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Ideals of a Lawyer

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IDEALS OF A LAWYER*

The subject which I have selected to discuss in the time which your dean has allotted to me, carries with it a very serious responsibility both to the speaker and the audience. I look into the faces of young men and women, I imagine, from all parts of the state, who will, in ten or fifteen years, or even less, bear upon their shoulders the administration of the law in all parts of this Commonwealth. I see before me not only the future practitioners of the state, but those who, from the bench, will pronounce, as if ex cathedra, the ultimate interpretation not only of the written law of the Commonwealth, but of those principles of morality which lie at the basis of all law which God has written in the hearts of every one of us who cares for ultimate justice not only between man and man, but between man and that aggregation of citizens which we call the state. Look into your hearts and you will find various motives which have prompted you to select the law as your profession. Unfortunately too many of us look to the law as a mere means for the accumulation of a fortune to be expended upon our pleasure, whether that pleasure comes from carnal ambition, from display, or from the mere love of money. If you have made your selection of a profession with this end in view, the sooner you repent and seek some other object for your lives, the better it will be for you. While some lawyers by thrift and economy have managed to accumulate respectable fortunes, they are the exception and not the rule.

It cannot be doubted that numerous other occupations and professions afford more efficient means for the mere accumulation of money than does the law. Mechanical, manufacturing and mercantile pursuits hold out to the mere money-grabber vastly greater opportunities for the accumulation of wealth

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than do the so-called honorable professions. The ministry, the practice of law, journalism, medicine, and other so-called learned professions, make an appeal to you and me, not as money-makers, but as means, which if carried out with high ideals, tend to develop that spirituality of life which is the true end and aim of all of us who have anything like a wide outlook upon life. On the other hand I wish to say, and if this should be your guiding star in the practice of your profession, that the opportunities which you will have for the moral and spiritual uplift of the citizens of this state, are not less than those which pertain to the ministry of the gospel.

I shall assume, although I realize that it is by no means true, that all of you have chosen your profession with the ideal that you are priests for the administration of God's justice among men. This assumption puts it up to you to search your own consciences and see what principles are elementary in your profession, because these principles are what is known as the ethics of the law. I regret very much to say that in the years which have elapsed since I have begun the practice of law, there has been a vast change in the ideals which measure the conduct of lawyers in their dealings with their clients, with their fellow lawyers and with the courts. Certain principles, to which I shall presently advert, which were regarded, within my memory, as elementary, have gradually changed in their apparent obligation and I think we no longer measure our obligations by the same standards which were in vogue forty or fifty years ago. For this reason and because I think the change has been a distinct deterioration, I want to make an appeal to you to stand firmly for the landmarks of the moral and ethical conduct of our profession, which will make for better men without making you less efficient lawyers.

Under the influence of the American Bar Association certain canons of professional conduct have been crystallized which show a disposition to return to the ancient landmarks of professional ethics without, I regret to say, any very serious discussion of the underlying principles from which these canons have been formulated, and so, while I rejoice that the Bar Associations seem to have turned their faces once more towards the law as an honorable profession, the canons formulated have not
altogether met the approval of even those lawyers who aspire to high ideals in the practice of law. Christianity is a part of the common law of England and no formulation of the principles of Christianity has ever approximated in depth and width the principles enunciated by our Savior when he uttered to his apostles the Sermon on the Mount.

There is in the oath of office administered to the lawyers in some of the newer states, a perfectly ideal formulation of the duty of an attorney to his God, to his state and to his fellow-men. How far a lawyer may go in supporting the cause of his client may be formulated in a negative way, by saying that you do not owe to your client the duty of doing for him anything which a man, who is a Christian and a gentleman, might not do for himself. We often hear a lawyer justify a shady transaction by quoting from some of the older crooks the supposititious principle that a man is justified in doing for his client things which he would never think admissible, or would never attempt to justify in the forum of his conscience in his own behalf. The infamous sophism that law is "anything that may be confidently asserted and plausibly maintained" is the cornerstone of a structure which has its foundation in the swamp and not on a rock. When we bear in mind that we are God's ministers for the advancement of the square deal between man and man, by that same token we eliminate the idea that a lawyer may do for his client what he would not do for himself. I have said that if your purpose in life is merely to accumulate a fortune, you are on the wrong track. Lawyers with no higher ideals than that were formerly called "mercenary" lawyers; using the word "mercenary" in its lower and more restricted sense as meaning a lawyer who is out for the stuff. The expression was crystallized by a statute, 20th Charles I, which may be found in 1st Hening's Law of Virginia, at page 302, from which I read:

