independence of our profession, Erskine
7 made this magnificent reply:

8 " I will forever, at all hazards, assert the
9 dignity, independence and integrity of the
10 English bar, without which impartial justice,
11 t the most valuable part of the English
12 constitution, can have no existence. From the
13 moment that any advocate can be permitted to
14 say that he will or will not stand between
15 the Crown and the subject arraigned in the
16 court where he daily sits to practise, from that
17 moment the liberties of England are at an end.
18 If the advocate refuses to defend, from what he
19 may think of the charge or of the defence, he
20 assumes the character of the judge; nay, he
21 assumes it before the hour of judgment; and in
22 proportion to his rank and reputation, puts the
23 heavy influence of, perhaps, a mistaken opinion
24 into the scale against the accused, in whose
25 favour the benevolent principle of English law
26 makes all presumptions, and which commands the
27 very judge to be his counsel."

28
29 Ladies and gentlemen, I wish you all possible
30 prosperity. (Applause)

- - - -