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THE LAWYER-ADVOCATE VS.
THE POET-ADVOCATE*

Attorney General Tom Corbett**

Good afternoon. I'm pleased to be here with you today. I'm pleased to be here as the Attorney General. After two years of campaigning, I get to be a lawyer again instead of a candidate, and I look forward to being just that.

Let me begin by making it clear that none of my remarks this afternoon will be in verse. I just don't have that talent. Now Justice Eakin is the only one that I know in this room brave enough to attempt that, especially from the bench. And I suspect he's going to spend some time entertaining you with his ability to be musical. I have no intention of singing. I got kicked out of the choir when I was in third grade, and I haven't sung since then. If you see me singing, I'm lip-syncing. About the only thing that I have in common with Bruce Springsteen, besides age, is that we're both born in the USA.

With that as a background, I'd like to talk to you about advocacy and about storytelling. Poetry is involved in the job that lawyers do, and particularly, from my perspective, poetry is where most of my career has been founded as a prosecutor.

Webster's dictionary defines an advocate as "one [who] pleads the cause of another,"¹ or "one [who] pleads the cause of another before a tribunal or judicial court."² As the Attorney General of Pennsylvania, I believe that the role of advocacy and the role of a lawyer stretch far beyond that definition. But let's use that as the basis, as our benchmark to start from.

* Attorney General Tom Corbett, Address at the Widener Law Journal Symposium, *The Lawyer as Poet Advocate: Bruce Springsteen and the American Poet* (Feb. 24, 2005).

** Attorney General, Commonwealth of Pennsylvania.

¹ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 32 (Philip Babcock Gove et al. eds., 1986).

² *Id.*

The definition of poet, according to Webster, is "one who writes poetry."³ Obviously, that makes sense, but it's "a writer having great imaginative and expressive gifts and possessing a special sensitivity to language."⁴ Justice Eakin knows the lyrical very well. I haven't seen that many lyrical writers or lawyers besides Justice Eakin, except maybe in my Allegheny County Bar Association when we used to put on a play at our Bar Association conference in the summertime. I've seen many whose work I believe is perceptive, is expressive, and whose work is even beautiful. There is no doubt that we as lawyers—and if we have any law students here, when you become lawyers—are advocates.

As Attorney General, I have the opportunity to speak in the defense of the Commonwealth, our constitution, and our laws. I also plead the case of our citizens who have been wronged and seek justice for those who cannot seek it on their own. Additionally, I have the honor of speaking for the law enforcement community—advocating for changes in law and for additional resources to address new threats to public safety and to the way we live our lives, to the way we work, and to the way we raise our families.

I hesitate to use the word poets to describe the role of lawyers. But we must certainly be considered good storytellers, especially if we are going to be in a courtroom. We must be able to carry our message to a diverse audience. Sometimes we are called to tell our story in the court, either to the judge, justices, or to a jury. Other times we need to tell our story to the public, to the lawmakers, to the media, or to a community. Like a performer, a good lawyer works to make that message clear and compelling and is enthusiastic and authoritative in his or her delivery.

Unlike a performer, however, the consequences of a "bad show" are far greater. A performance by an entertainer may leave the audience disappointed, variety may not be very good, or reviews may not be very good. A poor performance by a lawyer could place a client in a life or death situation, place a client in the face of financial ruin, or could allow the innocent to be imprisoned or the guilty to go free.

³ *Id.* at 1748.

⁴ *Id.* at 1748-49.

We, as lawyers, deal with people's lives and often have people in dire situations. We give them hope, and we give them guidance. We work to settle conflict and to mediate disputes. We fight for our clients and do what we believe is correct or right.

Poets may also advocate a point of view. But, in my opinion, there is one major difference between the poet and the advocate, at least when it comes to the law. We, as lawyers, are bound to the truth and to the law. Rule 3.3 of the Rules of Professional Conduct provides, "A lawyer shall not knowingly . . . make a false statement of fact or law . . . or offer evidence that the lawyer knows to be false."⁵ Poets, on the other hand, have the luxury of creating their own atmosphere, their own reality. They control everything about a situation—how it begins, how it develops, and how it will end. Our advocacy and our job are based in truth and in fact. A poet's advocacy is based in emotion, in personal experience, perception, or a desire for change, regardless of the factual realities of a situation. Poets can bend a story any way they choose, creating the environment they need, conveying their message to generate the response—the visceral reaction—that they wish to engender. They seek to spark that reaction; they seek to spark that emotional response. We, on the other hand, must deal in facts with the situation, the people, and the law as it is, whether that be good, bad, or indifferent.

