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Harold R. Medina

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THE BENCH AND BAR AND PUBLIC RELATIONS

AN ADDRESS BY JUDGE HAROLD R. MEDINA

Mr. President, distinguished guests and members of the Washington State Bar. For fifty-nine years I was cooped up in New York City with my nose on the grindstone. You will hardly believe me when I say that I had not even been as far west as Chicago. But here I am now having a wonderful time in places I have longed to visit and among people whom I have longed to know. And I am grateful to you for asking me to come. -

Doubtless you expect me to talk about some important public question or delve into the mysteries of some vast and complicated realm of the law or in some other way show my erudition and what an authority I am on something or other. If so, you are going to be disappointed. I am simply not good at that sort of thing.

So I shall talk shop. I think I know lawyers pretty well. Some of the happiest hours of my life have been spent working, arguing, feasting, and singing with my brethren at the bar at every sort of bar association affair known to man or beast. And I imagine that the lawyers out here are just about the same as the lawyers in New York. Anyway, it is my judgment that on occasions such as this lawyers like to hear something practical and at the same time entertaining, if possible.

There is another reason why I wish to talk shop. In a moment of weakness if not temporary mental aberration I agreed to take on the job of Vice-Chairman of the American Bar Association Section on Judicial Administration for the fiscal year 1950-1951, with a commitment to be Chairman for the next fiscal year which begins this month. That was before I got into the trial of one of those anti-trust cases but it was an ill-advised move. Having undertaken the duties of Chairman, however, I am going to try to do the best job I can. And I have resolved that for the coming year wherever I go and befall what may I shall keep harping on judicial administration from morning till night. And I don't mind telling you that I expect to get a lot of fun out of doing this. I have spent forty odd years kicking around courtrooms and lecture rooms learning about judicial administration largely through the seat of my pants and then passing whatever I learned along to the students and I understand something about the problems involving this and the difficulties to be surmounted.

And so, with all these things in mind, I have chosen as the subject of my address this afternoon "The Bench and Bar and Public Relations." You will note that I join together the judges and the lawyers, that is where they belong—together. This little twist is, I think, of real significance.

For some strange reason individual lawyers and judges are models of integrity and usefulness in the eyes of their particular clients and in their own communities, whereas lawyers and judges in general take a terrific beating. When we see a lawyer depicted in the movies he is almost sure to look and act like a weasel and the judges carry on in such a way as to make one wince. The newspapers and the public seem to leap with joy when some embezzler turns out to be a lawyer or when some judge is caught in the toils of a marital tangle; and so it goes.

The result is that it does seem to most of us that our motives and our aspirations, our love of liberty, our hatred of tyranny in any form and our truly fervent interest in the ways of American democracy and in the improvement of the administration of justice have been wholly misunderstood by the public at large. We know these things about ourselves but we seem to have a perfect genius for mishandling the subject of our public relations. Not that we fail to realize the importance of this subject; but we seem always to go about it the wrong way.

So much by way of preliminary. I am now going to wander around in a way which may puzzle you. It is characteristic of my approach to any subject to do it on the bias or by indirection as I have found it effective both as a teaching technique and in my summations to juries when I was at the bar. As I flit here and there I can assure you that I shall not have forgotten the subject but will bring things together before I finish and I hope to do so without boring you with a long speech.

Since I became a judge, I have been through the most interesting experiences of my life; and I have learned a lot.

At the outset, let me tell you that sitting on the bench with that grand old flag just over one's shoulder, really does something to you. The first thing, and the one I would emphasize above all others, is that it teaches one humility. I used to hear Chief Judge Benjamin H. Cardozo, while he was still Chief Judge of our New York State Court of Appeals and before he became an Associate Justice of the United

States Supreme Court, speak about this, without grasping the full impact of what he had to say. Now, I realize that a judge is often thrown in the midst of the interplay of great forces which he cannot hope to fathom but which he knows affect the destiny of humanity. And very soon the thought permeates his innermost being that he is a small, an infinitesimally small particle in the scheme of things.

As a lawyer I often thought of the things I would do and I would not do if I ever became a judge. I formed a lot of resolutions which I thought represented the irreducible minimum. Well, almost all of my good resolutions have now gone by the board; and in my striving to keep them, I have discovered that there are no absolutes in the field of human affairs. I have found that it is impossible always to listen to the lawyers until the cows come home, as I resolved that I should do; I have found that there are times when I did everything in my power to blackjack the parties and their lawyers into a settlement, although I swore that that was something that I should never, never do; and, to my dismay, I even found myself worrying about what the Court of Appeals or the Supreme Court would do with my judgments, despite the fact that I had resolved that of all my resolutions this one, at least, should never be broken.

But out of my experience as a judge, there has come an understanding of something infinitely more interesting, when one takes into consideration the mess in which we Americans now find ourselves. I have discovered by personal experience that there is in the heart of the common man, the average American one meets in the street or in the subway, and from one end of this great country of ours to the other, an intense and passionate interest in the administration of justice.

