

SPEECH OF MR. A.N.S. NADKARNI, ADVOCATE GENERAL OF THE
STATE.

My Lord Justice Thakur, My Lord Justice Kanade, My Lord Justice Reis, My Lord Justice Bhadang My Lord Justice Wadane, Mr. Usgaonkar, retired Judges, lawyers, ladies and gentlemen.

I believe the topic which is assigned to this session is about the lawyering skills and when we speak of the lawyering skills, it is related to the context, namely in the course of the legal services which we provide to certain sections of the societies. Art of advocacy is something in which we do not get trained after doing our course for three years or five years or for that matter even after securing an LLM degree. It's something like swimming. If you read a book on swimming and then jumped into the water there are pretty good chances that you may not come back. So the skill of a lawyer or advocacy is something very similar that after you passed out with the degree that it is not on day one you are ready. That there are several things. To tell you very frankly I am still learning, I am, still learning because there are several things apart from your preparation of a matters. It all depends upon. In many cases, the ideology to which the judge belongs to, depends upon what kind of mood the judge has on a particular day. It also depends upon your opponent Lawyer, it depends upon how well you have been briefed in the matter. But all said and done, If your-preparation is good and if you are able to hold the field I don't think that even a tough judge can mess up with you. That is also a part of my

experience.

I would come to what happens in the advocacy a little later, but first the skills of a lawyer in so far as legal service is concerned. I think the most important skill is while preparing the brief in a normal matter where we appear for a corporate client there are ready made law officers who come and brief you, they brief you on facts. They brief you on law also. They may even come with latest case laws, but in so far as legal services is concerned, as My Lord has said in the morning it is something which is afforded to a person who is not able to engage a normal lawyer and fight out his litigation, but, yet his right needs to be protected, yet he is required to be advised on the right remedy, to be taken in the matter. So, therefore when you sit with a person, may be a widow, he or she may be illiterate, he or she may be poor, he or she may not be able to express herself / himself properly. So please understand all these things. We need to come down to the level of a person, understand the difficulties when he or she pleads the difficulties and only when you actually see yourself in that position, you are able to put across the case, articulate it well, prepare it well, read it well and argue it well. Otherwise, there seems to be a lot of gap between cup and sip and you may not agree with what he or she says. You will say what can I do about this. Many a times, the client who comes, even educated client who comes and makes his case so complex that it becomes very difficult even for a junior lawyer to comprehend what is to be done now. Because, take a case of matter relating to divorce. Normally there is criminal litigation, there is a civil litigation there is

a custody litigation and if there are some properties there would be property litigation and all sorts of things. Now a days there are several Acts. So, all those cases etc., are filed. Don't make things complex. Make it as simple as possible for the client. Just simply understand for yourself. Once you have a conceptional clarity which is required in every matter but more particularly in Legal matters, you are able to articulate that particular matter well. This is in fact an important part. That is what I think. Because I have done, I would say not, but I have done substantial work under the legal aid. I have appeared in the legal aid matters, including in the year 1998-99. Just before I became Advocate General, Justice Lodha was holding sittings here in Goa. One day he saw me coming into the open court, and he said, come come Mr. Nadkarni, this brief will not earn you anything, but do this brief. I said My lord I have always done Legal Services Authority's work and I would do this. It happened to be an accused person whose name was Bhat. He was charged for 9 and half kilograms of charas and that matter was argued by me. The point which I took in that particular matter was that the seal which the police had used for sealing the seized material, was a seal which was easily available. There was no control over it. On the ground of seal, the accused got an acquittal and of course within three months I saw him he was brought again. He said, "now I am again back and again caught for the drug case", but he was being assisted under the Legal Aid. But the worst part is that because of said judgment, there were 17 others acquittals by Justice Lodha himself on the ground of seal. So, at times it could work either way on the criminal

matters and I really felt sorry that though I did assist the Court in this fashion, but, had I not done it, I would have failed in my duties either way.

This is part of the serious work. But I remember in lawyering skill certain things which are required to be known are that you should be able to think on your feet and spot thinking is something which is very important. We had a judge called Justice S. K. Desai, before whom me and Justice Kanade had practised in Mumbai, way back in the year 1986 and one day my senior gave me a matter and said go and tell the Court that there is nothing in this matter. See if you can get a point, otherwise there is nothing in the matter. He will dismiss it. I said, alright. I went to the court. I prepared myself, tried to prepare it, made out notes and I remember 17 pages notes I had prepared. I went to the Court. Before I could say anything, Justice S. K. Desai, the moment the file was given to him by the Sheristdar, said "Rule, returnable on Monday. Interim relief in terms of prayer so and so." I was shocked. I can't oppose it and tell him what my senior had told me. I was thrilled and came back, told my senior. Justice S. K. Desai might have found some point in it so you please look out. He himself looked out. I looked out, another two juniors looked out. We couldn't find any point. Monday when the matter was listed, I was reading the list of authorities and all that I thought I could persuade him. The judge comes to the open court and the first question he asks me, when the matter was called out, as to how did you manage to get this matter admitted, show me. Please tell me that. What do I answer? I was shocked because I never expected this question. I thought that straight away

the other side would be called upon because of something. I told him the truth. I said I had come because my senior had given me the brief to come and tell your Lordship to dismiss it, but before I could open my mouth, I said, Your Lordship said "Rule returnable on Monday" and order was passed. I couldn't order. I couldn't oppose such an order and the only witness who was there was the Sheristedar, who started nodding his head, but, of course, Justice S. K. Desai, knew he was practising day in and day out and he said "alright then I must have dismissed some other matter". These are all things. I will be honest to know because matter defers on ideology. also I remember a sitting judge of our high court who had come here on an assignment, told us of an incident that his senior had given him a brief to argue and it was an appeal which was filed by the State against an acquittal in an adultery case. Unfortunately for him the matter came up before a Judge who was very conservative and belonging particularly to a different ideology and he said no, nothing doing, your client must go. He is a doctor. He has murdered the marriage, this and that. He must go home. "He must go to jail for three years", Judge said. I was a junior. I started sweating and I didn't know what to do and where to look out and the said matter went on. But he allowed me to argue. So I argued for about two days. Third day, some Judges were sworn in Bombay and the sitting was changed. So some Bombay judge was posted there and the matter came up before the Bombay Judge, single Judge. The public Prosecutor was on his high saying that "My Lord he is that and this.....

"What appeal by the State in an adultery matter ? No no nothing doing.

Dismissed.” Then he said “My lord very serious matter of adultery.” “What you are talking. Come to Bombay. It happens every other day, every other hour.” This is our ideology that defers. This is our justice. But that apart, there is not always humour in the court room. There are serious matters also, but we must understand that we are doing a divine service. As My Lord had said in the morning what is more important is not the fees which are paid in a matter, I would prefer instead of the fees to get the blessings of these people, the down trodden people, so, that would help me not just in this material life, but spiritual life perhaps after wherever I go.

Thank You so much. I thank justice Reis for giving me this opportunity. Thank you so much.