



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 4 | Number 1

Article 4

1926

The Lawyer, His Client and His Adversary

Walter Parker Stacy

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Walter P. Stacy, *The Lawyer, His Client and His Adversary*, 4 N.C. L. REV. 20 (1926).

Available at: <http://scholarship.law.unc.edu/nclr/vol4/iss1/4>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

THE LAWYER, HIS CLIENT AND HIS
ADVERSARY*

WALTER PARKER STACY

CHIEF JUSTICE OF THE NORTH CAROLINA SUPREME COURT

Before proceeding to a discussion of the subject assigned to me, may I take this opportunity to congratulate you and the members of your Association, on the serious effort you are making to marshal your forces and to direct them into channels of uplift and betterment. The fact that you are undertaking such an enterprise is no admission or indication that it is needed here more than elsewhere, but it is a recognition of the value to be derived from restating old principles and applying them to present-day conditions. There is something to be gained from repetition and from speaking again and again of the old virtues, which time has neither improved nor impaired. The golden rule is just as good today as it was when first announced. It is a nugget of truth which knows no time or place. Our messages may be clothed in different words, but, in the end, they are no more than the same old, old stories of simple right and fair dealing.

A lawyer's conception of his duty to his client and his adversary will necessarily be determined by the attitude which he takes towards the law itself. If he look upon the practice of law as no more than a game to be played, or a race to be run, he is apt to consider himself bound only by the rules of sport, with the ultimate aim of winning his cases, by any fair and honorable means, as the goal to be attained. Viewed from the standpoint of money-making, this may be entirely legitimate, but in no sense can it be called ennobling. On the other hand, if he conceive the law to be a profession, a living, vital ministry for the establishment of justice and for the preservation of peace, he will often find it necessary to advise the strong, not only to be just, but even merciful, to the weak.

"Human imperfections are divinely appointed, to the end that the law of life may be effort and the law of judgment mercy."

The law is the best friend you have; it protects you before you are born; it surrounds and shields you as long as you live; and it stands sentinel and guard at your tomb. In its deeper and richer

* An address delivered before the Wake County Bar Association at Raleigh, N. C., on June 1, 1925.

meaning, it is the constant unfolding of a fuller and better life. Back of all worthwhile effort is a conscious philosophy which directs its purposes and shapes its ends, and a man's conduct is but a reflection of the philosophy which he holds. Just here, the lawyer has an unparalleled opportunity to fix the code of ethics and to determine the moral tone of the business life of his community. Other agencies may help, but in its final analysis, trade is conducted on sound legal advice. Take, for example, a commercial center of high ideals and another of low standards, and you will invariably find a difference between the bars of the two localities. The legal profession has never failed to make its impress upon the community; it stands in the forefront and shapes the destinies of democracy's far-flung battle line.

One of the first duties which a lawyer owes to his client is to keep him out of the court house if he can. Of course, this cannot always be done, but a law suit should not be the first means employed for the settlement of business disputes. That means a contest and a fight. And while a lawyer's office, in a sense, is still a clearing house for sinners and those sinned against, yet absolute fidelity to a client's cause, which every lawyer owes, is far from requiring litigation in every case. Quite the reverse. Discretion is often the better part of valor. We have all learned in the school of experience that the outcome of a lawsuit is not always certain and, in some instances, a lawsuit, though won, is a financial loss to the litigant. So I start with the proposition that you and your client both want to avoid litigation so far as you are able to do so with reasonable effort, but not at the sacrifice of principle. In this, however, there will be a sufficient number of failures to keep you and the courts busy.

