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LaFollette, Robert M.

Address to Class of 1885-'86

ADDRESS TO CLASS OF 1885-'86,
LAW DEPARTMENT, HOWARD UNIVERSITY,

BY HON. ROBERT M. LAFOLLETTE, OF WISCONSIN,

WASHINGTON, D. C., MAY 31, 1886.

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ADDRESS

TO

HOWARD UNIVERSITY LAW CLASS.

It is not my purpose, gentlemen, to go over the broad field which this occasion opens so invitingly. I shall not attempt an exhaustive discourse concerning the profession you are about to enter. It is equally foreign to my purpose, on this day of anxious anticipation, to emphasize the difficulties and disappointments sure to come into your professional life.

Upon these themes I can say nothing which you have not already thought and felt. I know, aye, so well I know, how often, in wrapt anticipation each one has out run time and penetrated the very future, until you have felt that you were on familiar terms with it. During the past year it has haunted you like a feverish dream, filling you with alternate hope and fear. With heroic courage you have faced the long, weary waiting for clients—the starving time for young lawyers—and of course you have made it longer and infinitely more terrible than the reality. And then, that crisis passed, you have felt privileged to loose the checks, swing to the other side of the arc, making the balance of life one long season of success and satisfied ambitions.

No trick of fancy, no power of statement, no gift of eloquence could possibly darken and illumine with failure and triumph the future as you already have in imagination many, many times.

I should surely fail to convince you that, possibly, your despair will not be so great nor your success so satisfactory as you have dreamed. A little experience and some reflection will teach you that as a rule, each man can judge his future by his past; that, looking over a long run of time, gathering up the extremes of experience and putting them together, he may re-

alize the change, the actual growth, may see that he has achieved indeed much. But the days, and weeks and months as we live them, mark few great transitions. They have about an equal share of sunshine and shadow—they are just about as we ourselves make them.

No, gentlemen, though it would be a privilege to yield this hour to the pleasure of these anticipations, and invest it with a personal interest for you; and though the majesty of the law, its sublime service to the human race, its transcendent opportunities to the individual, appeals profoundly to me here as ever, yet, moved rather to make my thought practical, I turn the lines in another course and speak to you especially of that which I think deeply concerns each of you. I speak to you of the preparation and trial of your first case.

The habits, formed in the beginning of your practice, may cling to you all through it, and it is therefore of prime importance that you start right. Your first piece of work is in more danger of being marred, by mistaken notions touching the lawyer and his methods, than any other. And it will be wise to reject now at the threshold, errors likely to be carried over into your professional life.

As one not too old in the practice to forget some of the dangers and difficulties which lie just before you, I hope to make a few suggestions that may be helpful to you hereafter.

There is no more common delusion respecting the lawyer's success in his court-work, than that it is dependent on his speaking talents. Almost as much confusion exists among lawyers on this point as among laymen. The prevalent impression that the trial lawyer need be little more than a gifted talker and adroit manager, while the counselor, only need be learned in the law, is dangerously misleading. This distinction, failing to recognize, that a knowledge of the law is the first essential to the trial lawyer, is false in theory and pernicious in its effects upon the practice. It is a paradox to say of one: "He is a good trial lawyer, but not a wise counselor." A trial lawyer must know the law. A complete mastery and assimilation of

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the principles in their application to the facts in issue is the pre-eminent requisite. Without it, a lawyer is not ready to hazard a suggestion to his client. Without it, his opinion is the merest guess. It must be the parent of his determination to try the cause. It is the bed-rock on which he must rest his case; on which, piece by piece he rears the superstructure of his action or defense. It fills and prevades his mind in its operation on the preparation and trial, to the exclusion of all else. It is before him, as the plan is before the architect. It subordinates every detail, directs every stroke, molds every thought, harmonizes and unifies the entire case by its supreme domination. Without this knowledge of the law, to direct and control the natural powers, all skill in management, all tricks of declamation, all arts of oratory will spend their forces as blows which beat only against the air.

No, gentlemen, the trial lawyer must be more than a mere talker who has learned the "rules of practice;" *he must know the law.* That is the fundamental essential.

