

THE LEGAL PROFESSION

By PROFESSOR MAURICE EWING

This is the text of a speech delivered in proposing the toast of the Legal Profession at the Annual Dinner of the Society held on 28th July, 1956.

IT is, of course, an honour to be invited to toast the legal profession in such distinguished company, but my competence to do justice to it (you will see how quickly I fall into this technical jargon) is very much open to doubt.

It is true that I once appeared in the Sheriff's office in my native Edinburgh on a parking offence, hot on the heels of a group of Polish seamen full of remorse and stale beer, but the experience cost me 10/- and gave me no great insight into the workings of the law. I also once knew a fellow undergraduate who almost got a holiday job as clerk in a solicitor's office but that too didn't really help me much.

I suppose, having admitted to such shortcomings, I should decently have declined your very generous invitation but such a course offended my native interest in a free dinner, especially since it was freely reported to be one of the best in the Melbourne dining calendar, a reputation which tonight's experience suggests to be richly deserved.

I suppose that now that I have joined a University which is widely believed to be based on the rule of the law, by the law, for the law, I should take an intelligent interest in its machinations, as against the day when rebel faculties might join together to free us from the legal yoke. However, even if in the first skirmishes we managed to subdue a redoubtable adversary like Professor Cowen, I am sure that I would never have enough courage to unseat two such distinguished and generous men as the present occupants of the Chancellory.

We are, of course, witnessing tonight very strong evidence of the maturity and cohesion of the social structure of Melbourne, an index of the high degree of civilization to which its citizens have aspired—or so we might deduce from the knowledge that its doctors and its lawyers can be induced to sit together in comparative harmony for some hours on end—but perhaps for this

happening there may be a less glorious reason. It may well be, for example, that neither finds himself entirely at his ease in the province of the other. The doctor is slightly disturbed (he may even be completely terrified) by the atmosphere of the courts, by the gloom, the sombre furnishings, the trappings of the law, and the hushed voices, all of which contrast so strikingly with the chrome and gleaming tiled elegance and the suavity that go no doubt with any successful Collins Street practice.

Equally, the lawyer feels not entirely comfortable in a hospital bed, or even less as he lies on his back on a trolley going to the theatre, recalling the while with frightening vividness all the doctors' shortcomings as recorded in the proceedings of negligence heard in the civil courts. No, they cannot feel in any way at home in each other's realms so they declare an uneasy truce and agree to meet on neutral territory and to risk rubbing shoulders for a little.

We have, no doubt, many things in common. We share with you the doubtful privilege, I suppose, with the priest at the confessional, of hearing people's confidences. It is also true that our separate professions have, with a most unfortunate lack of foresight, so hamstrung us so that we cannot exploit at all reasonably a situation full of possibilities. We are, in the innocence of youth at our graduation, bound hand and foot by a Hippocratic Oath and no doubt your Law Society imposes a correspondingly rigorous restriction.

The venerealogist, especially in these days when penicillin has put him out of business, could be saved the miseries of penury, of no food in the larder and no fire in the grate, if he were but allowed the privilege of a modicum of blackmail. Restaurants at home add to the bill a cover charge, cafes on the continent 10 per cent for service. Could we not, as occasion arises, add 10 per cent as silence money?

We meet together at least on two great occasions in the life of the family—at birth and at death. In the first I feel that our profession plays the leading part. We conduct ourselves at that time with a compassion and with a touching delicacy, which is very much in keeping with the role of what we so smoothly call the accoucheur.

The law, however, is taken up with what are in contrast vulgar considerations. You are, it is true, very concerned to know whether the emerging head will look down at feet clad in pink or in blue bootees (and, for a consideration we doctors can give you expert

information on methods of identification which depend only on delivery to a level just below the umbilicus) and you want to be convinced about what came out of whom, in what place and at what time and in a twin delivery you almost encourage in the newborn a haste for first emergency, a scramble determined only by the desire of direct succession and not at all by the restricted nature of the uterine bottle neck.

