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It will be my purpose in this paper to deal rather broadly with the subject of professional and judicial ethics.

In an approach to this subject, it seems to me certain fundamental concepts should be kept in mind.

First, the lawyer is a member of a learned profession, not a mere tradesman. Persons admitted to practice law in a state are a part of the judicial system of such state and officers of its courts. Likewise, persons admitted to practice in the Federal courts are a part of the Federal judicial system and officers of the Federal courts.

We cannot talk about a profession without considering the ideals which distinguished it from a vocation:

> * * * If there is such a thing as a profession as a concept distinct from a vocation, it must consist in the ideal which its members maintain, the dignity of character which they bring to the performance of their duties and the austerity of the self-imposed ethical standards.[1]

Judge Carter in his book, "The Ethics of the Legal Profession" said:

> And if [the law] is thus set apart as a profession, it must have traditions and tenets of its own, which are to be mastered and lived up to. This living spirit of the profession, which limits yet uplifts it as a livelihood, has been customarily known by the vague term "legal ethics." There is much more to it than rules of ethics. There is a whole atmosphere of life's behavior. What is signified is all the learning about the traditions of behavior that mark off and emphasize the legal profession as a guild of public officers. And the apprentice must hope and expect to make full acquaintance with this body of traditions, as his manual of equipment, without which he cannot do his part to keep the law on the level of a profession.

Second, when a lawyer becomes a judge, there devolves upon him duties with respect to his official conduct which concern his relation to the state and the people, to litigants who come before him, the practitioners of law in his court, to the witnesses, jurors and attendants who aid him in the administration of justice, and to the principles of law that condition his decisions. Moreover, there devolves upon him obligations of personal private conduct to the end that he shall not bring reproach upon the high office which he occupies.

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[1] W. A. Shumaker, in *Law Notes*, Vol. 28, No. 6.

Sir Matthew Hale in his "History of the Common Law" setting forth "things necessary to be had in remembrance" by a judge said:

> That, in the administration of justice, I am entrusted for God, the king and country; therefore, that it must be done uprightly, deliberately, resolutely.

And Mr. Justice Roberts in his address to the Association of the Bar of the City of New York in December, 1948, said:

> When a man goes on the Court, he ought not to have to depend upon the strength and robustness of his own character to resist the temptation to shade a view in order to put an umbrella up in case it should rain. He ought to be free to say his say, knowing, as the founding fathers meant he should know, that nothing could reach him and that his conscience was as free as could be * * *. He ought not to have to make a vow to himself that ambition shall not color his opinions. It should be impossible for that to happen.

Legal ethics has been defined as "that branch of moral science which treats of the duties which a member of the legal profession owes to the public, to the court, to his professional brethren, and to his client."[2]

The Code of Professional Ethics of the American Bar Association was adopted in 1908, in response to an urgent demand for a definite statement of professional standards.

The Canons of Judicial Ethics were adopted by the American Bar Association in 1924 as a proper guide and reminder for judges and as indicating what the people have a right to expect from them.

The standards of professional and judicial conduct set forth in the codes of professional and judicial ethics and in the decisions of the courts are high. But, I am convinced they can and should be improved and expanded. Competence, integrity, loyalty and public duty cannot be over-emphasized.

Sir Norman Birkett, the distinguished English jurist, in a speech to the Lawyers Club of Toronto said:

> You will forgive me saying it, but I am jealous of the very great reputation of the law. Its future is in our hands and it is a solemn responsibility and duty cast upon every member of the practicing profession that in all he does, in his duty to the client, in his duty to the court and in his duty to the State, he shall be above and beyond all other things a man of complete integrity. Whatever gifts or attributes he may possess, he shall have this supreme qualification, that he is a man of integrity and a man of honor.

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[2] Bouvier's Law Dictionary, Rawle's 3d Revision.

Some persons are endowed with a keen sense of right and wrong and are able to attain a true perception of morals and ethics and to develop a real desire to attain the ideal ends of human action. Others are amoral and totally lack a sense of moral responsibility. Still others are immoral; they lack the strength of character to adhere to what they know to be right. Individuals falling within these latter two groups should never be permitted to practice law.

It should be kept in mind that the right to practice law may and should be conditioned upon certain qualifications for the protection of the public, and that a license to practice law confers no vested right, but rather, a conditional license, revocable for cause, to the end that the public and the profession shall be protected.

