The Bench and The Bar

Address by

Honorable Benjamin N. Cardozo
Before Broome County Bar Association
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Mr. President, and Gentlemen of the Bench and Bar:

I jotted down a few headings for a talk to you today. Before I had gone very far I found that instead of jotting down some headings, I had written something like an address—a desultory, vagrant sort of thing to be sure, so vagrant that it ought probably to be arrested and put in jail instead of paraded in the light of day, but still in its way and according to its capacity an address. So I am going to do something that I never like to do; for economy of effort I am going to read what I have written, and trust to your charity and patience to put up with the ordeal.

I was asked not long ago to address the members of a club where no one was eligible to be a member, or *a fortiori*, I suppose, to speak, unless it could be said of him with truth that he was the author of a book.

Science warns us that we must define our terms, and an invitation so restricted made me seek a definition of a book.

Are we to include the humble pamphlet, or must the product of the brain be bound? If externals are not to count, are we to say that contents also are indifferent? A bookseller in my city displayed the sign upon his window, books *and* novels. Shall we accept that classification? Asquith in his recent memoirs quotes the comment made by Gladstone upon Kinglake's Crimean War that the book was too bad to live and too good to die. Shall we adopt that standard as expressive of a minimum? Shall we say that a book is not a book if a rational system of eugenics would strangle it at birth? Finally, and this is the point of the matter, the nub of it all for you and me, are legal opinions or legal treatises or legal arguments books at all?

Well, I am not going to give an answer to that question now, if for no better reason than the one that I am disqualified by interest in the subject matter of the cause from taking part in the decision. I have written things myself which had the outward semblance of a book, and I always have felt proud of the binding, though humble when I looked inside. Not only that, but in moments of extraordinary indiscretion I have even asked myself the question how judges and lawyers ought to write and talk if their deliverances are to be fit to live. A few years ago I wrote a little article for the Yale Review under the title Law and Lit-

erature in which I ventured some remarks on the subject of the literary style of judges of the past and present, passing from that topic by way of pardonable digression to a few words on the subject of the form of legal arguments.

There, I suppose, is a subject that has a lively interest for all of you, but I hardly dare to speak of it, when I reflect how much harder it is to practice than to preach, and how I should sin against my own precepts if I were to go back to practice and become an advocate myself. Perhaps I may say, however, that prolixity is the great evil against which we should pray to be delivered. I think it is permissible to suggest that when the slumber of a judge, or at least of any considerable number of the judges, becomes either visible or audible, the advocate might improve the argument if he would consent to "make it snappy." I may say in passing that a Chief Judge of a court has this great advantage over his associates, his duty to watch the calendar and keep the business of the court in motion is a safeguard unknown to his brethren against the embarrassments of somnolence. Also I wish to point out, in defense of modern courts, that there is nothing new in the judicial nap; not long ago in reading Plato's Republic, I came across a statement of Socrates that one should try to keep away from the law courts and all their sleepy judges. *Stare decisis et non quieta movere*. Well, just as somnolence on the bench is inveterate, so also, it seems, is prolixity at the bar. Judges have struggled vainly to offer rewards to brevity and lay a burden on prolixity. Some one gave me, a short time ago, a copy of an order made by the judges in England some centuries ago to discipline a lawyer whose pleading was so long that patience was outworn. The report of just what happened will be found in Oswald on Contempt of Court:

> "Where a replication was filed in Chancery extending to six score sheets, whereas all the pertinent matter might have been contained in sixteen, and it appeared that one Richard Mylward, the plaintiff's son, did 'devise, draw, and engross the said replication,' Egerton, Lord Keeper, ordered 'that the Warden of the Fleet shall take the said Richard Mylward into his custody and shall bring him into Westminster Hall on Saturday next about ten of the clock in the forenoon, and then and there shall cut a hole in the myddest of the same engrossed replication, which is delivered unto him for that purpose, and put the said Richard's head through the same hole, and so let the same replication hang about his shoulders with the written side outward, and then, the same so hanging shall lead the same Richard, bareheaded and bare-faced, round about Westminster Hall whilst the Courts are sitting, and shall show him at the bar of every of the three Courts within the Hall, and then shall take him back again to the Fleet, and keep him prisoner until he shall have paid 10 pounds to Her Majesty for a fine and 20 nobles to the defendant for his costs in respect of the aforesaid abuse, which fine and costs are now adjudged and imposed upon him by this Court for the abuse aforesaid'."