I don't fool myself about anything I have done. In going about my daily work, just as does every other judge in either the state or the federal courts, some queer turn in the wheel of fate has singled me out, for the moment, to feel the impact of America's love of justice. Everyone, irrespective of race, color or condition, the poor and the rich and those in between seem to realize that our whole democratic system and their particular destiny as individuals depend upon the impartial administration of justice by men of integrity who apply the law to all alike. It never occurred to me that this feeling was so well nigh universal. It is one of the most inspiring and one of the most encouraging features of these exciting days in which we live.

Let me give you one or two illustrations to explain what I mean. A couple of years ago, I was walking down a street in San Francisco. One of those funny looking little cable cars came along, and there was in it a young workman about twenty-six or twenty-seven years of age, with his lunch box and his clothes covered with dust, indicating that perhaps he was working on some building construction. He took one look at me, jumped off the car, ran over and looked me in the eye and gave my arm a little squeeze. He did not say a word; but he ran off and jumped back on the car.

Only a few months ago, I was walking along 43rd Street in New York City when a taxicab, with three or four passengers in it, came along, and the driver stopped the car, jumped out of his cab and came over to me and said, "Judge, would you mind shaking my hand?", which I did, and I thanked him and he got back in the cab and drove off.

As long as I live, I shall never forget the thousands of letters I received in late October and November of 1949. The common note running throughout them all was one of patriotic satisfaction that American justice had prevailed in an atmosphere of calm, quiet but firm impartiality; that, in the midst of turmoil and disturbance, the wheels of justice functioned smoothly; that deliberate consideration was given to every question on its merits, without emotion and with dignity.

Please do not misunderstand me. As I said only a moment ago I know perfectly well that what I did was no different from what would have been done by any of the hundreds of other judges of our state and federal courts. I am talking of what these people thought who wrote those letters. That they should think those thoughts and express them as they did is a matter of deep significance.

Some people may think these were like the fan letters received by movie stars or baseball heroes. But I tell you they were not. They came to me as a sort of representative of the judges of all the courts of America. There was a spiritual quality to them that was unmistakable. Let me illustrate.

Literally hundreds of these letters coming from every part of the country were signed by the mother and the father and all the children of the family—where a little girl or boy was too young to sign, someone wrote Jeanie or Billy and put a cross. In many cases the boss and every single employee of a business such as a retail store or a restau-

rant or a beauty shop signed right down to the porter or the delivery boy. Thousands of them were signed by both the husband and his wife—neither wanted the letter to go without having a personal, individual part in what they had to say. Most of them came from what some have been accustomed to call the “little guys,” the people you pass in the streets and meet in the stores and the movies.

So don't cry down America while I am around. I know better. I am an optimist and all this talk about our going to the dogs makes me sick. What if the average American does cuss out the politicians and what if he does enjoy a certain amount of bellyaching. We all do that. It doesn't mean a thing. Right down in their hearts they are proud of their judges and of their lawyers too. Sometimes I think the “little guys” know a lot more about the administration of justice than we give them credit for. And they don't like to be kicked around, and they don't like to be shouted at and they don't like gavel banging.

So much for step one.

Now for step two. It was not so many years ago that I acted as Chairman of the Committee on Public Relations of the New York County Lawyers Association; and later, and for many years, I was the Chairman of what was called the Joint Committee on Public Relations, which consisted of representatives of all the Bar Associations in metropolitan New York, numbering fifteen or more. I suppose perhaps I was selected for these responsibilities because I came through thirty-five years of an active litigated practice without ever having had a single personal quarrel with an adversary. Whatever the reason was, I approached my task with zeal and enthusiasm, only to find that we lawyers had a perfect genius for thinking of the wrong things to do to improve our public relations. Indeed, it would startle you to peruse the long list of suggestions that came before the Joint Committee for consideration. I almost threw up my hands in despair, and found that what I was chiefly doing was putting the quietus on one plan after another because it seemed so futile and unwise.

This leads me to the real point of what I have to say this afternoon. Out of these experiences that I have had on the bench, coupled with a good deal of meditation on the subject, has come the thought that the real key to the proper handling of the public relations of the bench and bar lies in an understanding of the fact that the administration of justice is not solely the concern of lawyers and of judges, but

that it is a great cooperative effort in which every member of the community plays his several and important part.

After all there is only one kind of justice and that is one hundred per cent justice; and it requires no argument to demonstrate that one hundred per cent justice is impossible without the wholehearted cooperation of every single member of the community.

We shall never get anywhere by blowing our own horns and telling people how fine we lawyers and we judges are, how hard we work and how much we do for the community and so on. One is never persuasive when he is boasting about himself.