If the ability to attain a true perception of morals, ethics, integrity and honor is a proper qualification for admission to the Bar, then there arises a peculiar problem with respect to time. Shall we wait until a young man or women has spent a minimum of three years in college and three years in an approved law school —and then investigate and find out that he is amoral or immoral and deny him admission to the Bar? Or shall we endeavor to ascertain such facts before we permit him to enter upon the study of law?

In some states a character inquiry is made when the applicant applies to take the Bar Examinations; in others after he has taken the Bar Examinations, but before he is granted his license.

In the third group of states a finding of good character, or at least a character investigation, is required when the prospective applicant commences the study of law. This group includes Alabama, California, Connecticut, Delaware, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, Texas and Vermont.

The Pennsylvania system requires registration with a preceptor approved by a County Board. To quote the rule on the preceptor's duties: "Each preceptor shall require students registered with him * * * to keep in touch with him from time to time by correspondence or otherwise, and shall help them to understand the ethics, duties, responsibilities and temptations of the profession. He shall endeavor to develop in each student a high standard of character, and, upon completion of the student's law course, shall certify to the Board what he knows of his fitness and general qualifications (other than scholastic) to become a creditable member of the Bar." The Board also makes an investigation and approves or disapproves the applicant's registration as a law student and reports its conclusions to a State Board. While the applicant may seek a review of an adverse decision at this stage, the Supreme Court of Pennsylvania has said that it is not "compelled to allow an appeal from the action taken by the State Board"; that "the decision of a County Board in the matter of the registration of a law student is conclusive in the absence of fraud or mistake"; and that "This court has never compelled a County Board

to register a law student." A further investigation is made when the student completes his studies, following a required published notice of the applicant's intention to take the Bar Examination. Finally, before his admission to practice, the student must serve a six months clerkship in the office of his preceptor. The purpose of this clerkship is to give the applicant a practical idea of the way in which problems of court and office are dealt with and at the same time a conception of the proper standards of professional conduct which daily contact with a reputable older lawyer should confer.

Such a procedure seems to me to be well calculated in a large measure to prevent persons lacking the essential attributes of character to engage in the practice of law from entering law schools, and certainly it provides the admitting authority with reliable information from which to determine whether or not an applicant for admission to the Bar possesses the requisite attributes of moral character.

An experience of 13 years as a member of the Committee on Professional Ethics and Grievances of the American Bar Association, five of which I served as chairman, and the studies I have made in this field in connection with the Survey of the Legal Profession, lead me to the conclusion that if we are to attain our goals we must have a sound inculcation in our law schools of the duties and obligations which devolve upon a lawyer and of the professional standards to which he should adhere. I do not mean by this a mere teaching of the abstract standards defined in the Canons of Ethics. It should be a much broader course, emphasizing the lawyer's responsibility to his client, to his profession, to the courts, and to the public—the responsibilities which devolve upon a lawyer upon becoming a member of the legal profession. A fallacy held by many is that all a lawyer needs to know to answer any question in legal ethics is the difference between right and wrong, or simple honesty. His knowledge of ethical standards should be much broader than that. What seem to me to be two ideal courses are those given at the Southern Methodist University School of Law and the College of Law of the University of Illinois, where emphasis is placed on the history and the traditions of the profession and where instruction is provided with respect to the responsibilities of the lawyer in his various relationships, in the duties he owes to his clients, to the court, to his fellow lawyers and to the public. May I recommend to you for consideration the Survey of the Legal Profession Report of Elliott E. Cheatham on "The Inculcation of Professional Standards and the Functions of the Lawyer," published in the *Tennessee Law Review*, June, 1951, and particularly that part of it dealing with the two courses I have mentioned.

So far, I have undertaken to deal with the problem before admission to the Bar. May I now deal briefly with post-admission problems. No doubt, from time to time persons will obtain ad-

mission to practice law who lack the essential attributes of moral character and integrity and who will be guilty of unprofessional conduct.

The issuance to a person of a license to practice law confers no vested right, but rather a conditional license revocable for cause, to the end that the public shall be protected.

Some infractions of professional standards may be dealt with properly by reprimand, public or private. More serious infractions must be dealt with by revocation of the license to practice law. It is my firm conviction that a revocation of a license should not be for a stated period and should place on the person whose license has been revoked the burden of establishing by clear and satisfactory proof that he possesses the qualifications for readmission, which should not be less than those required for original admission. No one can forcast with reasonable certainty when, if ever, a person guilty of conduct warranting revocation of his license will be rehabilitated and will possess the qualifications essential to admission to practice law.

One of the glaring weaknesses in our disciplinary practices is the use of suspensions for limited periods and reinstatement without adequate proof that the lawyer seeking readmission possesses the requisite attributes of character and integrity. We have the unseemly spectacle of lawyers being reinstated, who have been guilty of conduct which would be a bar to original admission.

