

the ordinance in question. It prohibits the explosion of fire-crackers, etc., 'without the written consent of the mayor specifying the time and place.' This was not a delegation of legislative power. It was a mere cautionary clause, to the end that such matters might be supervised by the executive officers of the city. It was no more a delegation of legislative power than is the common municipal mode of restraining the carrying of firearms except by written permission of the mayor."

THE IDEALS OF THE AMERICAN ADVOCATE—A SYMPOSIUM.

HON. SIMEON E. BALDWIN.

Justice Supreme Court of Connecticut.

Every true man works toward an ideal. He imposes it upon himself. In the rough but impressive phrase of Emerson, he has hitched his wagon to a star.

To this responsibility of the individual there is added for every lawyer a responsibility that comes from without. He owes a special duty to his profession, and to the world because he is of that profession. *Noblesse oblige*. Nobility, under our institutions, does not belong to any individual. If some foreign sovereign decorates an American with a title, it confers no pre-eminence upon him here. But under our institutions that nobility of purpose and character which belongs to the legal profession in other countries belongs to it in equal measure in the United States. It is everywhere, as concerns its most conspicuous office—the advocacy of causes—a profession of strenuous and chivalric endeavor, and honored, as such, now, as much as in any former times or other lands.

It is the profession of those who contend for the rights of others. Altruism and personal sacrifice are its foundations. Let a lawyer plead his own cause, and he finds, as the proverb says, that he has a fool for his client.

The Romans put this strongly in their *Corpus Juris*: "Advocates who resolve the doubtful fates of causes and by the strength of their defense often set up again that which had fallen, and restore that which was weakened, whether in public or in private concerns, protect mankind not less than if they saved country and home by battle and by wounds. For in our warlike empire we con-

fide not in those alone who contend with swords, shields and breastplates, but in advocates also; for those who manage others' causes fight as, confident in the strength of glorious eloquence, they defend the hope and life and children of those in peril."*

This sentiment was the inspiration of Malesherbes, when he claimed the honor of defending the king, whose disregard of his counsels had cost him his crown and was to cost him his life. It was the inspiration of Denman, in supporting the rights of Queen Caroline; of Evarts, before the senate of the United States in resisting the impeachment of President Johnson.

Great occasions like these come seldom, but the same qualities of advocacy are displayed and the same duties of advocacy discharged daily in every American state. Disregard of personal interest in fulfillment of professional obligations; sacrifice of personal convenience to secure the interests of others; putting all the powers of mind and body, in one supreme effort of concentrated energy, at the service of clients: these are the common story of the contests of the bar.

The undue multiplication of lawyers in the United States, incident in part to our being a new country, and in part to our being a great and rich one, has had a necessary tendency to weaken the personal sense of what is due from him to his profession, on the part of each individual member of it. It was partly to counteract this tendency that the American Bar Association was organized in 1878. Its influence has been steadily good. It has not only consolidated the American Bar, but has helped to bring together that of every state, and to put before it a high standard of professional honor and excellence. It has had no new ideals to propose. It could have none. The ideals of the advocate have been unchanged since the first foundation, on a sure footing, of courts of justice. They are all bound up in the one thought of the honor of the profession. Honesty may do for the office lawyer. Something finer—honor—is the watchword of the court-house.

The advocate can achieve the ideals of his profession without eloquence. Simple, plain, straightforward statement is often better than eloquence. He can achieve them without any

*Coke II, 7 *de advocatis diversorum judiciorum*, 14.

legal learning that could be called profound. A fair knowledge of law, with the power to make the most of what he knows, is generally enough. He cannot achieve them without a high sense of the rights of man, as man; without a sincere reverence for the institutions of human justice; without patient, self-forgetting, chivalric devotion to his client's cause.

HON. HENRY WADE ROGERS,
Dean of the Yale Law School.

You ask for an expression of my views on the "Ideals of the American Advocate." I know of no reason why an American advocate's ideals should be different from those of an English advocate, or of any lawyer in the active practice of his profession, whether he advises clients in his office or addresses courts and juries. In any and all cases he acts unworthily if he disregards the fact that he is a minister of justice, and cannot do, as a lawyer, anything which dishonors him as a Christian gentleman and a law-abiding member of society.