"Whereas many troublesome suits are multiplied by the unskillfulness and covetousness of attorneys, who have more intended their own profit and their inordinate lucre than the good and benefit of their clients: Be it therefore enacted, That all mercenary attorneys be wholly expelled from such office, except such suits as they have already undertaken, and are now depending, and in case any person or persons shall offend contrary to this act to be fined at the discretion of the court."
If that law had remained in force in Virginia, I imagine most of us would have found ourselves in other walks of life where we could have earned a livelihood for ourselves and our families. It shows the esteem held by our "ancient and honorable profession" by the Parliament during the time of the Stuarts. The assembly of Virginia in 1642-3 passed an act regulating licensing of attorneys and expressly providing that no attorney should plead in any county court, or demand or receive either for drawing a petition, declaration or answer and for his fee in pleading the cause of his client, anything above the quantity of twenty pounds of tobacco, or in the quarter court above the amount of fifty pounds of tobacco, and providing as a penalty that any lawyer who should transgress against the premises, or should take above these amounts, should forfeit five hundred pounds of tobacco in the county court and in the quarter court two thousand pounds of tobacco. And it was further provided in the same act that no attorney licensed as aforesaid, might refuse to be "entertayned" in any cause, unless he had been "entertayned" by the client on the other side. I pause to give you an opportunity to reflect how entertaining you would think it would be to have your fee in the county court restricted to fifty pounds of tobacco in a case which might represent untold principles and enormous values. How entertaining would you think it was to try a cause in the circuit court for which you could get a sack of tobacco which you could carry away at the close of the day swung over your shoulder? The act I have quoted in 20th Charles I, in 1st Hening's Virginia Statutes, 275, shows, I think, that even the restricted fees payable in tobacco, to which I have referred, were of such character as to have awakened public displeasure to such an extent that "mercenary" lawyers were kicked out of the profession by the act, to which I have referred. Fortunately, the prejudice existing in the middle part of the 17th century long ago passed away and the profession of the law has opened up to the ambitious young men and women, a means by which they can not only maintain a competence, in the practice, but may hold a position of influence, political or civic, which has made them leaders of public thought in the community where they have cast their lot. It has been said a good
lawyer lives well and dies poor, but I may add that in the books where his final account is cast, he may, if he keeps true to the ideals of his profession, have innumerable credits which make for the treasures hereafter which neither moth nor rust corrupt nor thieves break through and steal.

I have referred to the oath of lawyers upon entering their profession. This oath means little or nothing in Kentucky. You will bind yourself to support the Constitution of the United States and the Constitution of the Commonwealth of Kentucky; and that you have not fought a duel, or helped anybody to fight a duel or aided or assisted anybody to fight a duel, so help you God; and further that you will demean yourself as an attorney at law to the best of your ability; but this, I submit, leaves you to try yourself in the forum of your own conscience without any formula by which you may determine what your duty as attorney at law may mean. For this reason, I am going to tell you what I understand your duty to your God, your country and yourself is, by taking the oath of office as attorney at law. This demeaning yourself as attorney at law is susceptible of analysis and has been defined as follows:

"I Do Solemnly Swear:

I will support the Constitution of the United States and the Constitution of the state of .........................................................

I will maintain the respect due to Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD."

You will notice from the reading of this oath of office that it assumes at the start that an applicant has complied with the conditions prescribed by law touching his knowledge of the law and his ability to practice the same. The moral character and
good standing in the community of an individual who offers himself to take this oath is assumed to have been complied with and that the lawyer offering to take the oath of office has satisfied the examining board that he is a person of good moral standing. I suggest that there is a defect necessary perhaps, in this, that there is nothing in the conditions touching a lawyer's application for an examination to practice law and the oath of office itself, which requires that he should have that high sense of propriety which should mark the members of our profession. There is nothing in either the application or the oath of office which assumes that the lawyer has that high sense of propriety which is the foundation of all legal attainment, that sense of sympathy, of kindness, of gentility which marks the dealing of a high class gentleman with his fellow-men and which is wholly unprovided for even in the Decalogue. However, I am giving the Decalogue too restricted an interpretation. Our Savior said in interpreting this Decalogue that the whole of the law and the prophets was summed up in the Golden Rule. However, it is not my purpose to preach, but to see if I can find in this short time some fundamental roots out of which the ethics of the law may spring as a beautiful tree, shapely and fruitful.