The same reasoning establishes the converse of the last proposition, and weeds out of the mind the fallacy that there exists in the profession another class of men profoundly versed in law—wise, sagacious, judicious counselors—wanting perhaps in all the graces of oratory, and therefore not to be trusted with the conduct of a trial.

As a rule, and in the broadest sense, every lawyer of standing in his profession is a trial lawyer, and every trial lawyer is a counselor. The power to think clearly implies the power to speak clearly—whether to the client, the court or the jury. Given, a man with a well-poised, logical mind, learned in the law, and he cannot fail to present his client's case with the directness and power which follows correct reasoning. Here, as before, it is a question of knowing. The limit of expression borders only on the frontier of ideas. When you get into a section of country pretty thinly settled with thoughts, words begin to grow very scarce. A barren and desert mind has little use for the forms of expression. People the brain with great thoughts, fill the im-

agination with beautiful fancies, and all that appeals to man as sweet and tender and sublime will be quickly woven into the language of philosophy and song.

I say to you then, gentlemen, that you may open your offices, ready, as Goethe says, "to do that work which lieth nearest to your hand." Do this, strong in the confidence, that if you will, you may master any situation presented—but remember always, that, no matter what your special talents may be, only systematic, arduous, unifying preparation, will enable you to meet the demands of your profession.

You have doubtless already formed habits of study, insuring close application to work, but beware of letting your case go off upon a point. It is the melancholy way which many cases have gone when there has been a faithful, conscientious preparation, of what the lawyer thought every point in the case. Just here lies the danger of the preparation by parts, by points alone; something will surely escape you. The thought I would leave with you is, that you should make your case square itself to the principles of law which fit the facts, and then logical reasoning will not let you miss a point. I would have the preparation of your action or defense both general and specific—not one portion to the neglect of another; nor yet of any point without reference to all the others; but the preparation of every detail as though it were a piece of armor, of small value in contest, except as it fits and joins other perfected parts, leaving no opening at any point.

Let us make practical application of the foregoing reasoning to your professional work. You have chosen your little office; you have passed the probation of waiting, the door opens and your first client enters. He is of the class with whom young lawyers have mostly to deal. He believes that he has been injured; he is excited and angry. He has quarreled with his employer; there is a disagreement as to wages. Or, perhaps, his property rights have been invaded. His little garden has been destroyed by the trespassing herds of an adjoining land owner. Or, possibly, he thinks graver wrongs have been done him.

His personal character is assailed; his wife's good name is at stake; the sanctity of the home has been violated and his daughter's honor betrayed.

The recital throws him into a frenzy. He is passionate, vehement. You are inexperienced, sympathetic. His recital stirs you. The sensation of being appealed to strengthens your self-confidence. The spirit moves strongly within you to redress these wrongs. Everything conspires to make your action hasty rather than well-considered. Will you calm yourself, will you check the feverish eagerness, will you stop and remember that even the smallest case may involve the same legal complexities as though the issue was for millions? Will you have the courage to look your client squarely in the face and tell him that you must know more of the law and facts, that you want to examine the books before beginning the action? It may be the supreme test of your foresight and wisdom. If I knew just how each of you would bear this trying ordeal, I could forecast your future here to-night. I trust you will have the strength to pass through it triumphant.

This ordeal passed, next make sure of the facts. True, you are warranted in leaving this responsibility wholly to your client, but beware of his blunders, his prejudice and his bias. If you would win the verdict, verify the facts yourself in the beginning.

You are then ready to go to the books; and your University course has at least taught you how to use them. But the thorough investigation of the law in any case, though one of the highest forms of intellectual pleasure is never play. With our complicated system of courts, state and federal—the most complex in the world—with our vast number of reports—often happily agreeing, sometimes sharply conflicting, frequently construing similar statutes differently, and often at sixes and sevens on the same proposition of common law—to bring order out of this judicial chaos quickly and easily, demands the experience of years of patient study and devoted application. Long and close familiarity with these books is necessary to ac-

quire that mental habit and mastery, which enables the lawyer to play upon them as the musician plays upon his pipe, "to know the stops, to command them to any utterance of harmony," to get just what he wants out of them without apparent effort.