When you do undertake to represent a client, and litigation is necessary, you owe absolute fidelity to his cause. Of course you must treat with your client in the utmost of good faith, but primarily your duty is to his cause, not to him personally. You are not his guardian and he is not your ward; the relation is that of attorney and client. In the trial of a case every lawyer should remember that he is dealing with questions and principles, and not necessarily with personalities. This enables the prudent and wise lawyer to avoid the use of *ad hominem* arguments. Generally speaking, such arguments have no place in or out of a court room. They are usually the arguments of defense, and in many instances, they are "defenseless" arguments. The man who cannot deal with questions and is-

sues, regardless of the parties involved, can never make a great lawyer. He may practice law, and he may even gain the applause of the multitude for the moment, but this is not the goal for which he is striving. Debate questions, not personalities. "Hit and hit hard, but don't hit below the belt." And hit intelligently.

When a lawyer enters a court room to try a case, it is not only his business, but also his duty, to know more about his client's cause than any one connected with the trial, the judge not excepted. Again, knowledge of the adjective law is indispensable in the trial of causes. A man may know his rights and yet not know how to protect them. For this purpose he employs a lawyer, just as he employs a physician to treat him when he is sick. Poor trials and poor surgery, as well as good trials and good surgery, go hand in hand. Every lawyer owes it to himself and to his clients to master the law of procedure and to know how to try cases correctly. He has no right to be unprepared or illprepared for the trial of causes. When parties resort to the judiciary for the settlement of their disputes, they are invoking a public agency, and counsel should not forget that rules of procedure are necessary, and must be observed, in order to enable the courts properly to discharge their duties. And while the adjective law is not to be enforced harshly or oppressively, but rather in a spirit of liberality, to the end that justice may be administered in all cases, yet this does not mean that the courts should apply the rules of practice in such a manner as to favor the negligent and at the same time penalize the diligent party.

Another observation while I am on this subject, and a matter which many lawyers overlook: It is essential that you pay close attention to your adversary's exceptions taken during the trial. One valid exception may defeat a well-earned victory. This increases the cost of litigation and, in many instances, it is the result of poor preparation.

The best tried cases are the best prepared cases. It is not enough for a lawyer to bring his witnesses into court, ask them all sorts of questions and depend upon the judge to admit the competent and exclude the incompetent evidence. This is not only to invite error, but also to underestimate your opponent's ability to take care of himself—something always dangerous and quite often fatal.

I should like to observe also, while I am digressing, a bit of homely philosophy for the benefit of the younger practitioner. In presenting a case to the jury, it is well to argue the righteousness of

your case first, and then undertake to show how, under the law and the evidence, the jury can render a verdict in your favor. They are anxious to reach the right conclusion.

No lawyer should ever try a case as if it were the last one he expected to have. He must recognize the rules of practice adopted for observance by members of his profession. It is a fifty-years run, and the lawyer who takes short cuts, or whose word is not his bond, will have some difficulty in reaching the end, and rightly so. In dealing with an adversary, your first responsibility is to merit his respect, and to have the courage of patience, and often silence, when it is not given. This you owe to yourself, to your client, to the court and to your opponent. You will not always have the respect of your adversary, but you can at least merit it. The man who does not merit the respect of his adversary, forfeits his own self-respect; and it is more important to preserve your own self-respect than to win the respect of others, but you want both. Again, the courage of patience, which often calls for silence, is more difficult to practice than it is to preach. The desire of every lawyer should be, not only to say the right thing in the right place, but far more difficult still, to leave unsaid the wrong thing at the tempting moment. It is a practice of sufficient observance to call for comment that he who speaks when it is his duty to remain silent is likely to remain silent when it is his duty to speak.

And finally, brethren, I would observe, there is no royal road to success at the bar. The legal profession is full of men who press with the ardor of hope, it has some who are faint with the strife. He who would succeed among his fellows must first deny himself, learn to worship at the shrine of knowledge and devote his talents to the advancement of the cause of justice. The path of the lawyer leads by the quarry of hard work. This is the price which he must pay for the privilege of high service.

Gentlemen of the bar, ethics is the standard by which we measure our own conduct and judge that of others. It may be condensed and summed up in the simple injunction: Always do right. Again, I congratulate you on the effort you are making and wish you well.