The principle has been recognized by the Court of Appeals. Indeed I presume it is written in the conscience of every man whose conduct adorns our profession, that if you or I in the course of our practice should cease to have that high moral character, which is a condition precedent to our obtaining a license, and that fact should be shown to a court of competent jurisdiction, the right to practice law could be revoked upon the broad general principle that the condition of a moral standing in the community is a continuing condition, and that when the condition ceases to exist, the right which was founded on it, ceases also.

In Lenihan v. Commonwealth\(^1\) two principles are recognized by the Appellate Court; one was that a practicing lawyer may not be guilty of a fraud in procuring practice, and the second was that the court in punishing a misdoer in the practice of the law, having an unlimited discretion between reprieve and

\(^1\)165 Ky. 93.
disbarment, should use the least degree of punishment which might accomplish the reformation of the offender. In that case it appeared from the record that a practicing lawyer had a prospective client who had been injured by an accident warranting a tort action. The victim of the accident was a minor. The lawyer took the prospective client to his office, knowing that the relatives of his client were engaged in attempting to secure a settlement without the expense of a lawsuit. He concealed that fact from the client and told him that his parents could not qualify as his guardians. He selected for him a guardian who would be subservient to the lawyer's interests and had him qualify for the purpose of bringing the action. He made a contract for a large contingent fee and the question arose whether the conduct thus shown warranted a disbarment. Judge William H. Fields, who has always stood like a stone wall against the improprieties of our profession, disbarred the guilty lawyer and he appealed to the Court of Appeals. The judgment of disbarment was reversed, not because the lawyer was not guilty, but because a less punishment than the forfeiture of his profession might have saved him without injury to the public.

In the case of Chreste v. Louisville Railway Company,² it appeared that Chreste, having procured a contract of employment by solicitation on the part of his agent, prosecuted an action for damages against the Louisville Railway Company in behalf of one who had been injured by it. Without stating in detail the facts of the case, the question involved upon appeal by Chreste from the judgment refusing to enforce the claim upon the contract thus made, the Appellate Court stated the question in this language: "Is a contract between a lawyer and his client obtained by solicitation on the part of the lawyer valid, or is it contrary to public policy and, therefore, void?" There was no fraud employed by Chreste's agent and the bare question presented to the court was whether solicitation of business invalidated a contract obtained thereby. Let me remark in passing that it was one of the cornerstones of the law regulating the duty of an attorney in the obtainment of business to abstain from any solicitation of business or any means resorted to, to procure clients by request or by any approach to

²167 Ky. 75.
them for that purpose. The court recognized this principle, but held that Chreste's contract might be enforced by him. The court concluded as follows:

"Considering the difficulty of fixing the dividing line between what is proper and improper solicitation, the uncertainty that the doctrine would introduce into all contracts between attorneys and their clients, the fact that solicitation is not condemned at common law or denounced by our Constitution or Statutes, and the further fact that it is difficult to perceive upon what theory it can be said to be clearly injurious to the public good, we conclude that mere solicitation on the part of an attorney, unaccompanied by fraud, misrepresentation, undue influence or imposition of some kind, or other circumstances sufficient to invalidate the contract, is not of itself sufficient to render a contract between an attorney and client void on the ground that it is contrary to public policy. It follows that the second paragraph of defendant's answer presented no defense and that the demurrer thereto was improperly overruled."

I do not think that the position of the court was unsound, but I will say to you it emphasizes the importance of recognizing, at all times, the line of demarcation between that which is proper and that which is lawful.