I had a t-shirt given to me one time when I went to law school that said, "If you can't dazzle them with brilliance, baffle them with words." If you can't argue the law, argue the facts. If you can't argue the facts, argue the law. And if you can't argue either, just try to confuse them.

In many instances, we are faced with the task of seeking the best possible outcome from the worst possible scenario. It is the difference between fiction and non-fiction; between escape and reality; between entertainment and reality. The world that poets and entertainers create today, however, I believe is increasingly altering the public perception of the real world that we live in, and particularly, that we work in—exotic crime labs identifying vital evidence at the last minute, criminalists carrying firearms, dedicated investigators solving complex crimes in a matter of

⁵ MODEL RULES OF PROF'L CONDUCT R. 3.3(a)(1), (3) (2004).

minutes, and prosecutors using dramatic courtroom presentations to win convictions. In the end, our potential jury pool always sees that the bad guy almost always goes to jail and the good guys prepare to do it all again the next week. Many people in that jury pool have never seen the days, the months, and the years of work on both sides of the aisle.

When we are talking about a prosecution or a civil case that goes into these types of cases, society's expectations are dramatically different from the reality. Does that mean that every police department that doesn't have a CSI lab is doing a poor job? No. That every court case that doesn't end with a "Law and Order" cliffhanger is faulty? No. Are we creating that through the storytelling, through the poets we have today? We are in an era where people can't focus on a public discussion for more than fifteen minutes because that's when the television commercial is going to cut in. It can be very difficult for a jury, or the public to comprehend a court case that may take years to play out.

I'll watch "Law and Order," but my wife won't watch it with me because I'll say, "They can't do that." We know the fiction that it is. People believe that it's reality. It is always amazing to see that the case begins and ends in a conviction in about four weeks of their time. Well, we all know that's not reality, but the people don't because the poet has the liberty to do as they wish with the facts.

That's not to say that we cannot and should not do more as lawyers to be compelling storytellers. We are craftspeople, carefully selecting our words and meticulously building a case to accomplish our purpose—our advocacy. We work on pace and tempo, on how people respond to information and how to keep people interested and involved in a case. You want to keep that jury awake, don't you? Did anyone ever have a jury member fall asleep? How about a judge fall asleep?

As a young assistant district attorney, I'm trying a homicide case right after lunch. It is July in Allegheny County, and the courtroom is warm. The judge just turns his back to everybody. All of a sudden we hear snoring. Now, I have a witness on the stand, the defense lawyer is looking at me, I'm looking at the defense lawyer—what are we going to do? We've lost the judge. The only thing I could do was to pick up my book and drop it on the table.

We woke him up. Maybe it was my fault that he fell asleep because I was asking boring questions. We have to be entertaining.

I'll share one other quick story with you. I was in the middle of my examination of a witness, and I hear the door to the courtroom open. I must have really been boring because there goes a juror out the door. Aaah! It was an alternate sitting right next to the door; he just got up and left. I stopped questioning. The judge, who was an older gentleman, Nathan Swartz, said, "Mr. Corbett, why aren't you continuing questioning your witness?" I said, "Judge, we lost a juror." Everybody kind of laughed. The juror wasn't bored, just nature was calling, and he had to go and use the restroom.

Maybe we should be a little more entertaining. But while we are entertaining, we do not need to confuse the entertainer with the lawyer. The storytelling remains grounded in the facts of the case. Advocacy cannot overshadow the issue we are advocating.

For myself, my position as a line prosecutor to an Attorney General or to a United States Attorney, I prefer to focus on the power of the truth over the attraction of entertainment, the substance of fact over the style of song lyrics. Poets may try to highlight a cause, to bring about change, and to right what is wrong; but as lawyers and as advocates, we accomplish that every day. I can think of no better job than that of being a lawyer advocate. Thank you.