

CONVOCATION ADDRESS
AT THE
THIRTEENTH ANNUAL CONVOCATION
OF
NATIONAL UNIVERSITY OF ADVANCED
LEGAL STUDIES, KOCHI
SCHEDULED ON 1ST FEBRUARY, 2020
BY
HON'BLE MR. JUSTICE K.M. JOSEPH

1. Hon'ble Chancellor, Vice-Chancellor, distinguished personalities on and off the dais, members of the Faculty, the stars of the day-the graduates, their parents and other relatives, ladies & gentlemen.

2. I am elated to be in your midst on the occasion of the 13th Convocation of the National University of Advanced Legal Studies, Kochi. I congratulate all those who have passed out and also their relatives and friends who have gathered here. It is indeed a moment of indescribable joy, to be etched in your memory.

A rare milestone. May it be the beginning of a bright, exciting and momentous odyssey.

3. To those who have high scores, I salute you for your achievements. For those who may not have done as well, I would only say this.

In his work "the Court Years", an Autobiography of William Douglas, an eminent Judge of the U.S. Supreme Court, I find this comment:

"During my time on the Court we heard both great arguments and miserably poor arguments. When some incompetent soul was wasting our time trying to present a case, I often sent a note to Felix Frankfurter. Sometimes it read: "I understand this chap led your class at Harvard Law School." Sometimes it read: "rumor has it that this lawyer got the highest grade at Harvard Law School you ever awarded a student." Almost always Felix would be ignited, just like a match."

I could not agree more with this comment. It certainly holds out hope for those whose academic attainments may not proclaim their destiny in actual practice.

4. An address by me inevitably involves advice. I am reminded on what Benzamin Franklin said nearly 200 years ago. He said I quote:

“Wise men do not need advice. Fools won't take it”.

5. Some of you will secure positions as Solicitors. I was informed that many who pass out from National Law schools do not pursue the legal profession but instead pursue the 'super cheques' from seemingly secure positions that are offered at a young age. Some may take the civil services exams or get selected as Judges. At least a few of you may pursue a post graduate course and even doctoral course and teach law. Last but not the least many of you may practice

law. I have touched upon the wide range of options only to underscore the advantages of passing a law course today. The law graduate today is smarter than his counterpart was a few decades ago. The National Law Colleges have in no small measure contributed to this new 'status' that lawyers have acquired.

6. What I have to say is primarily directed to those who intend to take up law as their profession and practice in courts. India has about 1 lakh more than half a million advocates and perhaps the largest number of lawyers apart from United States.

7. The legal profession is not an employment leave alone a part time job. Becoming a professional involves the blossoming of a passion over a life time for learning which comes from deep within. A true lawyer would not either mark time or have sideward glances at the

clock. I have no hesitation in declaring that there is no profession like law for one who pursues it in a true spirit. It is obvious that the quality of the justice delivery system is largely dependant upon the attaining of the highest levels of competence, skill, commitment and dedication by the legal fraternity. Judges at all stages are overwhelmed by docket explosion. Their ability to keep themselves abreast of the latest developments in law despite no doubt the Government making available the benefits of technological advancement remains under a cloud. It is all the more reason that the level of preparation that lawyers must do is of the highest importance.

8. A lawyer must be a thinker. He must ponder. The faculties of imagination and intuition do play a significant role in the career of a successful lawyer. Cardozo in his legal work

"Paradoxes of Legal Science" has this to say about imagination:

"Learning is indeed necessary, but learning (to paraphrase what has been said of Keats) is the springboard by which imagination leaps to truth. The law has its piercing intuitions, its tense, apocalyptic moments. We gather together our principles and precedents and analogies, even at times our fictions, and summon them to yield the energy that will best attain the jural end."

9. What are the attributes of a profession.

G. Millerson in his work "Qualifying Association and a Study in Professionalisation" has noted certain common elements in a profession. They are skill based on theoretical knowledge, acquisition of training and education, testing of competence of the members, Organisation, the

ethical code of conduct and last but not the least the element of altruistic service.