Quite recently the learned judge who decided the Lenihan case and also the Chreste case, had before him an application to disbar a lawyer under circumstances of such an unusual character as warrant my calling your attention to it, although, as the case is still pending in the Court of Appeals, it would be manifestly improper for me to comment on the ruling of the learned judge who decided the case below. A very prominent lawyer, who occupied numerous places of eminence and distinction in the state, was president of an incorporated collection company. This business seems to have been quite extensive. Very large sums of money were collected for clients by the company, of which this lawyer was president, and the charge was made that money was retained by the company without payment to its patrons for months, in some instances, perhaps for years. The attorney pleaded not guilty upon the rule against him for contempt and urged upon the court, through his attorney, that he had no personal knowledge of the facts charged against him, that his business was so extensive as to preclude personal attention to the collections and disbursements. The court refused to disbar him but suspended him from the practice for a period of one year. The defendant thereupon appealed to the Court of Appeals where his appeal now stands
undetermined. As I said, it would be manifestly improper for me to comment upon the propriety of this suspension from practice. I have called your attention to the case, however, for quite another reason. It is this: as long as the practice of law is sanctified by the certificate of good moral character, an examination at the hands of a board composed of gentlemen learned in the law and the taking of an oath of office which appeals to God for the integrity of one's motive and conduct, the law should not sanction the organization of a corporation, whose purpose is to collect from recalcitrant debtors through the instrumentality of the law, at the hands of a corporation which cannot recognize the sanctity of an oath, or appeal to God to damn it, should it fail to do its duty.

The practice of law is an individual responsibility and cannot, I submit, be divided up into aliquot parts and each stockholder shoulder responsibilities in proportion to his holdings of stock and take credit for doing his duty measured by the dividends the directors may see proper to declare.

However, to get back to our theme: in periods varying according to the length of your study here, those whom I see before me will go out into the business world charged with the most responsible duty, second perhaps to preaching the gospel, of any of our learned professions. Indeed I cannot refrain from telling a story which happened under my own observation, to illustrate this. An old lawyer of my acquaintance who once lived in Lebanon, Kentucky, who had practiced law until he had attained the three-score years and ten and more, called my attention once to the fact that for several weeks the newspapers had been lurid with the acts of immorality which had been committed by members of the ministry and he was led to comment on it in substantially this language: "Notwithstanding the fact," he said, "that we see in the papers so many accounts of immorality on the part of the ministerial profession, I do not believe that they are worse as a class than the lawyers. We see more glaring instances of immorality imputed to the ministers than to the lawyers, because their opportunities are wider." I wish to say that this was in all seriousness and not intended as humor at all. The question then presents itself, how are you going to put yourself in touch with the people who shall insist upon enforcing their rights and are
willing to pay money for it? You cannot solicit business without violating the first canon of professional ethics. It is laid down in the very horn-books of our profession that it is our duty to stand aloof and let the world discover our talents without undue effort on our part to exploit ourselves by advertisement, by solicitation, by devices of any kind to make manifest to the world what astonishingly good lawyers we are. It is wholly improper for us to proclaim to the world that we can, like Mr. Bungle's golf ball, both shine in the dark and proclaim our merits in articulate speech. Like the sex which we adore and worship and which, theoretically at any rate, had to stand mute until sought out and solicited in marriage, we must keep our mouths shut and not let it be known that "Barkiss is willing." We cannot, if you please, imitate our sisters in attempting to learn the art of vamping. We have not even one year in four when the bridle is taken off and we can display our willingness to be hired for a reasonable fee.

The illegal methods of getting business by lawyers are numerous and conspicuous. I have heard it said that in our larger cities it is a practice, by those desiring to bring suits against the public service corporations, for damages from anything from mashing a nail to losing one's life, to hire touters to go into the public places to tell the unfortunate victims of railroad accidents, what a great lawyer A, or B, or C is, and how he will get the best results for you if you employ him as your attorney. I have even heard that in some of the more wicked cities, where the railroads and other public corporations are represented by unscrupulous lawyers, it is not unusual to send touters from their offices to solicit employment for the very purpose of betraying their clients, seeing that they do not get large verdicts in the court. These are the grosser forms of professional impropriety, which the conscience of every lawyer who has intellect enough to go through the law-school, knows as improper without anybody telling him.

I have known lawyers to adopt this method of self-exploitation. When he would meet his brother attorney in a public place he would in a quite audible tone of voice introduce to him the subject of law and say: "I had this question of law which came up in my practice today. Of course, I cannot
call names," but he will state in an audible tone of voice, so that the entire audience may hear him, his case for the benefit of some select litigant who he happens to know has a kindred case pending or about to be brought. I shall have something further to say about the duty of the attorney not even to think about his client's case in the presence of a mind-reader, before I shall conclude what I have to say to you this morning. For the present, I pass on to other methods which need no discussion as to the unethical character of the practice.