When one reflects upon the lawyer's ideals there comes instinctively to mind Lord Brougham's celebrated declaration concerning an advocate's duty to his client. "An advocate," he said in his famous defense of Queen Caroline, "in the discharge of his duty knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and among them to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on, reckless of consequences; though it should be his unhappy lot to involve his country in confusion." This is a most extraordinary and wholly indefensible and unworthy statement of a lawyer's duty. Brougham was undoubtedly a remarkable man who possessed great talents, enjoyed a wide fame and played a very conspicuous part in public affairs. He devoted himself to many things. He was not merely a lawyer, but was a man of letters, a man of science, a statesman and one who aspired to excel in all things and who directed his attention to many branches of human knowledge. He was not the ideal lawyer. The

law was not congenial to him and in his early life he spoke of it as "the cursedest of all cursed professions" and referred to it as an "odious" profession. We do not look to such a man for our professional ideals. In his own day there were better and greater advocates at the bar, and on the bench more learned judges. We are told that he wanted that moral elevation which inspires confidence and respect, and which is essential to lasting fame. The statement I have quoted from him proves this estimate of him to be correct. If his declaration were to be accepted no honest man could enter the legal profession, or having entered it could remain in it.

As matter of fact the only men who attain to any great degree of eminence in the profession are, as a rule, men of conscience and honor. It was said in Lord Hale's day that there were as many honest men among lawyers, proportionately, as among any profession of men in England, not excepting the divines. I believe that is true of the profession in the United States to-day. The lawyer should never assert to court, jury or client what he does not believe to be the truth. He should never resort to practices which are not in conformity with the principles of morality.

We live, no doubt, in a commercial age. Its aspirations are for wealth, more than for renown or service. It is common observation that

"The learned pate
Ducks to the golden fool."

The bar may not have escaped entirely the insidious influence. No calling, not even the ministry, has been altogether untouched by it. Every profession has its mercenary side. But in no one of the learned professions is avarice the leading aim. In Robert Louis Stevenson's essay on "The Morality of the Profession of Letters" can be found this admirable statement: "The salary in any business under heaven is not the only, nor indeed the first question. That you should continue to exist is a matter for your own consideration; but that your business should be first honest, and second useful, are points in which honor and morality are concerned." The ethics of the profession require that a member of the bar shall be first an honest man. He must live in rectitude and cherish his personal honor, not forgetting that personal honor is the distinguishing badge of the legal profession.

HON. U. M. ROSE,
Ex-President American Bar Association.

It was the maxim of Cato the Censor that the orator "is a good man skilled in speaking." Quintilian, who is more emphatic, says: "Now, according to my definition, no man can be a complete orator unless he is a good man. I therefore require that he should be not only all-accomplished in eloquence, but possessed of every moral virtue."

As the art of public speaking is one that most lawyers must exercise, these sayings have often been applied to our profession. They may seem hard at first sight, since moral perfection is not attainable in our present state of existence. But it must be remembered that these distinguished men were speaking of the ideal orator; a model for aspiration, though too lofty for unimpaired realization. The complete orator and the perfect man are equally unknown; but one may be a good man though subject to many frailties, provided that these are not so grave or numerous as to stain his whole character. There are different degrees of virtue, but the habitual exercise of a few that are fundamental, such as are enjoined by legal ethics, tends to a gradual and general elevation of character. The central idea intended to be imparted by these two classical moralists is undoubtedly a true one.

These rules are not the work of Pharisaism, or the outcome of frivolous and over refining casuistry; they are practical, well defined, profitable, and are based on long observation and experience. In so far as the lawyer fails to live up to them he will derogate from his own best interests, will bring reproach on himself and his profession, and will lay up provision for the day of regret and remorse. However great our apostasy may be, the standards, handed down from generation to generation, are still there, and if we can by any effort on our part render them more commanding and serviceable, the line of duty is too plain to admit of hesitation or dispute. They do not embrace the entire sphere of moral sentiments, but they do include the whole circumferences of professional duties, erecting standards higher and more exacting than those which are commonly insisted upon, standards of courtesy, fairness, honesty, fidelity, truthfulness, good faith, and a quality of disinterestedness by no means

common; in short, all of the attributes that go to make up the character of the true gentleman. The lawyer who lives up to these mandates stands on a proud eminence; his life, if he is not otherwise deficient, and if he is not made the victim of unrelenting and implacable fate, will be worth much in the world, while his influence will be a power in the land.