The young lawyer, like the learning musician, must attain the same result, by slow, laborious and conscious effort. The experienced lawyer, may, perhaps, comprehend quickly the questions of law to be determined on a given statement of fact, while it must cost you much analysis and reflection. In his investigation of these questions he passes easily and rapidly through the reports, apparently deciding by intuition what principle is involved in each; while you must read and re-read the same cases, digesting them slowly, rejecting or adopting them after long and arduous study.

If you have obeyed the true instincts of the lawyer, following fervently the reasoning on the principles wherever the lines lead you, forgetting self and all else, losing sight of the personality of your client in your close and absorbing pursuit, going at once below the surface down into the deep water of the law's philosophy—you may, alas, be greatly shocked, to discover, when you get back to the surface and self-consciousness, that you have come out on the other side of the case. After all your waiting for work, all your exultation at finally having a case, and all your labor upon it, to find the decisions strongly against your client, will indeed be a severe and bitter disappointment to you. But you will bear the trial manfully and counsel him accordingly. It need scarcely be said that this rule is never violated by the man who rises in his profession. The distrust sometimes found in the popular mind touching this subject, springs from the occasional loss of cases, honestly begun and honestly prosecuted. The non-professional mind does not readily understand the involved and complicated difficulties of the law—the facts of each case, as varying as the infinite complexity of human action, the distracting and harassing confusions in authorities—and hence each cause lost, may add something to the lurking suspicion that the lawyer's advice is given rather to increase

business than on merits. The reflecting man knows that both self-interest and professional honor must ever make his advice accord with the law as he understands it in its application to the facts.

But taking a happier view, and assuming that you find the law with your client, still it is best not to seem over confident to him. Admonish him of the uncertainties incident to every trial, but without manifesting timidity or a too-abundant-caution. Tell him you *believe he has a good case; that you will win it if you can*, and that you *think you can*.

Having advised your client to begin suit do not think that your work on law or fact is done.

Look well to the pleadings. More cases are wrecked because of carelessly drawn complaints and answers than laymen ever suspect, or lawyers ever admit.

Draft these papers, being most heedful of all the details of fact, and holding rigidly to the law already determined. I tell you, painful experience will impress you with the value of this rule, each time your violations provoke its application by the Court. Before the pleading leaves your hands, you must have selected with the nicest discrimination every word which fixes the lines of the contest. You must have mapped out the whole campaign, arranged your forces, studied the opposing counsel's position, thought of every contingency and prepared for every emergency.

This done, and having at your office, examined and re-examined your witnesses, analyzed their testimony, and fixed the order of calling them, you need feel no anxiety about entering the court-room. Still keeping in mind, that the law of the case should control its whole management, you bend every effort toward the pivotal points, about which the action must turn. Your clear understanding of what you must prove shapes every question. It compels directness of answer. It guards jealously the limits of admissibility of evidence. Nothing is irrelevant, everything is in order. The Court quickly grasps the points at issue, the jury follows you easily, and without weariness or effort,

and your case moves rapidly on, carrying their minds directly to the conclusions you would establish.

Not until you reach the cross-examination of witnesses will you encounter a single difficulty that thorough preparation can not overcome. Here there enters a new element offering opportunities for special talent. To be able always to conduct a cross-examination with advantage is indeed a rare power. It is difficult to define. It is that "other intuition," which makes you know the witness when he has answered the first question as though he were a part of you; it enables you to determine the workings of his mind; to anticipate his thoughts; to know when he is about to hurt you with invented testimony; to know how to lead him along, step by step, just up to that critical point—deceiving him into the belief that he is deceiving you—getting all that is helpful to your cause out of him, and then dismissing him just short of where he had aimed to strike the fatal blow. This is genius, and is, in part at least, the gift of nature. It can never be acquired in its fullest perfection. There is no denying that to win the greatest fame as a trial lawyer, you must possess this power. But wanting it, you need not despair of even a fair measure of success in the cross-examination of witnesses. Besides, this part of the trial can, except in rare instances, be curtailed without great sacrifice. Indeed, it was the opinion of the late Senator Carpenter—himself a most skillful examiner of witnesses—that in many instances, the cross-examinations were better omitted altogether.