I have known lawyers of the more unscrupulous class, to familiarize themselves with the dockets of the courts and utilize the information obtained from the dockets to let the defendants in the various cases know in a quite inconspicuous way what success they had had in that particular character of case, the moral being, of course, that what they had done once they could do again.

Every lawsuit is a drama ranging all the way from broad farce to deepest tragedy, and most cases of importance, at least, are represented by two or more lawyers upon each side. It is a well recognized fact, though often ignored, that there is one lawyer upon each side ordinarily to whom the client and the lawyer's associates look as the leader of any given case. He lays out the lines of the battle and he sends the forces to that part of the field which need re-enforcing and he it is who manages the technique of the case. To him the utmost allegiance is owed and cases are sometimes lost by an effort on the part of junior counsel to exploit themselves. I am reminded in this connection of Hamlet's advice to the players:

"And let those that play your clowns speak no more than is set down for them; for there be of them, that will themselves laugh, to set on some quality of barren spectators to laugh too; though in the meantime some necessary question of the play be then to be considered; that's villainous, and shows a most pitiful ambition in the fool that uses it."

Of course, it is the duty of every lawyer to give full cooperation to his leader in winning the case by suggestion of anything of importance that occurs to him, but a lawyer who exploits himself by making witty remarks in the presence of the jury and the court, needs a poker instead of a fee. But you may ask me if I cannot advertise myself, if I cannot brag
upon my talents, how may I attract the attention of the liti-
gating public? How are they ever to know that it would be
wise to employ me? I will say this: get the best office you can
in the best place; fit it up in the best style that you can; buy
all the books your money or credit will reach; stay in your office
diligently, from reasonably early in the morning until rea-
sonably late in the evening, mastering the principles of law
laid down by elementary writers and preparing yourself to be
ready for a touch-and-go when the client comes.

They tell a story of Daniel Webster, that when he was in
the callow youth of his practice a friend, who recognized him as
a man of promise and who happened to be an officer of a great
insurance company, had a litigation in which he wished to give
Mr. Webster an opportunity. He employed him upon an
agreed fee. Webster put the fee in his pocket, went to the pub-
lic library in Boston and spent days in unremitting labor upon
the principles touching that particular case. He tried out the
case and won it, and when he came to figure up the profit and
loss in the case he found that he had paid out more than the
insurance company had paid him. Years passed and he attained
the maturity of his learning and practice, and lo, another case
came to him of the same character, where he could charge a
well-nigh unlimited fee, and he went into it prepared from
his former employment and again won the case, but this time,
I may say, the balance was in his favor.

You won't be lonesome in your office if you love your pro-
fession and if you study intelligently the decisions of the great
judges who have written their individuality in the books of re-
ports. The acquisition of a knowledge of the law is far more ad-
vantageous than a cross-word puzzle, or a game of chess, or
checkers, or even mah jong, and infinitely more profitable.
You will find when the evening comes your trousers may be a
little smoother, but if you have the courage which lies back
of every profession, stick to it and as God lives you will make
a success of it. If you are a better lawyer than the other law-
yers in the place where you may locate, the world will make
a beaten track to your office as much as they would to the
workshop of the man who makes a better rat-trap than anybody
else. You will not go into the practice of law without having
numerous friends who sometimes have litigation and who will speak a word for you in season, without any prompting on your part, and when your time comes, the best advertisement may be found in the court-room where you can exploit the knowledge you have acquired in the quiet days of early inaction.

I am taking too much time, however, discussing this subject of professional ethics in a general way. I have called your attention to the interest taken by the Bar Association in urging upon the members of our profession a return to the old principles which obtained when our grandfathers entered the profession. I think perhaps it may be of use to you if I formulate some of the canons laid down by the American Bar Association, not following them slavishly, but submitting to you principles for your mature search and consideration and sometimes even criticizing the soundness of the rules laid down by them. I shall criticize, where I criticize at all, with great reluctance, but with the knowledge that in many instances these canons have been adopted by a majority vote and in some instances against the sound judgment of members of the profession whom I hold in the highest respect. I may remark in passing that your duty to yourself is to determine all questions for yourself, not departing from the landmarks of professional ethics without reasons which seem just to yourself. In this matter, as in every other, I beg you to remember that you have no right to put a strait-jacket on your soul any more than you have a right to let anybody else do it for you. Lay out your rules of conduct in the form of your own conscience and repeal the canons I am offering for your suggestion, permanently or temporarily, as your relation to your God, your state and yourself may in each instance require.