A good name is better than great riches, and words spoken by one who sets a praiseworthy and consistent example to his fellow men will be golden, while those uttered by a man of profligate habits and evil life will be as chaff, like those of the Duke of Wharton, the most brilliant orator of his time, but unprincipled and the slave of many vices, described by Pope, who knew him well, as possessing

"An angel tongue, which no man can dissuade."

Certainly the career of the lawyer is beset with difficulties, and is exposed to many temptations, but these are only multiplied and enhanced by evil practices.

Consistently with allotted space only one other point may be briefly mentioned. Fraternal feeling at the bar is something that softens the asperity of controversy, tends to the better administration of justice, and adds to the pleasures of life. It is neither so active nor so potent in our country as in others that might be named. The reasons are obvious, and they are closely allied with the immense expanse of our territory, and the want of compactness of much of our population, the facility of admission to the bar which is often indulged, and the general looseness of discipline. The American lawyer is frequently overworked. In England, France and Italy the advocate is relieved of much drudgery by the collaboration of attorneys, a well trained body of assistants, leaving him more time for social duties, the amenities of life, and the widening of the field of endeavor. Other restrictions peculiar to our situation might be recited; but however serious the obstacles may be, it is nevertheless true that the lawyer owes an affectionate allegiance to his profession, which demands a grateful remembrance; and that he should bring ungrudgingly his quota of influence to the work of elevating the tone of the bar, cheerfully lending his aid to secure the har-

mony of its members, and to the promotion of its dignity, honor and usefulness.

HON. JOHN F. PHILIPS,

United States District Judge.

As law is "the perfection of human reason" it ought to be "the pride of the human intellect," and the practice of it should be pursued rather for its honors than its pelf.

The spirit of commercialism has too largely taken possession of the profession. Fee-getting is the ruling passion, the effect of which is to narrow the mental horizon and eat out the heart. The ancient chivalry and sentiment of the advocate move him little nowadays, unless he perceives in the occasion some alchemy for transmuting the cause into gold. The ewe lamb of the orphan and the milch cow of the widow are turned over for protection to the shyster, who, if he win, takes the lamb and the cow for his fee. The most fruitful source of litigation to-day is on the increase because lawyer and client stand as full partners in the spoil.

The noblest quality of an advocate is intellectual honesty. The mind, whatever its endowments, that "toils in mischief"—that is not honest with itself—is apt to reflect a distorted image on court and jury. The practice of making counterfeit presentment naturally enough renders the mind oblique and sinister. By progressive steps it loses the sense of distinction between right and wrong. Whereas, the mental habit of presenting the law and the facts as they are brings the mind and heart into co-operation, exciting the sympathy born of candor, and exerting the power that ever lives in truth.

Another ideal of the advocate is that he should be the man of "high erected thought seated in the heart of courtesy." Obsequiousness evinces moral cowardice and mental weakness. Courtesy, without sincerity, is a false pretense. Amenity at the bar, if used merely as a feint to aid a sinister purpose, excites only disgust. There is no superior in odium to the professional Iago. The charlatan, if he be reasonably honest, is more tolerable.

While the advocate cannot always choose his client, yet, if he be constantly found in the advocacy of questionable transactions it evidences a readiness to make merchandise of his learning regardless of ethics. He may,

with propriety, urge a case against his opinion of the better law, because the law of the case is what the court may declare it to be. But he cannot, with self-respect, advocate a cause he believes to be dishonest, or hurtful to society, or dangerous to the state. Cicero said, a lawyer may defend the guilty, under limitations, but his duty will never permit him to accuse the innocent. *Id facere laus est decet, non quod licet.*

No respectable lawyer can encourage litigation or foment petty strife. The street-soliciting advocate is the burning shame of the bar, whose dislike it were an honor to share by bench and bar.

The successful advocate now is logical and analytical rather than rhetorical and glittering. He is less original and inventive, because of accumulated precedents tending to develop the faculty of discriminating assimilation. He looks to ultimate results rather than present effect.

HON. T. A. SHERWOOD,

Ex-Justice, Missouri Supreme Court.

In the English and American Law, "advocate" is the same as "counsel," "counselor," or "barrister." Web. Dict.

In order to answer the requirements of the idea conveyed by the above title, premise must be assumed in the first place, that the person to be discussed has, of course, a thorough knowledge of his profession, as well as of cognate science, for, as Sir Walter Scott so tersely observes, "a lawyer who knows neither literature nor history is a mere mechanic."