Well, our methods of repression are less rigorous today, but still we

struggle with the ancient evil. In the Court of Appeals of New York, the time allowed for the argument of an appeal from a judgment used to be two hours on each side. Luckily comparatively few lawyers took advantage of the privilege, due, I think, to a pretty general notion that with us as in the Appellate Division, the limit was an hour. Recently we have amended our rule to make it more in harmony with the current misconception. I understand that in other states, for example Pennsylvania, the time is even shorter, and that neither the court nor the cause of justice has suffered from the change, though I am not advised to what extent the clipping of the wings of flight has brought suffering to counsel. Only the other day I listened to an interesting talk by the Solicitor General of the United States in which he put his finger, as it seems to me, upon the cause and origin of the difficulty. He said that in arguments before the Supreme Court at Washington most lawyers when they heard they had an hour, laid out their arguments in advance with the thought of saying whatever might be possible in order to fill the hour up. The true question that they should have asked themselves was how they could cut the hour down. Of course, they don't always get the hour even when they plan for it. The story is told of an argument at Washington in which counsel for the appellee was deaf as a post. At the close of the appellant's argument the Chief Justice said that it would be unnecessary to hear the other side. The other side, however, because of its infirmity, did not hear the ruling, and at once rose to its feet. The Chief Justice, unable to check the flow of argument, called upon counsel for appellant to assist. Still smarting under his defeat, the friend of the court made a trumpet of his hands and shouted into his adversary's ear, in a voice that could be heard in the Senate Chamber and beyond, "they say that rather than listen to you, they'll give you the case."

I think young men are interested often in going behind the scenes and learning how courts work and as I look into your faces I can see that most of you are young, and that none of you in any event can be classified as old. We sit in our court from two to six in the afternoon. There is a popular impression abroad that this is all the work we do. I am constantly asked the question how I manage to pass my time in Albany. We consult about our cases in the morning, usually from 9:30 to 1. The interval between 6 in the evening and 9:30 in the morning, we spend in working at the records and trying to know enough about them to be able with some intelligence to take part in the discussion. No one dares to go to a dinner party or other social function during the evenings of the week when the court is in session. He will fall behind in his work if he does. Of course, once in a great while, some extraordinary temptation, even in these days when the temptations of dinner parties are not so great as they used to be,—some extraordinary temptation may lead a man to wander from the narrow path, and to trust that the morning conference will be sufficiently enlightened through the labors of his brethren. In general, however, the only way you can get a judge to dine with you at such a season is to invite the whole court. If we are all in the same boat, the danger becomes less. Most persons seem willing to forego the privilege of having us if it is to be acquired at that price. During the

recesses for the writing of opinions, the strain isn't so bad, and we have our evenings to ourselves.

I have spoken of the consultation table. Matthew Arnold said of Oxford in a famous passage that it was the home of lost causes and forsaken beliefs and impossible loyalties. That is the consultation table also. It is the most interesting part of our work. It is there that one gets the liveliest sense of the intellectual stimulus to be found in the work of a great court. There is the clash of minds. There are the varying forms and phases that the case assumes as it travels around the table. Why, sometimes at the end its own mother wouldn't recognize it. There is the effort of seven minds, each bent upon the same quest, to discover and unfold the truth. Truth is a coy maiden to woo, but she is a great lover of dialectic, and nothing wins her like discussion. I have often thought of this before, but I had confirmation of it the other day when I was re-reading that book of endlessly suggestive power, "The Education of Henry Adams." Adams was secretary to Mr. Evarts who was then attorney-general. The legal tender cases were on the calendar of the court. Benjamin R. Curtis, one of the great lawyers of his day, had been retained to argue against the constitutional power of the government to make an artificial standard of value in time of peace. Evarts, as attorney-general, was under a duty to uphold the statute. He set himself to the task of preparation with his secretary as an assumed antagonist. "No doubt," says Adams, "the quickest way to clear one's mind is to discuss, and Evarts deliberately forced discussion." Day after day, driving, dining, walking, he provoked Adams to dispute his positions. "He needed an anvil," he said, "to hammer his ideas on."