In taking up these canons of professional ethics as adopted by the Bar Association as a backbone, I suggest that you will find that they deal (1) with the relation between the lawyers and the public before the relation of client and lawyer is entered into between any one of you; (2) after your employment as attorney, the relationship of lawyer to client may be dealt with with certain canons more or less obvious, but which always need a statement either as a principle by which you are to be guided, or as a principle from which you may depart; (3) the relation between the lawyer and the courts, and conversely
between the courts and the lawyer constitutes a subject-matter for your earnest consideration; (4) the relationship of lawyer to his associates and to his adversary must also be considered.

You will find that all of these canons fit in, except a few which are more or less empirical, with the broad general principle that a lawyer when he enters upon his profession carries with him as the elementary doctrines of morality, of fair dealing in his relationship to his fellowmen, those principles which control us at all times in our conduct as gentlemen, who always recognize the fact that the law requires us to do nothing immoral, improper, unjust or unfair to our fellowman. Your first relationship is the relationship of frankness with your God, and no client has the right to ask of the lawyer that he do anything which in the forum of his conscience seems to be immoral, improper or unjust. Taking up these subjects in their consecutive order, you will find these canons well recognized:

(1) A lawyer may not advertise himself, either in the public prints or by letterhead or otherwise beyond the simple legal card with the place where his office may be found.

(2) When a client comes into your office for the purpose of securing your services either as counselor or as advocate, it is your duty to cross-examine him as tactfully as you may, but nevertheless fully to get the facts as he understands them with a view to determining for yourself whether he has taken counsel with his own interests or with that sense of justice which should underlie all litigation. Remember, however, to give him the benefit of the doubt where his case is fairly stated, if the facts and law are fairly debatable. Be perfectly frank with him as to the merits of his case. If you think his case is not maintainable, tell him so. You may temporarily lose a client, but in the long run you will gain a friend, which is far more valuable.

(3) When you have satisfied yourself that your client needs assistance of legal character, the next thing is to make a satisfactory adjustment with him for your compensation. He has already taken some of your time; he has already precluded you from taking employment on the other side and common justice requires that he should compensate you for the legal opinion you have given him, although in the early years of your practice, the compensation which you exact from a prospective client, if measured by the value of your services, will not be great. I
speak from experience, because I think I may say with frankness to you, not to be repeated where my clients could hear it, that when I entered the profession I could not have prepared a petition upon a plain note of hand without copying it from the book.

(4) When this preliminary has been satisfactorily arranged the principles of professional ethics have placed a seal upon your lips which absolutely precludes you from telling anything which your client has told you, or even from thinking about it in the presence of a mind-reader. Do not flatter yourself that you can talk about your client’s case outside anonymously. Lawyers are not as a rule dull, and when you undertake to talk about somebody’s case in the abstract, you are in all probability laying your cards on the table before him and you are violating this canon of legal ethics.

(5) It is your duty to your client to make a diligent and careful examination of the lawbooks to see how far your opinion is borne out by the authorities; to trim your opinion to fit the well recognized rules of law and to shape his case as far, in equity and in good conscience, you can bring him within those principles.

(6) And this brings me to this canon of professional ethics. Your relation to your lawsuit calls for the fairest dealings with your associate counsel, if there is one, your adversary as there is certain to be, and the judges who preside over the courts where your case is to be tried.

(7) You have no authority by a general employment to make any agreement, without the consent of your client, with opposing counsel, except such as touches merely the practice of the case. These agreements should be entered into with opposing counsel with the greatest care and where possible they should be written and signed or embraced as an order of the court.

(8) Offensive personalities at the expense of your adversary, or his attorneys, should not be indulged in. I have known, however, the severest punishment to be meted out justly where counsel had made themselves liable to punishment for breaking this canon. I think this will justify an illustration.