Secondly—He must be gifted with an imagination of undoubted vigor in order to be able to look over the contemplated forensic battle-field, see and anticipate what the adversary is likely to do, and thus put himself in his place. Judge Elliott in his General Practice very deservedly bestows the need of great praise on the imaginative faculty, as being a necessity of legal success. And Beaconsfield asserted the imagination to be the most important factor in the science of human government.

Napoleon, too, as Bourienne relates, employed the mentioned faculty to great and successful advantage when, in the winter preceding his joining battle with the Austrian Melas, he used a map of Italy, on which with

pins tipped with black and red sealing wax, he delineated the respective positions of the Austrian and French troops, and the location of the battle-field. Subsequent events showed a victory won by Napoleon, where, and in the manner and the position predicted.

Thirdly—He must have great power and force of expression; this faculty usually accompanies the imaginative faculty, because whatever a man vividly sees with mental vision, that also, can he vividly describe.

Of course the capability of speaking fluently and without embarrassment, is seldom attained except by *practice*, although Lord Clive, in his first parliamentary speech, is an illustrious instance to the contrary.

Charles James Fox, the ablest debater the world ever saw, became such, he declared, by boring with his forensic efforts, successive parliaments for years.

Fourthly—He should be *eloquent*. In general the possessor of a noble imagination, one that can picture forth what the imaginer desires to portray, in "words that burn," coupled with the capacity to *think on foot*, is almost, of necessity, eloquent. But who shall say in what *eloquence* consists? Like certain liquids (not altogether unknown to the profession), it can only be tested by tasting.

Fifthly—He should be logically as well as legally accurate. Such bifold accuracy is not at all inconsistent with splendor of imagery nor an appropriate flow of words. S. S. Prentiss of Mississippi, Rufus Choate of Massachusetts, are conspicuous examples of this assertion's correctness.

Sixthly—He should by constant study keep his armour burnished. If "eternal vigilance is the price of liberty," so also is eternal industry the price of law.

Seventhly—He should, regardless of public clamor or adverse criticism, do his duty as he conscientiously sees it. If he chooses to defend a man charged with crime, he will not be slack in his diligence nor in his vigilance because he *believes*, or even because he *knows* the accused is guilty. Every man, though guilty, is entitled to the same orderly method of procedure, the same unscrupulous observance of all legal rights and forms, as if wholly innocent of the charge. Captain Kidd, placed on trial for piracy, is as safely guarded by the law, as would be the archangel Ga-

briel, when charged with a like offense. And this will be true so long as sections 22 and 30 of our Bill of Rights are obeyed. Although guilty, the accused has still a right to be tried according to the law of the land; "a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial." Thus tried, the accused is entitled to counsel to defend him. If counsel defend him, then such defense is a legal and rightful defense, and casts no more discredit on such counsel thus engaged, than it casts on those provisions of the organic law which authorize and provide for such defense, or on the court which enforces them.

BY HON. J. W. DONOVAN,

Circuit Judge, Detroit, Mich.

The court room should be a place where none would fear to enter; but the intensity of practice has led a host of lawyers to the verge of abuse to so many, that timid women, and braver men, will suffer a wrong rather than be subject to the cross-fire of an enemy's advocate. And the question is pertinent—Is such conduct just on the part of counsel? Is it up to a high standard of ethics? Let us consider.

It is a common practice to overdo the answer back, or cross-fire dialogue of counsel in trials by jury. Lawyers attach so much value to repartee, that they would rather lose a case, than lose the last say with a witness. Such wit or personal abuse, as the case may be, is costly to a client, if his case is lost by it.

A very large proportion of verdicts are lost by cross-examiners in forcing witnesses to emphasize their denials of facts, or answers to important questions; as advocates usually get what they bargain for, if they start to be abusive. A small minority even complain of the trial court in their briefs on appeal, and seldom escape the ire of the Supreme Bench, with a fine fully equal to one day's pay for services, a brief stricken from the record, and plenty of deep humiliation as a reward for their evil doing. How any advocate can ever hope to advance by attempting to overrule a trial court, on other than legal grounds is a problem. Surely counsel who argue long after an adverse ruling, and attempt to alter it, in sight of a jury—only to be defeated in each attempt—is making slow prog-