There is the consultation table over again, with perhaps this exception, that each one of the seven is anvil and hammer by turns. Sometimes the iron is not flattened out till the last blow has been received. Not infrequently a judge reports his impressions about a case, and is cheered by the successive approval of each of his associates until the last man is reached in rotation around the table, when suddenly there is a suggestion that destroys the structure of the argument and sends it toppling to the ground. There is something fine and stimulating in the candor and mental honesty with which the cataclysm is accepted, and the structure built anew. And yet when all has been said and done, when each mind has contributed what is in it, how dubious and wavering and uncertain the conclusion must often be. I think the average lawyer looks upon the judges as a rather cocksure group of men, satisfied with their own conclusions, and therefore with themselves. I shared that delusion until I became a judge myself. When I was at the bar, I often used to wonder when I lost a case, how it was that the judges were so certain I was wrong. I spent a good many hours of mournful introspection trying to solve that problem. I was ready to admit that a good deal might be said in favor of the other side, and even, if you please, that the balance of argument was against me, but I said to myself, are my mental processes all wrong that I still seem to see some sort of merit in my position? Why is it that judges when they write their opinions are so sure there is nothing in the other side? Well, a brief experience on the bench was sufficient to enable me to answer that question, and the answer is,

they are not so sure; they are merely doing the best they can. Old Dr. Johnson, arguing with Boswell that it was legitimate to defend a bad cause, and seeking to assuage Boswell's qualms of conscience, said, "Why, Sir, you do not know whether you are right or wrong until the judge has rendered his opinion." If only, we could be certain then! They treat us better, anyhow, even when we make mistakes than they treated our predecessors some centuries ago. I have read in Prof. Thayer's book on Evidence that in ancient times not only were jurors subject to attaint and punishment when they gave a wrong verdict, but judges also were subject to like penalties when their judgments were reversed, and that in still more ancient times they were expected to defend their judgments by the duel. Those were the days when a seat on an appellate court, and preferably, I should say, on the highest appellate court, had the most obvious advantages. And yet even today the consequences of error, if not so dangerous to life and limb and worldly goods, are still sufficiently disheartening. Any morning's mail may bring a law review from Harvard or Yale or Columbia or Pennsylvania or Michigan or a score of other places to disturb our self conceit and show with pitiless and relentless certainty how we have wandered from the path. The reviewer seems to say with Shakespeare speaking through the mouth of Brabantio in the tragedy of Othello: "It is a judgment maim'd and most imperfect." In such emergencies, I have taken comfort at times from the form of an opinion on an application for reargument which I found recorded not long ago in Sandburg's Life of Lincoln. A Kentucky justice annoyed by the loquacity of counsel after he had announced his ruling shut off discussion with these words: "If the court is right, and she thinks she air, why then you air wrong, and she knows you be, shut up."

All this, however, is an affectation of serenity. In my heart of hearts I am disturbed and troubled. I sometimes think I might escape some of the mistakes I am sure I often make if I had had the training which is given in the law schools of today. As ill luck would have it, I went to Columbia Law School in the transition days when the old order was passing into the new, the text book system into the case one, now, we are told at times, to be in turn supplanted by something else. For one year I had the old text book system under Prof. Dwight and his associates. For the second year, I had a mixture of the old one and the new. It was neither one thing nor the other. As I look back on it now, it seems as if we didn't have any instruction worthy of the name. We just grew up into lawyers, or rather into members of the bar. I feel grateful, however, that I learned a little more than a lawyer who was trying a case not long ago in the federal court in New York. It was a suit in equity to set aside a fraudulent transfer. There had been some earlier litigations which it was hard to follow. The judge trying to understand them said to counsel—"if I follow the case aright, the fact is that in the earlier action you waived the tort and sued in assumpsit." "Oh, no," said the counsel, "I sued in the City Court."