I saw a will case tried once, quite a celebrated cause in its day, involving the estate of some hundreds of thousands of dol-
lars, in which the attack was made upon the testator's testamentary capacity upon the ground that a partial paralysis, the effects of which had lasted for some years, had rendered him incapable of recognizing his obligation to the natural objects of his bounty. The testator in his lifetime and for some years before his death had been attended by a physician whose practice was somewhat irregular, but which, on the whole, had resulted in great relief to the bed-ridden patient. This physician, whom I shall call Dr. A, was one of the leading witnesses for the establishment of the will. Numerous counsel were engaged upon both sides, and the case was tried in Stanford, where leading members of the profession at that time were T. P. Hill, W. G. Welch and Mike Saufley. The leading attorney on the other side for the establishment of the will was an uncle of T. P. Hill, whom I have mentioned. You know, of course, that the propounder of the will has the last argument before the jury, and this duty was put upon the uncle of T. P. Hill. All through the trial counsel for the contestants had rung in the charge that Dr. A was a "quack," so that the word "quack" had become a slogan for the contestants. When the last argument for the propounders came to be delivered, it was made by one of the most skillful advocates it has ever been my fortune to hear. When he came to answer the argument of "quackery" against Dr. A he said substantially this:

"Gentlemen of the Jury, against all of the testimony we have had of the testamentary capacity of the testator, we have the charge that Dr. A, who attended him for some years before his death was a 'quack' and, therefore, his testimony is not to be believed. Now, so far as I am concerned myself, I don't know what the counsel on the other side mean by the word 'quack.' Dr. A was a regular graduate of a reputable school of medicine; he attended the testator to the latter's entire satisfaction; he done him good; he eased him in his last sickness; he made him comfortable, and everything else that a reputable physician could do, Dr. A did. But, gentlemen, let's see how frank and ingenuous this charge made by these Stanford lawyers against Dr. A is. We have this especially emphasized by Mr. Welch, by Mr. Saufley and by my nephew, Tom Hill. If I say anything about these gentlemen that is not true, I challenge them right here and now in the presence of this jury to deny it. Look at Bill Welch, a great big, bald-headed lawyer who has spent $50 in the last year trying to get some sort of medicine that will make the hair grow on his old bald head. And there's Mike Saufley. Gentlemen, I tell you right now, and I challenge him to deny it, Mike Saufley is wearing a liver pad this minute and he joins in the cry that Dr. A was a 'quack;' and, gentlemen, there's my nephew, Tom Hill, baying with the pack and joining in the charge that Dr. A was a 'quack.'
Gentlemen, I want to read you a little scrap of paper that has come into my possession. It reads:

'Proprietors of Dobbin's Sure Cure.

Gentlemen:

It gives me pleasure to state that I have tried your remedy on my wife and I find it all that you recommend.

(Signed) T. P. Hill.'

"And Tom jines in the charge that Dr. A. was a 'quack.'"

(9) Perfect frankness on the part of a lawyer with the court is an imperative duty. No lawyer has a right to assert his own opinion as to fact or law either to court, jury or commissioner. The evidence, the written memorials of the law and facts of which the courts and triers of facts take judicial notice, speak for themselves. It is the grossest impropriety on the part of counsel to undertake to mislead the court, by reading from the law books in such a fragmentary way as to misrepresent either the opinion or the text-writer. I saw this thing occur in an argument of a case in the Court of Appeals once.

Quite a distinguished lawyer, an ex-Chief Justice of the Court of Appeals, was arguing the case in the Court of Appeals and he had numerous books supposed to support his contention, and he said substantially to the court: "I am not going to take Your Honors' time by reading all the authorities which I have before you. I will select one as fairly representing the bulk of those I have before me." He then read from the Supreme Court of Wisconsin a case which to all seeming supported his contention exactly. He then sat down with a smile of triumph and gave place to his adversary, who as it happened, had the last argument. This adversary said substantially: "If the authorities which Judge X has paraded and not read bore any relationship to the one which he has read, I am not surprised that he should have passed them over silently. My brother must have known that the case which he had read Your Honors from the Supreme Court of Wisconsin was subsequently taken to the Supreme Court of the United States on writ of error and reversed as to the very point upon which he has cited it as authority."