If the presentation of the law to the Court is the crucial test of your courage, and seems the most critical point in the trial, it is only because here you must stand up alone under your responsibility for just what you are worth. It is not because every step in the proceeding is not equally dependent on the principles of law; but because here there is no chance for any concealment; because here, your want of preparation will be clearly manifest. Up to this point, you may have concealed the real cause of your blunders; you may have been permitted to amend your pleadings; you may have succeeded in shirking

much of the embarrassment of a disastrous and awkward examination of witnesses off upon your unfortunate client. But there is no cloak which will conceal ignorance of the law when you face the Court. Even the novice of the court-room understands the cause of your failure here. Who has not witnessed these painful exhibitions—the impotent struggle to cover up under a mass of hastily collected authorities the want of preparation; the pitiful sight of the lawyer loaded down with books he does not know how to use—flushed, heated, confused, doubtful where to begin, scarcely realizing what he has read, never knowing where to end, wearying the Court and missing the very points he should make?

With the case thoroughly briefed, your authorities thoroughly mastered, you will use but few books, and every word will seem written for your case. You will forget embarrassment in reasoning; earnestness will possess you; confidence will support you; the attention of the Court will inspire you, and when you have ended, you will turn to the jury, strong with yourself, and the judge, ready to round out to fullness and completion your case.

And, gentlemen, I trust that you will not indulge in the delusion that you can now abandon the rules of law and logic, and seek, by mere talk, to cajole your jury into rendering you an unearned verdict. While it is true, that the judgment of men is sometimes unduly influenced by feeling, yet you ignore an important element in human character if you suppose juries are often controlled by sentiment alone. Before they can be deeply moved by their emotions, they must find justification for their action in reason. Great criminal lawyers never lose sight of this principle. They first seek to establish a legal doubt in the mind of the jury as to the guilt of the accused, before they attempt to play upon the feelings. But the great bulk of court practice does not admit of much sentimentality. And it is my observation and experience that the most dangerous man before judge or jury is the one who, understanding his case, has by his examination of witnesses with reference to the law, laid the

foundation for an invincible argument. I care not how devoid he may be of oratorical grace ; I care not how ungainly his appearance, how awkward his gesture, how unpleasant his voice. If he has that clear understanding, that strong conviction, that will enable him to transfer his own view of his case to the mind of the jury, he is an able advocate and a most dangerous adversary to encounter.

No, no, you must not go backward. Hold fast to the high course which you have pursued to this point in the preparation and trial of this case. You are standing before twelve intelligent, conscientious men whose minds you must convince. Just as the knowledge of the law controlled the advice to your client, framed your pleadings, directed the examination of witnesses, molded your argument to the Court, so must it preside over your address to the jury, form its lines, marshal its propositions, direct its movement, knit together its reasoning into one powerful, concise summation, and leave it where it will be but fortified and strengthened by the instructions of the court.

Prepared and tried by these rules, I promise you a verdict in your first case.

Here, then, open before you, lies the way to the highest success in that profession upon which all society rests for its protection and perpetuity. With your cases systematically prepared—the facts clearly understood, principles correctly settled, authorities thoroughly digested, your client faithfully advised—your feet are on firm ground, and no power on earth can deprive you of the sure honors which lie in your way.

You will not win every case. You will meet with some surprises and many disappointments. You will sometimes find, notwithstanding all precautions, that you have been misled as to the facts. You will sometimes find the authorities unsettled and be thrown back upon your own reasoning. You will sometimes feel certain that the Court has greatly endangered its reputation for soundness and learning, in disagreeing with you. But you will survive it all. To the lawyer who fits his profession it is not everything to gain the case. After thorough

preparation, when you have gone through to the end of the trial, whether you have won or lost, you will find yourself on higher ground.