In 1936, the late Justice Nathan Conrey, of the Supreme Court of California, wrote in an opinion of that court resulting in the disbarment of a lawyer found guilty of fraud and decption:

> The license to practice as an attorney and counselor is a certificate of good moral character. It is a representation by the court, speaking as of the date of the license, that the licensee is a trustworthy person who reasonably may be expected to act fairly and honestly in the practice of his profession. Thereafter, in the absence of proof to the contrary, the original representation exists as a continuing presumption. * * * But when charges of misconduct have been made and proved in a disbarment proceeding, the original representation has fallen, and with it the presumption becomes dust and ashes. There are, as everyone knows, many lapses from high standards, due to human frailty, which may be overlooked or visited with mild punishment * * *.
>
> But when in a disbarment proceeding it is established by evidence amounting to proof, that an attorney and counselor had been dishonest in dealing with the affairs of his client; and has violated the duty which he owes to "never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law" * * *

> then a refusal to order disbarment amounts to a renewal of the original license, and is a declaration that in spite of his own record, the attorney is fit to be offered to the public as one who safely may be trusted. In this case the court has no reasonable alternative. The petitioner has disbarred himself.

There is one error in the statement just quoted, an error which pervades the decisions in too many disciplinary cases and too often limits the thinking of those responsible for the task of professional housecleaning. That error lies in the use of the word "punishment" with reference to the suspension or disbarment of a lawyer. It is axiomatic that neither the discipline of a lawyer nor his disbarment is "punishment." The cases are legion which hold that the purpose of discipline is to preserve the courts "from the official ministration of persons unfit to practice in them." From this it follows as a natural consequence that it is equally the purpose of discipline or disbarment to protect the public and the legal profession from the ministration of those same unfit persons. As said in a fairly recent case:

> In the final analysis the purpose of any disbarment proceeding is not to punish the attorney—in the case of a criminal act he is amenable to punishment under the penal statutes—but is to afford protection to the public and to the profession by an investigation respecting the moral fitness of the attorney to continue in the practice of the law.

Nor should any one ever doubt the power of the courts, when gifted with courage as most courts are, to make adequate inquiry into the conduct of lawyers as officers of the courts, and to compel lawyers to testify under oath in such inquiries, even though disciplinary proceedings against such lawyers may be the result. The late Justice Cardozo dispelled any doubt on this score when sitting as a member of the New York Court of Appeals.[3]

The power to investigate and to control the membership of the Bar through disciplinary proceedings is as old as the profession itself. It is co-equal with the power to regulate admissions to the practice of law, and includes the power to determine the good character and fitness of all who seek admission or readmission to practice. Unless this power is fully recognized and fully exercised by the courts, with the support and assistance of the organized Bar, we may as well cease to think of ourselves as a learned profession.

JUDICIAL CONDUCT

The perpetuity of American institutions and the preservation of individual freedom and ordered liberty under law depend in a large measure upon the maintenance of judicial establish-

[3] People ex rel. Karlin v. Culkin, 248 N. Y. 465, 162 N. E. 487, 60 ALR 851.

ments presided over by judges who are able, conscientious, fearless, honest, competent and just. A judge should be learned in the law and learned in the ways of men; he should stand firmly for truth and virtue and uncompromisingly against falsehood and wrong; he should be patient when patience is required, but swift when dispatch is possible; he should be insensible to the attack of the demagogue and the blandishments of the flatterer. He should strive always to square his official actions with the dictates of his own conscience and his own concepts of even-handed justice. To the arrogant he should be adamant, to the timid reassuring, and to the ignorant merciful. He should never shirk a duty, no matter how unpleasant, distasteful, or charged with unpopularity. He should never usurp power, but neither should he fail to exercise it when it exists and the occasion demands its exercise.

How may we hope to have a judiciary that measures up to those high standards? My answer is threefold: First, an improved method of judicial selection; second, an integrated judicial system, with an administrative director under judicial supervision; and third, adequate judicial salaries and retirement benefits.

I think is necessary that we remove as far as possible political considerations in the selection of judges and select them on the basis of legal learning, judicial temperament and integrity.

Selection by the chief executive, with the advice and consent of the Senate, works well when the executive weighs recommendations of the organized Bar and advisors like the Attorney General, makes political considerations secondary, and bases his selection on attributes and qualifications essential to a high order of judicial service.

In my opinion, the elective system is the least desirable, because it is impossible, in my judgment, to remove judicial elections from partisan politics.