Yes, it is comforting to know that lawyers make their blunders as well as judges. I remember that Sir Frederick Pollock said in his lectures on the Common Law that every disappointed litigant believes one or other of two things; he believes either that the court was unjust or

that his lawyer was incompetent. The lawyer is generally at pains to remove the latter impression,—indeed, the litigant is generally convinced that his case is so strong that not even incompetence could spoil it—and so I fancy the weight of odium is borne by the judge. But if rancor survives in the hearts of disappointed litigants, it has little home, I am glad to say, in the hearts of the bar. I think it is surprising that this is so. I have not been so long away from the bar as to have forgotten what it means to lose a case. The cherished verdict which was won with so much toil, reversed and nullified; a sentence in the charge to which the jury never listened, held to have controlled the judgment; everything to be done over again as if it had never been done before; the whole judgment in the quaint but emphatic form of order in use in our court, "reversed, set at naught and altogether held for nothing." I have many a time tried to look cheerful while surveying some such scene of ruin. For the sceptical and disconsolate, I commend Mr. Dooley's comment on the winged figure of Victory. You remember the headless figure in the Louvre where not even the lost head can obscure the impression of exulting triumph. Dooley looked at it and mused, and he said to his friend Hennessey: "Victory," he said, "they call that Victory. Well, all I can say is the other lady put up a devil of a fight."

I have been talking to you in lighter vein, perhaps too light if I am to keep alive the notion, or more properly the fiction, of grave and revered wisdom which is supposed to be of the essence of the judicial mind and spirit. I am not sure but that I have made a mistake in exploding this amiable error (which like most other fictions is not wholly lacking in utility). "I rose by my gravity," said a public speaker who had experienced the effects of misplaced and futile humor, "I rose by my gravity and fell by my levity." You must not think me wholly frivolous, for in truth I am interested in some of the weightier aspects of the work of bench and bar, and have even dabbled at times in the waters of high philosophy. Now, it is hard to write philosophy, harder still to talk of it, harder again to get anyone to listen to it, and hardest of all perhaps to apply it in our lives. Every now and then I find myself giving effect to some antiquated rule of law, so imbedded in the legal strata as to make it almost impossible for any judge to extricate it and cast it into outer darkness, and yet belying much that I have written about the progressive growth of justice within the shell of legal doctrine. Take such a hideous rule as the one prevailing in this state and very likely in many others, that a municipality is not liable for the torts of its employes under the principle of *respondeat superior* when they are engaged in the fulfilment of functions that are classified as governmental rather than proprietary. Was there ever a more foolish, unintelligible, unjust and antiquated doctrine? No one understands it. No one approves of it. Yet day by day we apply it. The city is immune from liability if a traveler is run down through the negligence of a driver of a city ambulance, but subject to liability if the delinquent is driving a wagon for the removal of garbage, snow or rubbish. I can state these pronouncements as I find them in the books, but I cannot undertake to state them with a straight face. Well, the truth of the matter is that fossil remains like these will abide in the legal structure until it becomes the business of

some board of public officers to keep track of the abnormalities in the body of legal doctrine and report from time to time to the legislature the changes that are essential to keep the body sound. What is everybody's business is nobody's business. I have been urging for many years the need for a ministry of justice or permanent commission to mediate between the judiciary and the legislature and keep our law up to date. Perhaps I may be permitted to quote from a report which I prepared four years ago, in January, 1925, in behalf of a commission appointed by the Governor to consider these and other problems. "Anachronisms persist, not because they are desired, but because they lie buried from the view of those who have the power and the will to end them. Reforms are not made because the impulse to make them is sporadic, working by fits and starts, and at times because the motives of the sponsors are unworthy or at least suspect. A disinterested agency should exist to survey the body of our law patiently and calmly and deliberately, attempting no sudden transformation, not cutting at the roots the growths of centuries, the products of a people's life in its gradual evolution, but pruning and transplanting here and there with careful and loving hands. The experiment, however fair its prospect, may fail like any other. If achievement is worthy of opportunity, authority and prestige will be augmented with the years. But whatever the outcome, one gain at least will be assured—the State will have done its part. It will not have turned a deaf ear to the unorganized multitude who, unable to speak for themselves, must look to it as *parens patriae* for the correction of abuses. It will have created the agencies through which attention can be focused upon hardship and injustice. The wise years must judge whether it has builded well or ill."

