

Forum Juridicum: The Ideal Relationship Between the Bench and the Bar

Joe B. Hamiter

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names of Livingston, Derbigny and Moreau-Lislet, we should add now the name of Henry George McMahon.”

I, of course, heartily endorse those sentiments and I am sure that we all agree.

Had Henry George remained in practice in the early thirties, he would certainly have made a notable success. Instead he deliberately sacrificed material gain for his unselfish ambition to teach law and to produce a Code of Civil Procedure. What greater sacrifice could any man of any profession make for his fellow man?

And so, Henry George, on this momentous occasion in your life, your colleagues on the Council consider it a rare privilege to present to you this sterling silver tray, in small recognition of your tremendous effort and accomplishment, on which you will find engraved the following:

“Presented to Henry George McMahon, this token of esteem bearing the signatures of his colleagues upon the completion of the projet of a Code of Civil Procedure for the State of Louisiana in recognition of his dedicated contribution as coordinator and reporter. The Council of the Louisiana State Law Institute. March 25, 1960.”

But, under our law, you are not entitled to all of the credit. In keeping with the civilian concepts of domestic tranquility, the end result was indeed a community venture, and so we are particularly pleased to present Neenah McMahon, who is a wonderful and capable person in her own right, with these beautiful roses as a token of our appreciation for her part in caring for you on the home front.

May both of you be with us for many, many years.

The Ideal Relationship Between the Bench and the Bar*

Joe B. Hamiter†

My first words must be an acknowledgment of the great and genuinely appreciated honor you do me today. Calvin Coolidge once said that no person is ever honored for what he has re-

*Address delivered by the author at Louisiana State University on the occasion of his induction into The Order of the Coif, April 30, 1960.

†Associate Justice, Supreme Court of Louisiana.

ceived; honor is his reward for what he has given. If the honor conferred upon me reflects your conviction that what I have given to the law, to the legal profession, and to the high calling of the judiciary deserves this special recognition, then I am relieved of the uneasy feeling I have that it is undeserved and I can look upon your kindness as a fulfillment that crowns my every wish and makes my life full to the brim and overflowing.

My participation in this highly beneficial Law Day program and in these impressive Coif induction ceremonies is for me, in a particular sense, a remembrance — a revisitation. More years ago than I like to recall I attended this University and this law school and listened as erudite, estimable, and devoted professors led my young and inquiring mind in the pathway of the law. It was from those instructors that I learned not only the tenets of the law, but also much of the patience, consideration, courteous kindness, and humility with which I have sought to clothe my judicial life. In a special way, therefore, the memory of those men has remained with me. Today — across the arch of the years — they take on, in the perspective of distance, an especially vivid place in the recollection of my college days at Louisiana State University. I would that I could call some of their wisdom to my command as, tempering this recollection and warm glow of personal pleasure with the realization that as a judge I share with the lawyer awesome responsibilities, I turn to the subject of my remarks today — *The Ideal Relationship Between the Bench and the Bar.*

There is, of course, a relationship between the judge and the lawyer that exists in no other profession and in no other walk of life: it is unique. This relationship is fraught with the hazards of tempers that sometime seethe in the stormy billows of the courtroom and of antagonisms that occasionally arise from the loss that must, inevitably, be sustained by one side as every legal battle ends. Yet the desirable future of this great country of ours may well depend upon the proper balancing of such relationship and upon an understanding by the lawyer and the judge that without the mutual assistance and respect of each toward the other neither can carry out his assigned role, despite great learning and dedication to duty.

Justice has been pictured in Roman mythology as a goddess wearing a blindfold and holding scales. The scales connote the weighing and balancing of rights and privileges — a process that

led to Shakespeare's phrase: "even handed justice." The judge and the lawyer should remember, first and foremost, that in weighing and balancing rights and privileges they are building together a monument in the Temple of Justice that is, as Daniel Webster once put it, "the greatest interest of man on earth."

This building is never-ending, for the process of justice is never finished. It reproduces itself generation after generation in ever-changing forms. In this perspective, the lawyer and the judge are, together, fashioning for tomorrow's chronicle yesterday's experiences in the law; and their daily labors, though seeming at times tedious, uninteresting, and unimportant, will ultimately play a part in the vast reaches of the future of all mankind. It is only by working harmoniously together for the advancement of this justice that the lawyer and the judge, as guardians of our constitutional government, can stretch our horizons to meet and match the stupendous dimensions of the present epic days when there seem to be permeating the minds of men doubts about the ability of our republican form of government to survive and when many persons feel that political totalitarianism offers an inviting alternative.