When we make tender enquiries about dates we are looking only into the future, and having lowered our voice and leaned across our desk we record the intimate details in our engagement book and make some reassuring remarks. Your interest is, however, far otherwise. Your dating is retrospective. When the child is born you subtract nine months from the day's date and quickly compare it with that of the marriage ceremony. Whilst we are interested in the father only so that we can know his address and can send him a modest bill you are just as likely to be taken up with considerations of his vigour and competence.

It would be unreasonable and I think unwise for me to claim that we play the leading role at the time of death, although we do often have occasion at that time to regret most terribly the indifferent responses of so many of our patients to treatment and that the inevitable degeneration that goes with growing up so often thwarts our most brilliant ministrations. But, once again, I feel that on these occasions we never fail to act in the most commendably good taste. We have the decency to listen to the last heart beat, to mutter some appropriate words of sympathy, to send our bill pretty promptly and with equally commendable speed to seek new business elsewhere.

But for you, things are just waking up. Death for you means renewed interest and perhaps even big business. If we carry out an autopsy we do it in the privacy of a tiled room and our voices are muted as we handle the organs with great reverence. How offensive are your dissections! You unlock the innermost secrets of the dead and you take a ludicrous delight in unsavoury revelations and rejoice when there is a disputed succession. Moreover, with an obstinacy which comes only from a desire to show your power you will not let a beneficiary lay hands on the estate, to which he can make no more convincing claim than that it is his own. But, it would be unseemly for me at such a time to quarrel with you and I will talk of more congenial things.

There was a time when a knowledge of the classics was a requirement for admission to the faculty of medicine of any

worthwhile university. No doubt you have, in the study of law, had the wisdom to insist on the perpetuation of what is in our profession now an outmoded practice. A working knowledge of vulgar Latin (and it goes without saying that I am using vulgar in its old sense) is, of course, immensely valuable. I must admit that, suitably abbreviated, it forms the essential framework of our prescription formulae with of course a vast amount of wisdom and experience as padding. Yes, a few—only a few—Latin tags gives one a veneer of erudition, a façade of scholarship, a reputation for the very highest intellectual attainment. It is like the white wall on the tyres of a Cadillac, it gives us a sales value we little deserve.

But, it goes without saying that considerations like these mean nothing at all to men of our calibre; we are content with the mental satisfaction of our deep love of the classics for their own sake and our enduring interest in Latin syntax must form a bond of union between us for all time.

Being a Scot, from a country where a love of learning is traditional, my knowledge of Latin is, of course, exhaustive and it will be no surprise to you to learn that when I delightedly see Laker or Lock or Statham (they are, of course, all English and I must confess that Ian Peebles was the only Scot who could ever bowl), when I see one of them tumble down a wicket I instinctively shout not “well bowled” but “bene audax”. Equally, I imagine a Miller, trained in the law would shout as he came racing up to the bowling crease, “Mens vester ego” (which being translated—in case we have any guest not belonging to our professions—means “Mind you I”) to which a scholarly Harvey, confidently and coolly replies: “Ignis via—Fire away”.

It goes without saying that those engaged in the practice of law have a great reputation for respectability, such respectability as some people would find infuriating and oppressive. They are characterized by a seriousness of demeanour and by their careful and cautious movement. They give an impression of infinite wisdom and of benignity which makes them a first choice as trustees—and if you get that far it should not be too difficult to graduate to being a beneficiary!

This goes hand in hand with a high degree of sartorial excellence. In this you showed complete emancipation. The cut and texture and colour of Counsel’s suit is as unpredictable as the winner of the Melbourne Cup.

This unpredictability in dress is, of course, only one manifestation of your acknowledged freedom of behaviour, of your complete liberation from the fetters of the past.

Doctors are, by nature, conservative. We set a great deal of store on the lessons and practice of our fathers and our grandfathers and even dear old Hippocrates and even Galen. You may well complain that we continue to make the same passes over our patients as did our distant forefathers and your complaints may have some justification for the Professor of Medicine will readily agree that the day has long since passed when people believed that a doctor could hear anything through a stethoscope, except the rumblings of the distant sea. Tradition, however, still requires it as a rather impressive preliminary to an X-ray or an electrocardiogram. Yes, we are a conservative, hide-bound body: fully a month had passed after the original article in *Reader's Digest* before doctors had got round to using penicillin.