The so-called Missouri Plan was approved by the American Bar Association in 1937. It was adopted in Missouri in 1940, by an initiative petition. The legislature resubmitted it in 1942 and it was retained by double the majority it received on the first submission. It was made a part of the 1945 Missouri constitution without change, except more judicial offices were embraced within it. Under the Missouri Plan selection is made by appointment of the Governor from a list of three names submitted to him by a selection commission. The selection commission for the appellate courts, the supreme court and three courts of appeals, is composed of the chief justice, three lawyers selected by the Bar, which is an integrated Bar, and three laymen appointed by the Governor. The six members, other than the chief justice, have six-year terms, staggered so that one term expires at the end of each year and the members are not eligible to succeed themselves. The lay members are appointed by the Governor—one every two years—each from a different court of appeals district. The lawyer members are elected one every two years by the members of the Bar of the

court of appeals district which they represent. The selection commissions for the city trial courts have five members. They are the presiding judge of the court of appeals of the district in which the city is located, who serves as chairman, two laymen appointed by the Governor and two lawyers, elected by the Bar. Their terms are also for six years and are staggered so that the term of each member expires in a different year.

After a judge so appointed has served one year, the people vote at the next general election, following such year of service, upon the question of whether or not this judge shall have a full regular term. (Trial courts, six years; appellate courts, twelve years.) Thereafter, a judge given a full term must, at the expiration of each term, submit his declaration of desire for another term to be voted on by the people. At such elections, the judges' names are placed on a separate judicial ballot, without party designation, the only question submitted being: "Shall Judge..... of the.....Court, be retained in office? Yes. No." Judges are prohibited from making any contribution to or holding any office in a political party or organization or taking part in any political campaign. Thus, political opposition is eliminated and the judge runs solely on his record of service on the bench. Unless that record is corrupt or obviously inefficient, there is every reason to expect that he would receive a favorable vote.

Honorable Laurance Hyde, Judge of the Supreme Court of Missouri, has said this with respect to the results of the Plan:

> Our ten years experience with this plan has demonstrated its effectiveness to bring about a gradual and continuing improvement of the judiciary. It has taken our courts out of politics. Our political parties have respected it and have made no effort to influence elections under it. Judicial qualities have been substituted for party affiliations as the principal basis for selecting and retaining judges. Court dockets have been brought up to date, delays lessened and expense of litigation reduced because judges spend no time campaigning for reelection but are free to use all their time on their court work. Our judges can now always be working on the next case instead of on the next election. All this has increased the confidence of our people in the courts and raised the prestige of the Missouri judiciary throughout the nation. In at least half the states, Bar and Citizens Committees are working for the adoption of similar plans.

I am of the opinion that a plan substantially like the Missouri Plan is the solution for the selection of state judges.

An integrated and coordinated judicial system under which judicial manpower can be assigned and used wherever the need exists, to the end that all of the court dockets of the state shall be kept current, is, in my opinion, essential.

Experience under the Federal system and in New Jersey and other jurisdictions has demonstrated that an administrative director for the courts, under proper judicial supervision, contributes valuable help to proper judicial administration.

The number of lawyers who fail to live up to the high standards of the profession are comparatively few. The number of judges who fail to meet the high standards of judicial conduct are likewise comparatively few. But the shortcomings of these few injure the public and tend to destroy confidence in our courts and greatly lower the esteem in which the public holds our profession.

Ours is a learned profession and not a mere trade. Competence, integrity, loyalty, and public duty cannot be over-emphasized. Skilled and adequate professional legal service should be made available to all segments of our society. It should not be denied to lower-income bracket persons or to the indigent because of cost. The quality of judicial service should be improved by better methods of judicial selection and the complete removal of judges from the realm of partisan politics, and the insistence on higher standards of judicial qualifications and conduct. The ideals of our profession should be the fixed stars which guide our conduct. They should be the goals for which we should constantly strive.

In his eulogy of Mr. Justice Story, Mr. Webster said:

> Justice, sir, is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race.

The task of the judge and the lawyer is to accomplish the administration of justice fairly, competently, speedily, impartially, and equally under law. By earnestly striving to measure up to our ideals, by improving our stated standards of conduct and of competency and by the insistance of the organized Bar and the individual judge and lawyer that those standards shall be maintained, we can and will discharge our duty to the public to bring about that constant improvement in the administration of justice which must be our never ending endeavor.

The law is a profession and not a trade. It ought to signify for its followers a mental and moral setting apart from the multitude—a priesthood of justice.