Let me illustrate this further: There is a federal statute which requires the Comptroller of the Currency to report his
own opinions for the benefit of the accounting officers of the
treasury. When Judge Lawrence, of Ohio, occupied that dis-
tinguished position, he was arguing a case in the Supreme
Court of the United States, in which he had occasion to refer
to one of his own opinions. He did it with more or less of a
mumbled reference to book and page, and one of the justices
of the Supreme Court of the old school, leaned down and said:
"Excuse me, brother Lawrence, I didn't catch your last cita-
tion." Judge Lawrence said it might be found in 2nd Law-
rence, page 484. The justice who asked the question settled
himself in his seat and exclaimed in a stage whisper: "Well,
I'll be damned."

(10) The judge on the bench owes the lawyers who are
practicing at his bar the same courtesy and consideration as it
is the duty of the lawyers to extend to the court. I have no
patience with that practice which obtains of a certain obse-
quiousness on the part of lawyers towards the bench. The
judge on the bench, of course, as an executive officer has to
manage the business in his court, but he has no right to be dis-
courteous to counsel, or to assume a superiority which rarely
exists in any given case, though, of course, it is a part of his
executive function to keep lawyers within a reasonable time
for argument and within a courteous demeanor towards the
court, without, however, any attempted witticism or story, as-
suming to himself the superiority of a teacher to a pupil. I
do not forget one of the great English chancellors, Lord Lynd-
hurst, I think it was, who once said after he had been unduly
severe upon a practitioner before him: "It is the duty of a good
judge to prevent the lawyer from talking nonsense."

Another instance will illustrate this canon:

Justice Miller, of the Supreme Court of the United States,
who started his career in Barbourville as a country doctor, left
that profession and entered the profession of law. He moved
to Iowa and was subsequently appointed Justice of the Supreme
Court of the United States, and was a distinguished ornament
to that great tribunal. He had unfortunately, however, a
tyrannical habit on the bench. On one occasion while trying a
case in Kansas City, a young lawyer who had acquired legal
attainment in Harvard, and who was more of a lawyer of ele-
mentary principles than of court practice, was proceeding some-
what unsatisfactorily to himself and much more so to Judge Miller. Finally the judge lost all patience and he said: "You had better sit down; you don't know anything about your case." The young lawyer, with courage rarely possessed by men of his experience, stopped and said: "May it please Your Honor, my time has been mostly passed in acquiring the elementary principles of the law, and I am sorry to say that I am not as familiar with the practice as I should be. I would like to ask Your Honor a question. Would it be permissible for me to ask a question of practice?" The old judge said very gruffly: "Yes, go ahead." The young lawyer then said: "If I had said to Your Honor what Your Honor said to me, would it have been a contempt of court?" The point hit home, and Judge Miller said: "You can proceed with your argument."

One other and I pass on. Mr. Wilson, of Elizabethtown, a very shrewd practitioner of the old school, got over the line one day and was fined by the court. He said to the court: "Judge, may I ask you what that fine is for?" "Yes, Mr. Wilson; for contempt of court." He drew out $5.00 from his pocket and laid it on the table and said: "I'll pay it; it's a just debt."

(11) I have quoted heretofore in the oath this language:

"I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice."

I do not think the consensus of opinion of the leaders of the profession will agree that the lawyer is bound to take a case under any circumstances or conditions, and so I venture to suggest that the right to decline to enter into a relationship of such high and responsible character is an absolute right, with good reason, or with no reason, and I venture to suggest this to you.

(12) No advocate in a trial or in anticipation of one, should show familiarity with the members of the jury panel. Addressing them by name on a trial, or pointing an argument by personal allusions, is highly improper. Covert allusions of matters known alone to a juror and an advocate are as improper in the trial as they are illbred in the drawing-room.

(13) In conclusion, courts of justice are temples in which
advocates thresh out in the presence of the judge the ultimate facts to which the latter applies the law, and it is as immoral, and, therefore, unethical to deceive a juror on the question of fact, as it is to mislead the judge on the question of law.

(14) The extremely delicate and confidential relations between attorney and client have given rise to another canon of professional ethics. It is this: No client, who has employed you to represent him in his litigation, has a right to employ another lawyer without your consent to take your place, or even to assist you in representing him to do what he has employed you to do. Any lawyer who accepts such employment, without your consent, is violating the rules of professional ethics, which leaves you no reasonable alternative but to withdraw from the case.

And in conclusion, let me say it has not been my purpose to be exhaustive or definitive in these suggestions, which I have made upon the subject of the ethics of the profession. If I have said enough to make you think out these problems for yourself, I will have accomplished my purpose.

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