In the face of such sentiment for rending asunder the fundamentals of our constitution the lawyer and the judge must close ranks and stand firm, being mutually mindful of the obligation that each bears to the other and keenly aware that, though certain issues may divide them, the end sought by both is the same — to maintain through the swift and unhampered dispensation of justice a constitutional government under which all may live together in peace and prosperity. Clear, scholarly, patriotic, and righteous minds at the bar must, therefore, complement receptive, studious, dedicated, and intellectually honest ones on the bench to insure that the demands of the time do not tarnish the image of justice we cherish, but, rather, that it be held high as a shining symbol to our people and to those in other lands who are denied law and justice.

If I could suggest only one rule for covering all of the varying facets of the ideal relationship between the lawyer and the judge it would be the Golden Rule: each would do to the other as he would have the other do to him. But, unfortunately, time has made abundantly clear that, primarily because of the divergence of opinions respecting the individual personal dignity and sense of responsibility of the judge and the lawyer, the

Golden Rule will not alone suffice to produce and sustain the relationship desired. Accordingly, the excellent principle contained therein must be bolstered by other worthy principles and all crystallized into several rules capable of transforming well-intended concept into beneficial conduct.

Turning to the Bible I find in Deuteronomy Chapter 1, verses 16 and 17, the earliest known rules for the guidance of the judge in the proper discharge of the broad functions of his office: "And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgments; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's." And again, in Deuteronomy Chapter 16, verse 19: "Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift; for a gift doth blind the eyes of the wise, and pervert the words of the righteous."

Many centuries later Bacon, in his essay "Of Judicature," advised, among other things, that "Judges ought to be more learned than witty; more reverend than plausible; and more advised than confident. Above all things, integrity is their portion and proper virtue." Calling the place of justice a "hallowed place," he admonished that "patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal."

Other than general exhortations that apply to all people, there appears to be no particular rule in the Bible for the guidance of the lawyer in his relationship with the judge, and Bacon does not give us the benefit of any specific thought in this respect. However, in 1648 Lord Commissioner Whitelock of England, addressing the new sergeants-at-law at the Chancery Bar, put the duties of an advocate toward the court in a two-fold category — Reverence and Truthfulness. Included in reverence were such particular matters as respect for the office and its incumbent, abstinence from currying favors, obedience to rulings during trial, punctuality, and courtesy. As to the category of truthfulness he advised against active and passive deceit toward, and a misleading of, the court by various named acts — collusion, sham pleadings, distortion of facts, to mention a few.

Presently, there is contained in the Canons of Ethics of the

American Bar Association the following: "It is the duty of the lawyer to maintain toward the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected."

As succinctly as the duty of the lawyer to the judge has been phrased in these Canons, the average lawyer — even of mature years — can find therein little to guide him in his peculiar and particular relationship with the court. More helpful would be a continuing self-reminder that the fundamental basis for the respect the lawyer owes the judge is that he is an officer of the court over which the judge presides, the judge there acting under the authority and the power of the state. By taking his oath as an officer of that court, the lawyer has become bound jointly with the judge to uphold the due and orderly administration of justice. This obligates him also to show to and promote in others respect for the dignity of the judicial office. By his proper attitude and actions toward the individual judge, the lawyer encourages such respect in the minds of the litigants and the general public, for habitual conduct is and always has been more the product of example than of concept. Generally speaking, on all occasions and everywhere the lawyer should be as jealous of the honor and repute of the court as he is of his own, because by lowering the court's dignity he degrades the legal profession of which he is a member.

While there is no specific rule in the Canons of Judicial Ethics of the American Bar Association that voices in so many words the corresponding duty of the judge to the lawyer — an omission that seems to me to be unfortunate — such a duty may be gleaned from a consideration of the canons as a whole. A summation of the provision that might be said to bear directly on this relationship discloses that the judge must be studious to avoid controversies which are apt to obscure the merits of the dispute between the litigants and lead to its unjust disposition; avoid a controversial manner or tone when addressing counsel in the courtroom; avoid interruptions of counsel in their argu-

ments, except to clarify his mind as to their positions; and refrain from an unnecessary display of learning and of premature judgment. With respect to his rulings, a judge must be uninfluenced by public clamor or considerations of personal popularity or notoriety, unapprehensive of unjust criticism, and indifferent to private, political, or partisan demands. While bearing only indirectly on the relationship under consideration, other provisions of such canons require that the judge be conscientious, studious, temperate, attentive, industrious, thorough, courteous, patient, punctual, just, impartial, prompt, and, further, that he administer his office with due regard to the integrity of the system of the law itself.