Thus I spoke in 1925. Till now, the wise years have been unable to sit in judgment upon my proposed commission, for though it was favored by Governor Smith, the legislature would not follow him. In the meanwhile, judicial councils, approximating my plan, but differing from it in important elements, have been formed in many states. In New York, the new Governor, Mr. Roosevelt, has expressed an interest in the reform of law and its administration which fills me with the hope that he will revive the failing cause. The State Bar Association has appointed a committee directed to the same end or one not greatly different. Perhaps something may yet come of it. Until such an agency is created, we shall have to trust to the slow methods of the judicial process, hampered by the many restrictions inherent in its nature, though accelerated by sporadic statutes, and by the work of bar associations and others,—we shall have to trust to these methods to keep the law alive. I have written a good deal about the judicial process, its methods and its possibilities, and I have no thought to speak of it disrespectfully or slightingly. I would not, if I could, replace by a code our system of case law developed at the hands of judges, here a little and there a little, as the instance may require. What I complain of is merely this, that the method, admirable when understood and properly applied, has been subjected to too great a strain. At times, it brings one to an impasse, and then we need the steam shovel of legislation to clear the obstacles away. One must know

when to use the pick and axe and spade, and when the charge of dynamite.

Men are complaining every now and then that the abstractions of jurisprudence, its principles and concepts, seem to be in a state of flux, that they are variable and inconstant, that they have no finality about them. But abstractions never have. You will find some interesting thoughts about abstractions in a series of essays by an author whose work is far removed from jurisprudence, the essays by Aldous Huxley to which he gives the title "Proper Studies." "An abstraction," he says, "can never be true. To abstract is to select certain aspects of reality regarded as being, for one reason or another, significant. The aspects of reality not selected do not thereby cease to exist, and the abstraction is therefore never a true, in the sense of a complete, picture of reality. It is the very incompleteness of the picture that makes it valuable for us. Reality is so immeasurably complicated that it is impossible for us to comprehend it synthetically in entirety." This, I take it, is the reason why so many of our legal formulas are approximate and tentative, and failure to remember this is why so many are rebellious against an uncertainty which is inherent and essential.

Men are complaining also, every now and then, that there is unwillingness on the part of this one or another to rest contented with the past, and the complaint becomes the shriller if he who evinces unrest or discontent holds the position of a judge, who is then, as often as not, looked upon as an unstable weathercock, a menace to society. Again I turn to Mr. Huxley. "It is to the unstable-minded (he says) that we owe progress in all its forms, as well as all forms of destructive revolution. The stable-minded, by their reluctance to accept change, give to the social structure its durable solidity. There are many more stable—than unstable—minded people in the world (if the proportions were changed we should live in a chaos), and at all but very exceptional moments, they possess power and wealth more than proportionate to their numbers. Hence it comes about that at their first appearance innovators have generally been persecuted and always derided as fools and madmen." Now, law, more perhaps than any other branch of human thought, is an expression and embodiment of the principle of stability. An infusion of instability in the mind of a judge may be a menace to order, a contradiction of his essential function, when in other lines of activity it would be insignificant and harmless. Infusion to some extent, however, there must be, even though the quantity be small, unless progress is to be checked and stability to petrify into deadening paralysis. Here is the endless paradox, the never-ceasing antithesis, of rest and motion, of permanence and change.

From time immemorial lawyers have been vaguely conscious of this opposition, and yet have tried to shut their eyes to it. From time immemorial they have felt the need of changing the old rules when in conflict with the present needs, and yet have gone about trying to disguise the change and announcing in all sincerity that it was all as it had been before. Only the other day in going over the pages of DeTocqueville I ran across his comments upon this tendency as active then as now: "Under our common law system," said DeTocqueville, "laws are esteemed not so much because they are good as because they are old; and if it be necessary to modify them in any respect, to adapt them to the changes which time operates in society, recourse is had to the most inconceivable subtilties in order to uphold the traditionary fabric and to maintain that nothing has been done which does not square with the intentions and complete the labors of a former generation." He is the wise judge who has the perceiving eye to mark when the need is for change and motion, and when the better choice is rest. He must know the litanies and rubrics of the law and must not lightly put them by. But he must know at the same time that like other litanies and rubrics they are not to be mouthed and intoned forever with mechanical repetition when their meaning has departed. Where shall we find the perfect equilibrium between these antithetical extremes? "Has it occurred to you," writes a cynical critic of politics and society (F. M. Comford), "has it occurred to you that nothing is ever done until everyone is convinced that it ought to be done and has been convinced for so long that it is now time to do something else?" To this I ought to add the comment of an English barrister, wise as well as witty: "The evidence on the whole goes to show that a man who has made up his mind on a subject twenty-five years ago and continues to hold to his opinions after he has been proved to be wrong is a man of principle; while he who from time to time adapts his opinions to the changing circumstances of life is an opportunist."