10. I would request those who wish to set up a law practice to hone your talents under the able guidance of an experienced counsel. What makes the practice of law truly attractive is that the practice presents each day with new and seemingly intractable problems. You may have familiarised yourself at least at a superficial level with the rudiments of nearly all branches of law. I would have no hesitation in telling you that the practice of law requires a comprehensive understanding of the many facets of a case. How a case is conducted in court depends on how you would set up your pleadings which include what you should be saying as much as what is best left unsaid. Familiarity with procedures, arguments in interlocutory applications, examination and cross examination

of witnesses and of course, the icing on the cake, namely the final oral arguments before the court, are all skills best acquired under the gaze of an experienced counsel.

11. It is for you to choose the branch of law which you wish to specialise in undoubtedly. I believe that a lawyer should put in at least a few years in the trial courts and High Court in all aspects of civil law as sound knowledge of the basic concepts of civil law is important for laying a strong foundation for a successful practice in law. In the first place, it is obvious that the several branches of civil law often interlock with each other in the resolution of disputes. To my mind civil law can be likened to field full of mines and counsel must be extremely skilful lest the litigation does not end in a catastrophe. It is undoubtedly

the most complicated branch of law in my view. The importance of learning it at the earliest phase of your profession is that it will prepare you to launch a successful practice in any other branch of law. Equally, in the initial years it would be indeed advisable if you familiarise yourself with trial work in criminal law. As with children, toddlers at law more easily assimilate knowledge and overlooking of mistakes they may commit may be liberally forthcoming than if committed by so called experienced counsel.

12. While practising under an experienced counsel make use of every moment you get to deepen your glimpse of the law at play in individual cases. The Socratic method which I believe is applied in many Law Schools should continue to be the hall mark of your approach to devising both your stratagem and the unfolding

of the same in the court rooms. Do not resist seeking light from those around you. Many a time the hint of a doubt, which you may have is best cleared at the earliest with those who know more than you. Do not stand on your ego. It is better to ask and find answers before things become far too late.

13. Negligence by lawyer is not an uncommon phenomenon. Be it drafting pleadings or in cross examination of witnesses, and lastly in addressing arguments, litigants can take you to court over half baked and a pretence of professional work.

14. The practice of law is not to be taken lightly. You are no different from a surgeon upon whose skill, hard work and dedication hangs the life of a patient. The importance of a lawyer is felt and realised when he himself is conscious about his impact on the destiny of

others. A fellow countryman approaches the counsel for possessing the high level of knowledge and competence which he professes to the whole world that he possesses. It is not as if the party-in-person cannot present his case. Indeed many of them do so and they perform exceedingly well. They approach a lawyer with the reassuring thought that they are entrusting their destiny in safe hands. Pursue knowledge through your careers as a humble student, Drop the Know-All mask which you may be inclined to wear on the strength of having undergone a five years course in law.

A large part of hard work would be occupied by extensive reading. In the matter of reading, it would be wise on your part to understand that as years roll by and you get more work, you will not get enough time to read. Therefore, make use of the early years to read extensively.

Consider the relative dearth of work as a blessing in disguise. Seize every moment to read not only about law but every branch of knowledge. The lawyer is a jack of all trades. The sea, the space and everything about life is under the command of law. No activity is today beyond the reach of law. This enhances the utility of a practitioner to society and catapults the responsibility of a lawyer as never before.

15. As noted by the Sociologist, one of the distinguishing features of a profession is the altruism that attaches to the practice of a profession. All said and done, a lawyer performs a service. It can make or break the life of his client. In a country like India where large sections live below the poverty line and are otherwise underprivileged and disadvantaged, the element of altruism associated with the

profession acquires unique dimensions. It is the sacred duty of each one of you to bear this in mind wherever you are, and whatever you may be engaged in. Doing pro bono work whenever you get the opportunity will undoubtedly contribute to not only redeeming the fair name of an advocate but also more interestingly fostering your own careers. Lawyers doing pro bono work earn marks in applications for being designated as senior counsel.

