

Art of Advocacy

By Rao H D

“My lawsuit has nothing to do with assault, battery or poisoning. It is about my three goats my neighbour stole. The judge wants this proved, but you, with big words and extravagant gestures, talk about the Battle of Cannae, the Mithridatic war and the Perjuries of Carthaginians, the Syllae, the Muccii. Now, Postumus, say something about my three goats.”¹

Yes, the lay client was right, and what was true centuries ago is more so today.

Lawyers must be brief and to the point. With mountains of cases to decide and unable to balance the competing claims of hurry and hearing, judges are under severe pressure and are in no mood for wordy, wandering, beside-the-point arguments.

Advocacy is the art of persuasion and a lawyer is a persuader with twin duties: argue for the client as well as assist the court to decide justly. Thus, a lawyer ought to know how to reconcile the interests of the client with the eternal interests of truth and justice.

Lawyers' craft consists in skills and the foremost among them is the ability to get to the point quickly, and to extract and encapsulate its essence in a few yet compelling words.

Next comes preparation and presentation. Preparation is everything and whether a case stands or falls depends on it. No matter how big the case is, no matter how confused the facts are, you can arrange and reduce them to understandable issues. This comes only from hard work and heart-and-soul application. Hard work has no substitute and habit of hard work is the hallmark of a successful lawyer.

Advocacy is a dynamic process and effective advocacy must have a structure. Structure depends on strategy, and strategy is determined according to events.²

Lugging a teetering stack of law books to the courtroom, reading pages upon pages with dramatic gestures, and citing precedent upon precedent is a vain exercise to impress the court. The technique is not ‘aggregating’ but ‘arranging’ the material, not ‘massing’ but ‘marshalling’ the evidence—which witness to call and in what order.

What’s more, a strong point made once is all you need. It becomes no stronger if you say it to a sickening degree. More cases have been lost by going on too long than by stopping too soon,³ and Josh Billing’s advice is worth remembering: “When you strike ‘ile’, stop boring; many a man has bored clean through and let the ‘ile’ run out of the bottom.”⁴

A final word. Legal skills apart, lawyers have a duty to the profession and to society. Their bar membership does not mean the end of their primary membership in the human race. Justice is the great interest of man on earth.⁵ To achieve this, lawyers must do their part, adopting the maxim ‘Better to make a life than a living’.

‘Life’ versus ‘living’. Yes, indeed a tough balancing act it is in today’s world. But, let not the legal profession so high fall so low as to become a mere moneymaking mechanism.

Endnotes

¹ Martial (c AD40-c104) Epigrams, bk VI, epig. XIX quoted in Dictionary of Legal Quotations, Simon James and Chantal Stebling

² Sun Tzu, The Art of War

³ *Rondel v. Worsley* (1969) 1 AC 191,228 quoted in *Advocates*, David Pannick, OUP, 1992, p191

⁴ Francis L Wellman, The Art of Cross- Examination, fourth edition,1976, p80

⁵ Per Daniel Weber, quoted in *The Fabric of English Civil Justice*—Sir Jack I H Jacob, *The Hamlyn Lectures*, Thirty-eighth, series, 1987, p187