When I first went upon the bench, I was a good deal perplexed and harassed by the consciousness of these opposing tendencies in my own mind and practice, as well as in those of others, but as the years have gone by, I have become reconciled to them, for I have come to know them as inevitable. Everywhere through life, in nature and in the mind of man, there runs the principle of polarity. You cannot escape from it in law any more than in anything else. The opposing and contradictory forces of stability and progress are tugging us at every step. You may try to avoid the conflict, but the avoidance is sure to fail. Sooner or later you will be driven to a choice.

If anyone wishes to understand the essence of the judicial process, its defects, its limitations, its possibilities, one should read a book published very recently, "Law in the Making," by Prof. Allen of Oxford. I wish I could have had the benefit of it when writing on like subjects years ago. Could anything be better than this?—

"The business of a court in deciding any particular issue is to work its way by the inductive principle which I have mentioned to a *rule*. To this end the arguments of counsel are directed, and the process from first to last is one of logical development. Any material of logical relevancy, whether it be 'legal' or 'historical' or 'literary,' is legitimate and germane. Doubtless the best possible instrument of demonstration is the exact analogy of a previous case. But analogies are seldom exact, and counsel is rarely fortunate enough to be able to checkmate, so to speak, in one move. Almost invariably he has to justify or amplify his analogy from other sources, and it matters not what those sources are provided they are material to his main purpose. If he betakes himself to the opinions of reputable writers, to decisions of other countries, to history, to

common sense, to natural justice, to convenience and utility, to the etymology and interpretation of words, he will never be stopped by the court because the sources on which he is drawing are not 'legal.' He ceases to convince only when his argument, whatever its source, is beside the main purpose. This is as true of a legal argument as of any other kind of argument; and a legal argument is not governed by any peculiar magic of its own. Lawyers do not possess, and do not claim to possess, a monopoly of the art of dialectic. They have to deal in argument more frequently than other people, and they naturally develop facility in doing so, but the principles of reason and logic upon which their arguments are based are the common property of mankind * * * The only reason why precedent figures so largely in the method they employ is because the analogy of precedent is a forcible method of demonstration in any and every argument. Parity of reasoning is as natural to logic as reasoning itself. It is more convincing than most other methods of demonstration simply because a close analogy is more convincing than a far-fetched analogy. Consequently the pleader relies on precedents as the most persuasive arguments he can adduce, and the Judge, with faculties specially trained to this end, becomes adept at distinguishing between the stronger and the weaker of the analogies presented to him."

"The Judge himself addresses his task in much the same way as counsel. His decision is given in the form of a structure of logic, in which he may use *any* material which he considers *ad rem*. If the matter is governed by the clear and unambiguous provision of a statute, his task is simplified. In the great majority of cases, no statute is applicable, and even if it is applicable, it is frequently the reverse of clear and unambiguous. The Judge must then proceed, as Bacon laid down long ago, either by *parity of reasoning* (*vel per processum ad similia*) or by *the use of examples* though they have not been embodied in any statute ('*vel per usum exemplorum licet in legem non coaluerint*') or by rules of natural reason and discretion ('*vel per jurisdictiones quae statuunt ex arbitrio boni viri et secundum discretionem sanam*') The method of his reasoning may take innumerable forms provided they achieve a logical conclusion."