16. Naturally associated with this aspect of the profession is the troubling phenomenon of very high fees charged by lawyers. Remember your duty which is to render service to your fellow countrymen who in their distress rush to you hoping to find solutions to their vexed problems but handicapped by the paucity of funds. Think for yourself whether the respect that a lawyer used to command particularly during the freedom

struggle in our country has been at last partly dimmed if not lost in large measure, due to the perspective that it no longer appears to be a profession but more of a business.

17. There cannot be a profession if its practise is not predicated by norms to be observed by the professional. I am sure you would have gained familiarity with the same. It is important to revisit the study of the same from time to time. There appears to be large number of complaints with the Bar Councils.

18. Meticulous preparation of your cases is not only a duty which you owe to your client and also to the court but more importantly to yourself. Outwitting your opponent in the intellectual wrestling in a court room is an indescribable ecstasy to be realised over a hard

won legal battle. With each case which you conduct with skill and care, honesty and dedication in a profession where advertisement is otherwise tabooed, you proclaim yourself to the rest of the world. There is no greater joy for a lawyer than in the culmination of a case properly conducted. The vedantic exhortation of Nishkam Karma is most apposite for a lawyer. There will be ups and down, triumphs and defeat. View both as imposters like the waves of the sea which come and go. Learn to remain unaffected.

It is the duty of the lawyer to assist the Court. The advocate must not only keep himself abreast of the latest laws churned out by the law giver but he must establish familiarity with the decisions undoubtedly of the Apex Court and of the High Court in which he practices. The Judge, however would be more forgiving of

ignorance betrayed by counsel if it goes to law but what is unpardonable is the counsel being unable to give a correct picture of the facts. A counsel who has completely mastered the facts of his case becomes the blue eyed boy of the court. The mastery of the facts must be such that he must be able to answer any aspect of the case which may be posed by a discerning Judge or Judges.

The important thing to realise is as that everything lies in the reputation which a professional acquires over a period of time which establishes him as a top flight lawyer. Reputation in turn is acquired by a motley crowd of virtues blending in a person. Apart from learning, what appeals most to a Court, is character manifested by honesty and fairness. Justice Crampton, an Irish Judge, has this to say:

"He (the advocate)", says Mr. Justice Crampton, "is a representative but not a delegate. He gives to his client the benefit of his learning, his talents, and his judgment; but all through he never forgets what he owes to himself and others. He will not knowingly mis-state the law, he will not wilfully mis-state the facts, though it be to gain the cause for his client. He will ever bear in mind that if he be the advocate of an individual and *retained* and remunerated (often inadequately) for his valuable services, yet he has a prior and perpetual *retainer* on behalf of truth and justice and there is no Crown or other licence which in any case or for any party or purpose can discharge him from that primary and permanent retainer".

Abraham Lincoln in his first appearance before the Supreme Court of Illinois addressed the Court as follows:

"This is the first case I have ever had in this Court, and I have therefore examined it with great care. As the Court will perceive by looking at the abstract of the record, the only question, in the case is one of authority. I have

not been able to find any authority to sustain my side of the case; but I have found several cases directly in point on the other side. I will now give these authorities to the Court and then submit the case."

Never ever attempt to mislead the court. You will stand exposed. It is not unnatural that judges discuss lawyers. Lawyers who mislead are bad news and it travels fast.

19. Being under the gaze of everyone in the courtroom which includes also members of the staff is almost like being under a CCTV camera. Nothing that a lawyer does or does not do escapes the scrutiny of those in the court, most importantly, the judges.

Be courteous to your opponent as much as you must be to the Court. Be a thorough gentleman. Remain an officer of the Court even when you

will valiantly continue your crusade on behalf of your client to the very logical end. Helping the Court in arriving at a correct and just conclusion is the true duty and the role of a lawyer. The courtroom is not to be confused with an audience at an election campaign. While oratorical skills may be harnessed, a wise counsel will recognise that oratory is only a means to an end and the quality of brevity is greatly appreciated by courts.