In the law, in contrast, practice varies almost every day. You set little store on precedent. The files of court proceedings lie dust-covered and long unopened. The law as interpreted by Justice A today is of no consequence to Justice B tomorrow. You enjoy a freedom and independence which makes you the envy of your medical colleagues.

If, in proposing this toast I seem sometimes to make comparisons between medicine and the law I am in no way keen to stimulate any sense of rivalry. I use my profession only as a control group, as a yardstick to measure your greatness. We form the shadows and serve to highlight your brilliance. And I am all too much afraid that, as I go on your shortcomings will become in the face of this contrasting excellence only too disturbingly apparent.

It is, I imagine, important that in the framing of laws and in all legal documents there should be at no time any possibility of a different meaning from the correct one. This need for exactness and for absolute clarity has given to legal writing an ease of expression, a fluency, a cadence and a directness beside which Churchill's writing must seem involved and ponderous and confusing. You suffer not at all from the use of words like "whereas" or qualifying phrases like "always provided". You never have such a long and complicated preamble with such a rapid succession of positives and negatives that when you arrive eventually at the operative verb you have completely forgotten what went before. To your directness and clarity we must pay high tribute.

The law enjoys a great reputation with all members of the community for speed and for the streamlining of all its activities. It must be fully five years since the quill in your offices gave way to the steel nib and blotting paper had even replaced sanding by the beginning of the 1939 war. It is heard that the more enterprising are making inquiries about typewriters, but a junior clerk who produces a ball pen suffers the tortures of ostracism which are happily terminated by his eventual dismissal.

The workings of the law run on with breathtaking speed and no sooner has a client taken advice than he is catapulted into court and presented with a verdict and a bill for settlement. Beside this our leisurely progress is a snail's pace—the surgeon's consultation and diagnosis may not have its sequel of operation for at least twelve hours.

You also have the great gift of sympathy and of helpfulness. This is displayed in full measure by Counsel in cross-examination—the witness, ill at ease, apprehensive and uncertain of himself, is soon quietened by words of comfort and by helpful suggestion, by coaxing and wheedling, by flattery and by touching his vanity. He ends up by saying precisely the opposite of what he meant but all in such a way that it doesn't really hurt.

One also hears of counsel taking considerable pains in searching standard textbooks on some point of medical evidence evidently for the specific purpose of helping the doctor when he takes his stand in the witness box. He then proceeds to induce the doctor to admit to very special knowledge and experience, to highlight his own ignorance of things medical, but only as a preliminary to bamboozling him completely by a complicated question within a question, tied up with an infinity of saving clauses. Yes, to your sympathy and kindness again we will pay tribute.

But—I have left to the end of my long recital of your attributes the most important one of all. We are both defenders of the truth and of your competence in this direction there can never be any question. You have, however, learned a great secret of fundamental truth—that there are two different ways of telling it—and if you can do it persuasively and convincingly enough you can make a good living. If it is not the basis of legal practice in general it will surely be an essential for a successful career at the bar.

And now it is time for me formally to propose your toast. Forgive me if my eulogies have been so effusive that they have caused you any embarrassment or have made you suspect my sincerity—

it is only because I have been carried away by the obvious virtues of the cause I am pleading.

But, to be serious for one last moment, I have since the wildest days of my youth, when my natural inclination was to be in no way fearful of authority, been brought up to trust the institution of British Law and to trust those responsible for its workings. My adult experience and my travels since have done nothing to lessen my high regard for your profession.

I am one of those people who are still old-fashioned enough to believe that our two professions are right in their insistence of putting a lot of store on certain virtues, among which integrity and inviolability are two essentials. As Bacon puts it, talking of judges—"Above all things integrity is their portion and proper virtue". We can always be assured that you have integrity in very full measure.

So now, my medical colleagues, please be good enough to rise and drink the toast of our very esteemed colleagues—the Legal Profession.