There is material here for a whole essay or even treatise on the art of juridical and forensic dialectic. I have sometimes thought it could be developed in an interesting way by concrete illustrations, and by pointing out certain differences of method in different systems or at different epochs. I had occasion not long ago to read Cicero's speech in defense of Archias, and it was instructive to contrast his method with any that would be permissible in our own courts of law today. There is no need in truth to go back to distant times. An article on French criminal procedure in the current Law Quarterly Review reminds us pointedly of the wide spaces between our own forensic methods and those of other lands, though perhaps the methods of the advocate differ more profoundly than those followed by the judge.

Let me take another extract from the same book by Mr. Allen, an extract which may help to reconcile us when we are tempted to rail at judges as logic choppers and nothing more, the devotees of a sterile pro-

fessionalism, a professionalism run to seed. "For here and always," he says, "the Judge is performing a function not merely subsidiary to the operation of law, but inherent in its very nature. Law exists in order to be applied; and it must be applied through some human agency. If all men apprehended rules in precisely the same manner; if all men were at one about their rights and duties; there would be no need for legal exposition, and indeed little need at all for 'law,' as that term is usually understood. But since unanimity is impossible, there arises very early in the development of law the necessity for analysis and application through the medium of the skilled, impartial interpreter. The veriest tyro in legal study is soon made aware how omnipresent the influence of the interpreter has been. It has not always been an influence for good; 'professionalism,' both in ancient and in modern societies, has too often impeded progress and brought justice into disrepute. But in another and more characteristic aspect; in the devoted search after exactitude and the quest for justice for its own sake, the expert interpretation of law has rendered incalculable service to mankind. The force and discipline of legal reasoning have not only been a constant attraction to commanding minds, but have made the lawyer a model of that dispassionate thinking, clear vision, and nice appreciation of evidence, without which it is impossible to progress far in the orderly conduct of mundane affairs."

On this high note, I may wisely rest. We make our share of blunders, heaven knows. Certainly, I know it, and it would be presumptuous to suggest that what is known so well to me can be unknown in heaven. Even so, the work has a variety all its own and a fascination commensurate with its variety. Everything is grist for our mill. We draw or ought to draw upon the whole range of human knowledge. Out of this vast and inexhaustible quarry, we add this wing and the other, this tower and that, to the great structure of the law, impressive and magnificent, if at times misshapen and irregular. Little enough it is that any one of us can contribute to the significance of the mass, yet true it still is that honest work is never lost. I was reading the other day a book of legal essays and studies written in English by a young Chinese friend, who studied law here, and is now teaching it in China. He quotes these words of Nietsche's: "The philosopher fancies that the value of his philosophy lies in the whole, in the structure. Posterity finds it in the stone with which he built and with which from that time men will build oftener and better—in other words, in the fact that the structure may be destroyed and yet have value as material." Lucky any one of us may count himself if a stone,—perhaps even, it may be, a keystone,—shall be found in the end to have been added by his hands.

This is my first visit to Binghamton, and indeed it has been a joy to be with you. I cannot imagine a greeting more cordial, a hospitality more generous, a fellowship more fraternal. Year by year and day by day I am more and more impressed with the kindness and generosity of the bar in its relations to the bench. "We take our pleasures sadly," says an English essayist, writing of his countrymen, "but we take our troubles with a smile." Perhaps that is not a bad summary of the spirit of the bar. We judges are doing things all the time that must disap-

point you sorely. We are handing down decisions in closely balanced cases where the patient and careful work of months and even of years of conscientious members of the bar is shattered over night. If one were to consider such a situation in the abstract without knowledge of the facts, one might suppose that the result would be a chronic state of irritation and hostility between two contending camps. Nothing of the kind! If we do the day's work with a reasonable measure of intelligence and devotion, we are rewarded by a friendship which is really more than friendship,—by a friendship so tinged with emotion that we can only describe it as affection.

I was a stranger to everyone in this room when I went upon the bench fifteen years ago. I have made my share of blunders, but I have done the best I could. You have rewarded me—richly rewarded me—with a friendship and, I sometimes feel, with an affection which fills me with solemn pride and stirs in my heart an affectionate response.

For these abounding blessings, I can only pledge you in return my gratitude and loyalty, my brotherly devotion, and my consecrated effort to be worthy of the fellowship of the bar.