20. Study the Court. When I joined the Bar, a senior counsel gave me advice which I thought was useful. He told me that the Court is like a zoo. There is the elephant, the horse, the deer and also the tiger and the lion. You cannot feed grass to the tiger as much as you would feed them to a deer.

Be prepared enough to answer any question that falls from the Bench. If you do not know the answer please tell the court that you have no immediate answer but will come back, given time. Do not say something in court without understanding about the consequences of your statements. Contemplation leading to clarity of thought is of crucial importance. Orderly arrangement of arguments addressed in a tone of equanimity and avoiding confusion in thought is greatly appreciated. In fact this is what Lord Macmillan says in his work : "Law and other things"

....."If I were to select the rule" observed Lord Macmillan "which in my estimation above all others should govern the presentation of an argument in court, it is this - always keep steadily in mind that what the judge is seeking is material for the judgment or opinion which all through the case he knows, he will inevitably have to frame and deliver at the end. He is not really interested in the

advocate's pyrotechnic displays: he is searching all the time for the determining facts and the principles of law which he will ultimately embody in his decision."

The same learned author further states this also :

"...It is a good exercise to think out how, if you were the judge and not the advocate of your client's cause, you would yourself frame a judgment in your client's favour. Then model your speech on these lines. You will be surprised to find how often the grateful judge, when he comes to give judgment, will adopt the very words of an arguments so presented. You have furnished him with the materials of judgment; he will be predisposed, to use them because they are at hand and the more so if your opponent has adopted a less helpful though possibly, more showy method of advocacy."

Carefully observe how each Judge reacts by attending court proceedings.

Make use of the time you have when you are not having any particular case to attend some court. Make extensive use of the library. It may be true that unlike the earlier times today knowledge is at your finger tips by merely opening the laptop or even the mobile phone. But I would still advise you to go to the library and develop the habit of reading which should not be confined to reading relating to any particular case with which you may be involved. Develop a passion for reading. Not a word you read I can assure will be in vain or go waste.

Success in the profession is best described when you are recognised by your own peers. It is when lawyers queue up and seek to engage you or request you for your advice that you could declare that you have arrived. This is possible only if you earn a place in the hearts of your fellow lawyers by the extra mile that you have

walked, the midnight oil that you have burnt, your standing in the court and the respect which the court holds you in. None of this is possible unless you are in a position to work hard on a regular basis and not in a sporadic or impulsive vein.

Be regular in your habits. Let the whole world know that you are available at your office at hours at which they can expect you to be present.

Be fair with your clients not only in the matter of charging fees but in the matter of advice you give regarding your perspective of the case. Do not give false hope to your clients. No doubt I am reminded of the following words of Johnson in this regard:

"Sir you do not know it to be good or bad till the Judge determines its. You are to state facts clearly; so that your thinking, or what you call knowing, a cause to be bad must be

from reasoning, must be from supposing your arguments to be weak and inconclusive. But, Sir, that is not enough. An argument which does not convince yourself may convince the Judge to whom you urge it; and if it does convince him why then, Sir, you are wrong and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad; but to say all you can for your client, and then hear the judge's opinion."

The life of a lawyer is unique. In his work "It is Your Law" Charles P. Curtis aptly describes it aptly:

"In a way the practice of the law is like free speech. It defends what we hate as well as what we most love. For every lawyer whose conscience may be pricked, there is another whose virtue is tickled. Every case has two sides, and for every lawyer on the wrong side, there's another on the right side. I don't know any other career that offers an ampler opportunity for both the enjoyment

of virtue and the exercise of vice, or, if you please, the exercise of virtue and the enjoyment of vice, except possibly the ancient rituals which were performed in some temples by vestal virgins, in others by sacred prostitutes."

Run a hard race. Abide by the rules of the game. Your rewards will surprise even you. The constitution beckons you eternally. Even while your life is transient and short, your contributions to the upkeep of the rule of law and constitutionalism can make you eternal. The nation must be taken forward on your shoulders. May you all have the strength, health and unquestionable spirit to endure your arduous journey. Jai Hind.

[JUSTICE K.M. JOSEPH]