Let me give you just one little example out of my own life. It didn't take me very long to realize how much the law was doing for me and I felt a sense of gratitude which will last the rest of my life. I tell you with all sincerity that there is absolutely nothing that I would not do to bring the lawyers and the judges closer together and to help make our judicial establishment more efficient. And, incidentally, if you really want to arouse my wrath, speak of some of these things as "sacrifices." They are not sacrifices nor did I make any "sacrifice" when I gave up my practice and went on the bench. You and I do these things because we wish to, because it pleases us to do them. If there is anything I dislike more than another it is this mealy-mouthed talk about sacrifices.

But, to get back to what I was about to say, I kept thinking all through my professional life of some way or other demonstrating to the public what we lawyers really do as a matter of service to the community, quite as important in the aggregate as all the work the doctors do for the poor and needy in their clinics and so on. With this in mind I wrote out and kept copies of all the speeches I made. I would practically memorize them and seem to be talking extemporaneously but really I wrote them out and kept them filed away so that some day they might perhaps be gathered together as Harold Medina's speeches, with a foreword by some jurist of reputation, to show that the lawyer's function in society is not just rooting for his client and trying to win cases and make money. There were speeches in high schools about "Why Study Latin," speeches at college commencements and graduation exercises at grade schools and high schools, speeches at Memorial Day exercises and Flag Days, dedications of war memorials and even sermons from the pulpits of churches of various denominations with dozens of Bar Association addresses

sprinkled around. Well, when the commie case was over I said to myself it will now be easy to publish the speeches. But it wasn't. No one was interested. The publishers said nobody wanted to read speeches. They wanted me to write about the commies and about myself but I didn't want to do that for reasons which I need not explain to an audience such as this. No. We shall never get anywhere telling the public about what we do for the public welfare, the vigilance of our committees, the midnight oil burned while we prepare reports attacking unwise proposed legislation, our representation without compensation of indigent persons charged with crime, our support of and participation in Legal Aid and so on. That is the wrong approach. And it is unsound because human nature will never change and you can never get anywhere telling people what a wonderful fellow you are. The reaction is always negative.

On the other hand, from the approach of the administration of justice as a great cooperative effort, we can hold the public to do its part, and in doing so bring about a better understanding of ourselves.

Take the matter of selection and appointment or election of judges. I am persuaded that no way will be found to put this on anything approaching a nonpartisan, nonpolitical basis, until an aroused public gets up on its hind legs and forces the issue. And yet, how little the public really knows about judges. If good public relations between the community and the bench are to be maintained, there must be a better understanding on the part of the average citizen of what the judges do.

It is a curious fact that most people think the judge's work begins and ends when he ascends the bench in the morning and leaves it in the afternoon. They think that he knows all the law by some curious process of absorption, and that really he leads a rather jolly life. The truth of the matter is that every judge has an infinite variety of administrative and judicial matters to attend to in chamber; much of his time is consumed in the most painstaking study of records and briefs, exhibits and so on, to say nothing of the inevitable conferences with lawyers and others, which are coming up all the time.

It is surely not enough that a judge should be honest and merciful, free from prejudice and bias to the extent that it is humanly possible to be free from prejudice and bias. Nor is it enough that he be industrious, patient and courteous. Some background of scholarly endeavor, some substantial experience in the work of the court in which he is

to sit, and some more or less complete understanding of legal principles and the course of legal decisions, and the vast variety of the statutes which he must interpret, are requisite and essential. But how is the public to do its part in the cooperative effort, unless there is some studied attempt on the part of the bench and bar to explain these things?

The same thing is true about lawyers. What a curious circumstance it is that such vast numbers of people throughout the land have no conception of the importance of preventive law, of the good that can come from consulting a lawyer when trouble first appears as a speck upon the horizon. The Lawyers' Reference Services now springing up all over the country are doing much to explain this most essential phase of the lawyers' work.

But what better way could be found to explain the contributions of lawyers to society, their devotion to our liberties, their love of justice, than to have lawyers do more to explain to the community about the part played by the average citizen in this great cooperative effort.

I happen to believe that the jury system is one of the most important features of our system of American justice. But we all know that there are things that jurors do that must be stopped if we are to have the kind of one hundred per cent justice that I was talking about a moment ago. This reading of newspaper accounts of the trial; this talking about the case to one's wife or husband or to one's friends and business associates; this listening to commentators discuss the case over the radio. Jurors just can't do these things if they are to mete out one hundred per cent justice. Lawyers can explain these things to groups of business men and groups of housewives and workers. People will listen and try hard to do the right thing if only they are convinced of the sincerity of those who try to lead them. We must keep plugging away at those things with examples and illustrations—and at the same time try not to bring in the cases we won and other things which show how smart and canny we are. That always spoils the whole affair.

And how about the people who witness an accident or some infraction of the law and then sneak away because they think it is unsportsmanlike to tell on anyone or because they don't want to get mixed up in a trial as a witness, where they may have an uncomfortable time on cross-examination. It must be explained to them that the whole administration of justice functions on evidence and facts—that the

suppression of evidence is the one sure way of sabotaging the system, lock, stock and barrel.

Well, I've made my point and it's time to sit down. It has been a wonderful experience for me coming out here and getting to know you. I hope you won't forget me.
