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## Practicing Law by Telephone†

BY SHIPPEN LEWIS\*

One of my lawyer friends once attended a meeting of four lawyers in an older man's office. In the middle of their discussion of the troubles of an insolvent the host called his insurance broker on the telephone and inquired about a policy covering his household furniture, while the others sat breathless at this magnificent display of brass.

Another lawyer friend found a case important enough to warrant a trip to talk to a lawyer in Atlantic City rather than a letter or a telephone call. While the Atlantic City lawyer and the Philadelphia lawyer were talking face to face, a third lawyer telephoned from Philadelphia and the original caller then amused himself for forty minutes in his host's library while the other two discussed their case and not his.

Very recently I went to a lawyer's office by appointment to talk about our respective clients' positions, and twice in less than half an hour I had to sit back and listen to fairly protracted telephone conversations about matters which certainly were not of instant importance.

We have not yet developed well-established conventions about the telephone, and we naturally follow the easiest path. If the telephone

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\*Of the Philadelphia, Pennsylvania, bar.

rings we run to it, or seize it if it's on the desk by our side, and then the telephone conversation takes precedence of everything else on the agenda. That's the way it used to be in my house when I was a young boy and the telephone was first put in. For office practice, I suggest that, except in unusual circumstances, when someone takes the trouble to go to a lawyer's office to talk to him, the lawyer should tell his telephone operator to hold all calls during the interview, and if there is no telephone operator that the host should answer any call by asking if he may call back later.

Another adjustment that I think would help us all is not to insist always on talking over the telephone to the man you want to reach. For instance, you want to tell the eminent Jonas Throttlebottom, Esq., that the amount of the mortgage is five hundred thousand dollars. (It's more fun in an article to write about five hundred thousand dollars than about five thousand dollars.) You call Mr. T. and find that he is out, so you leave a call. An hour later he calls you with the same result. Theoretically, this can go on so long as you both do live, with profit only to the telephone company's stockholders and the United States Treasury. How much easier for both of you if you leave a message the first time \* \* \* "Tell Brother Throttlebottom that the mortgage is half a million." This sounds like advising a child not to put beans up his nose or advising a lawyer to check his hat outside the Supreme Court room. But many a lawyer continues to pursue his victims by telephone until he has himself delivered the message to the destined ears, no matter how trivial it may be.

In fact I would go further and encourage sending many messages through others. If the man you are trying to reach has a stenographer or a private secretary (the difference depending on relative affluence), whether he is a lawyer or a business man, he will usually be relieved whenever a message can be taken for him.

Sometimes, when you call up an office and ask for Mr. Coke, the telephone operator says, "Who is it, please?" You naturally give your name. Then, as like as not, she comes back with, "I'm sorry, Mr. Coke is out just now; can I take a message?" Of course, you want to say, "Well, why did you ask me my name then?" I suggest that the telephone operator could be told by her employer to reverse her patter—first say that the boss isn't in, and then ask if the caller cares to leave his name and perhaps a message.

Everyone remembers playing Last Tag in childhood. Grown-up lawyers play this in reverse through their telephone operators.

"Mr. L. T. Martin is calling Mr. Simpson, Jr."

"Put Mr. Martin on, please."

"Thank you, I'll wait until Mr. Simpson is on."

"I'm sorry (or as they say in Hollywood, 'I'm sawry'), but I can't put Mr. Simpson on until Mr. Martin is on."

This Amazonian struggle can go on indefinitely, while the innocent principals go about their usual business. Finally the Martin warrior wins and Mr. Simpson is triumphantly hauled to the telephone before Mr. Martin. By this time Martin has forgotten that he put the call in and has wandered off to look up the latest case on assault, little realizing that he would be in danger of assault, battery and mayhem if he were within reach of the infuriated Simpson.

To meet this situation I suggest telling your telephone operator that it really makes little difference who gets on the wire first; that though your time is priceless the other man thinks his is too; and that your operator should follow the course which will make the other office feel most content and therefore most likely to agree to your proposals. Of course, if the same office takes advantage of your good nature too often, you can always reverse your instructions and then enjoy the sense of power which it gives a man to drive two women to battle with their bare wits.

As to the use of the telephone generally, it seems to me that for serious matters it cannot take the place of a face to face conversation in which you cannot only place your interlocutor with his face toward the light and watch the play of emotion on his mobile countenance, but you can feel relatively unhurried, especially if you are in another man's office and he is too polite to hasten your departure. I have an occasional client who illustrates my idea well. When he asks for advice it is almost always by telephone and the inquiry will be something like this: "I'm a trustee for my second cousin and I want to sell a house for half as much again as it would have been worth on the day it was put into the trust if it hadn't burned down the night before. Will there be an excess profits tax on the sale, and can my cousin complain because the insurance policy is not perpetual?" If you have that kind of client face to face, you can, with patience, make some sense out of his story.

Incidentally, if there is to be a face to face discussion, some men regard it as a point of honor to crow on their own dung hills wherever possible. I don't think anyone is really impressed by this. When you want help or information, you should certainly make a point of going to the other man's office to get it. When he wants help or information from you, it is fair to expect him to come to you, unless he is a good deal older lawyer than you are. If you are both on an equal footing, do whatever is natural and easiest for both, but don't emulate the barnyard rooster.

Many of us grew up in houses without telephones and there are probably members of our bar who started practice peacefully with no office telephone. How many inconsequential messages were never deliv-

ered; how many interruptions were avoided; how many briefs were better because concentration was more easily attained. But let us recognize our blessings while we have them. We cannot yet see the stubborn and unlovely face of the opponent to whom we are telephoning, nor can he see the wink with which we accompany our grave statement to him of the weakness of his position. When practicing law by television becomes possible, may I have the fortitude to stick to the humble telephone with all its shortcomings. And I trust no reader of this article will tell Mr. Philip C. Staples that I am a dissatisfied customer of the Bell Telephone Company, for I cannot spare the homely instrument which has inspired this article.

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## Bishop Rice "Released" a Telegram

(A Lesson in Constitutional Law)

BY FRANK SWANCARA\*

When it became noticed in the press that some persons were objecting to the appointment of Mr. Aubrey Williams as Administrator of the REA only because of some alleged changes or modernism in his theological opinions, Frank H. Rice sent a telegram to Senator Johnson, urging support of Mr. Williams. The contents of the message were telephoned to every news agency.

The radio and the press failed to quote, or even to mention, the telegram of Bishop Rice. But that ignored and unnoticed document could have been the exordium of a lecture on constitutional law. If Mr. Williams had been aspiring to a state office in Tennessee, his opponents might have invoked against him that part of the Tennessee constitution which provides:<sup>1</sup>

"No person who denies \* \* \* a future state of rewards and punishments, shall hold any office in the civil department of this state."

It seems, also and therefore, that the bar of Tennessee, under oath to support the constitution, is obliged to search for, and oppose, any candidates who deny, either by words or conduct, a "future state of \* \* \* punishments." They must keep off the ballot the name of any Jewish aspirant, for presumably they know that the highest court of North Carolina said:<sup>2</sup>

"We know that the Old Scriptures, which is the Hebrew Bible, does not teach a future life."

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\*Of the Denver, Colorado, bar.

<sup>1</sup>Art. IX, sec. 2, Const. 1870.

<sup>2</sup>Lady Lisle's Trial, 11 Howell's State Trials 325, as quoted in sec. 1816 Wigmore on Ev. (2d ed).