Start right! Prepare every case as though your reputation depended upon it, not only your ability as a lawyer, but your professional and personal honor. You will then find in your ready hands the powerful and legitimate weapons for every contest, and all temptation and all occasion to use others will be removed.

No lawyer, from choice, would sink to the level of a pettifogger. No man whose love of the law has led him through the curriculum of a Law School, could easily fall into that intellectual and moral ruin, which is the fit habitation of this trickish knave. And yet the decline from imperfect and careless preparation to irregular habits and no preparation, to equivocal methods and the practices of indirection, alas, is steep and rapid.

There is one and only one way: be honest with yourself; give yourself a fair chance and your future is safe and full of promise.

Gentlemen of the Graduating Class, as you take your place beside us within the profession here to-day, I cannot escape the spell of retrospection. Holding you by the hand, greeting you as brothers, and then looking back at what has been, appreciating what is, the eye fills, words fail, and the mind almost staggers in comprehending the swift work of a quarter of a century.

Why, stop and think what this day presents! Fact out-running fiction! Past history made a dull and lifeless story! Prophecy mocked, and the dreams of the wildest enthusiast a century too slow!

Away with the man, who talks of improvidence and scoffs at the progress of a people, who through six generations were held in a bondage where ignorance was enforced and learning punished with the lash; who, only a score of years ago, by the throes of civil war, were flung into full American citizenship,

weak, helpless, naked; coming out of a system of servitude that left them only physical strength—not disciplined even to self-help. Of all they had to learn, nothing so difficult as learning to work for themselves. Not prepared gradually for this great transformation, but lifted at once to the awful responsibility of self-care and self-development. Nay more, at this dizzy height, clothed with the bewildering authority of self-government and sovereign power. A mighty earthquake rocked this continent and changed the face of the South. The swamp, the mire, the very pit, was thrown to the top of the mountain. Nothing approaches it in history. To-night, a slave, the meanest creature of the earth; to-morrow, an American citizen, the peer of kings. The powerful recoil of a long violated and broken law, not the calculated management of men, wrought out this mighty transformation.

The result defies all comparison, and leaves us mute with wonder. Slavery and a learned profession in one generation!

Gentlemen, this day of your admission to that profession, which honors every man who honors it, is a day of royal triumph for you—but it is not a day of triumph for you alone. We all have a share in it. From the gilded home of the millionaire at the North, to the meanest hut in the rice swamps of the South, every man and woman in the land owns an interest in this event.

We are one people, one by birth, one almost by blood. Our lives run side by side. Our ashes rest in the same soil. The social order of things wraps us about altogether, as the atmosphere envelopes the earth. Each of us draws from it, that which nourishes intellectual and spiritual life. Each one consciously, or unconsciously, gives back something of himself, clean or unclean, nourishing or poisonous, to that social organization. It is snobbish stupidity, it is supreme folly, to talk of non-contact, of exclusion! Recognize it or not, it is a homogeneous mass, and each element is vitally interested in every other.

But there are those to whom your elevation appeals with

special significance. To the colored people of the South, it is a matter of profound concern. Oh, gentlemen, gentlemen, have you the full conception of the unlimited possibilities, upon the very margin of which you stand to-day? To the men of your rank, to the men of your learning, aye, to the men of your profession, must your people look for their leaders. Look to you to throw over them the shield of the law, to teach them their personal and property rights, to be prophets unto them, to inspire them with a loftier meaning of liberty than mere freedom of the hands, to inspire them with the enlarged sense of personal rights, insured to each citizen, through his neighbor's sacred observance of the law.

You stand upon the rim of an ever-expanding horizon. The morning breaks. Before you lies the waiting world of opportunity—behind you the long night of degradation, of ignominy, of human slavery. At your back stands a quick, responsive, capable, willing race, panting to be lead to a higher civilization—above and beyond you the angel of human progress beckons you on and on. A new century is bursting upon you. There never was such an opportunity for leadership in the history of the human race. You are equipped for the mighty contest.

Go to your work.

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