It is to be noted that nowhere in the fairly comprehensive picture of the ideal relationship between the bench and the bar as portrayed by the mentioned various sources is the noble attribute of humility to be found. As is said in Luke Chapter 14, verse 11; "For whosoever exalteth himself shall be abased; and he that humbleth himself shall be exalted." To me it seems that neither a judge nor a lawyer can properly discharge the great responsibilities that are his unless he displays, in a large measure, humility — that is, freedom from arrogance.

Nor is there reference in any of those sources to the attributes of mercy and humaneness; yet both should be built into the structure of the judge and the lawyer. Without them the judge lacks important ingredients of the perfect judicial temperament that aid in making workable his relations with the lawyer and the litigant. Without them the lawyer lacks not only the understanding that permits him to appreciate many of the problems confronting the judiciary, but he lacks also the incentive to stand before the world and be counted as the skillful and ardent advocate of just causes.

There can, therefore, be no just disposition of any case unless the judge and the lawyer, who are always third party litigants therein, approach their respective tasks with humility and a strong sense of mercy and humaneness. These traits, when present, help to eliminate individual idiosyncrasies that are inimical to the molding of pure justice; they strike in the lawyer and the judge alike the responsive cord: "Fiat justitia!" — "Let justice be done."

If you will pardon a personal reference, it was with the idea of seeing that justice be done that in 1923, fresh from the halls

of this law school, I prepared for the trial of my first case — a civil suit in the justice of the peace court in what was then known as Cedar Grove, a suburb of Shreveport. While I was confident that if justice was done my client would be victor, the immediate result of the feelings that surged through my breast when I proceeded to the bench — a plain, unfinished table — was not then particularly pleasing to me. Those feelings — of awe, respect, humility, and insufficiency — wiped from my mind the unanswerable arguments I had plotted and pondered during the greater part of the preceding night. Even today, although on the opposite side of the bench, I never enter the courtroom without a return of them. Knowing that their roots lie deep in the sense of responsibility to the public and to the great body of the law to which my life has been dedicated, I hope they will ever be with me.

I won my first case, notwithstanding that the litigant opposing my client was a personal friend of the judge. And as I recall to memory the moments of that initial courtroom experience I am reminded of the lawyer's reactions to the trial of a law suit as related by Piero Calamandrei who, for many years, was a celebrated professor of civil procedure at the University of Florence in Italy. He said: "You are pleading an important case, . . . a case where a man's life or the happiness of a family depends upon the outcome. You are convinced that your client is in the right. Not only has he the law on his side, but the moral conviction of society, which is far more important. You know that you must win if justice is to prevail, but you are full of doubts and fears. Your adversary is more learned, more eloquent, and has greater prestige than you have. His briefs are composed with the subtlety you do not possess; the presiding judge is his personal friend; the judges consider him a master, and you know there are powerful interests behind his client. On the day of the trial you are sure you have argued badly, that you have overlooked your strongest points and have wearied the judges, who were wreathed in smiles at the brilliant defense of your opponent.

"You are exhausted and discouraged. Failure seems inevitable. Bitterly you repeat to yourself that you can hope for nothing from the court. And then, when the decision is handed down, you hear that you have won, despite your inferiority, the eloquence of your adversary, the dreaded friendships and the vaunted protection. These are a lawyer's red-letter days, when

he learns that against every expedient of art or intrigue he can win with justice on his side."

These quoted observations reflect the proper functioning of the judicial process, with the judiciary — standing at the pinnacle of a strong bar and complemented by it — harnessing the illusive standard of justice which honorable and upright members of the legal profession hold so dear and ever seek.

In closing, may I digress to tell you of an incident that has had a marked influence on my life? Shortly after my election to the Supreme Court some seventeen years ago my pastor and his wife, the late Dr. and Mrs. M. E. Dodd of the First Baptist Church of Shreveport, very kindly gave a reception in their home for my wife and me. At the reception that renowned man of God presented to us a treasured Bible, on the fly leaf of which, beneath his inscription of good wishes, was written Micah 6:8. Examining this citation later, I found these words: "He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?" This exhortation by the Prophet Micah became the creed of my judicial life. I suggest that its acceptance and observance by all judges and by all lawyers will aid immeasurably in accomplishing and maintaining the ideal relationship between the bench and bar.