

PRACTICAL ACTIVITIES IN LEGAL ETHICS.¹

To address the Philadelphia Bar upon legal ethics must seem to you to be carrying coals to Newcastle, or warming pans to the West Indies. For I am mindful that Sharswood's Legal Ethics was a series of lectures delivered to the students of the University of Pennsylvania, the influence of which still lingers here, and that the greatest part of the burden of preparing the Canons of Ethics of the American Bar Association was likewise performed by a member of this Bar.

However, I was invited to come, and the topic was suggested to me, so I am not responsible. It may interest you to know that at the inaugural dinner of the New York County Lawyers Association, an infant association now in the sixth year of its existence, a former member of your Bar, now one of our United States Circuit Judges, spoke as follows:

"When I practised in Philadelphia, which was some twenty-five years ago—there may have been changes of which I am not aware—we never were troubled by the written stipulations which are so common in the course of a law suit here. I never remember to have been asked to give a stipulation in writing, or to have asked any other attorney to give me one. No doubt this system has its defects. There were misunderstandings sometimes, charges of bad faith, but they may arise even where written stipulations are used. My point is that no such practice could have been persisted in unless there had been a high standard of integrity, honor and courtesy, which it is the object of your Association to promote here."

In addressing the same Association on Legal Ethics at a later date, I took occasion to point to these views of Judge Ward as emphasizing the lasting influences of practical activities in legal ethics, and further to say:

"At a dinner given in Philadelphia by its Bar to Judge Sharswood on his retirement as Chief Justice of Pennsylvania, William Henry Rawle said:

¹ Address before the members of the Law Association of the Philadelphia Bar, November 14, 1913.

'If the Bar in this State and this City is what it is, a great part of it is owing, I think, to your careful study of a modest little book which deserves to be printed in letters of gold, written by our distinguished guest of to-night. I mean Sharswood's Professional Ethics.'

The phase of my subject, to which I shall now devote my attention, is how to make legal ethics a practical working force in any community. In order, too, that my suggestions shall not be drawn from the realm of imagination or fancy, I shall be content to give you an account, for the purpose of illustrating what may be done, of what in my own State and City of New York has been done of a practical nature in the last few years, looking to the ethical uplift of the Bar and the Bench, by preliminary preparation, careful scrutiny, well enforced discipline and public education.

I must say that while I believe I have a comprehensive knowledge of our own problems, I do not profess to know whether you have any at all. And, therefore, perhaps I should assume that you will listen to the tale of New York's practical activities in legal ethics as a matter of mere curious interest, rather than as a help to the solution of any problem of your own.

As for myself, I feel to some extent like the clown in the country circus, who, though he is ever appearing before new audiences, never fails to say to them with a smile, Ah! here we are again! For wherever I am, and whatever I may say upon this subject, I know that I can not avoid saying what I have already said before some other audience; and so to those of you who have chanced to hear from me elsewhere what I may now say here, I shall begin: Ah! here we are again!

This time I shall devote myself to New York's practical activities in legal ethics; the numerous efforts to restore a conception of the moral duties of a lawyer that once prevailed, but which unfortunately had been lost to view among some of those who brought to the practice of the law in our commercial metropolis a purely commercial and somewhat sordid instinct.

When, like perhaps a majority of the Bar of the County of New York, I migrated thither a quarter of a century ago, I was

horrified by my first encounter with a successful law firm in commercial practice, whose money-making instincts were brutally and frankly used for the promotion of their own individual interests, using their client merely as a power for their own gain. It was a manifestation of an attitude toward the opportunities afforded by the practice of the law, which was wholly new to a man who had been schooled in the traditions of another bar, and to whom such open and declared sordid selfishness was utterly unknown. It involved also, incidentally, such a misuse of the powers of the Sheriff's office as to throw a gleam of light, as well, upon the way in which some of the canny practitioners then capitalized its evil possibilities, likewise in pursuit of their own sordid profit. With a mind fresh from the standards of another bar, I quickly brought it to the attention of one of the older leaders with a suggestion, that certainly if such reprehensible practices existed and were so boldly indulged, it called for the active interference of the Association of the Bar, of which I was not a member and not entitled to be a member until a later date. But he admitted that there was neither disposition nor power in that Association to tackle and eradicate the evils of the Sheriff's office, which the lawyers had brazenly utilized and frankly admitted.

The City Bar Association had been organized when the rascality of the Tweed *régime* had disgraced the civilization of New York; it had served a great and useful purpose, and seemed to be resting sweetly and peacefully on its laurels. It was apparently not yet ready to do battle for any other public good.

Later, a legislative investigation disclosed the conditions in the Sheriff's office, and so far as I know the practices that were disclosed to my view by that one experience are no longer indulged. That single episode, the details of which I have thought it unnecessary to give, followed as it was by the information that the Bar Association as a body might be regarded as inertly indifferent, sharpened my determination to utilize the first opportunity which presented itself to turn the weight of the good forces at the Bar to the improvement and elevation of the Bar itself. The opportunity offered when the American Bar Asso-

ciation began the formulation of its canons of ethics, and since that time, alert to assist in every effort to that end, I have been in a position to see and know what a wondrous change, manifesting itself in aggressive activity, has come over the spirit, not only of the Association of the Bar itself, but of every agency which was before apparently indifferent and inert. It is of that change and its various manifestations that I shall speak to you to-day.

If I were to attempt to draw for you the picture which first presented itself to me, you would discover in it these chief characteristics: lax requirements for preliminary qualifications; inordinate rewards, particularly to the unscrupulous practitioner; easy terms of admission and easy methods of evading them, which were openly resorted to, and an almost complete lack of supervision of the conduct of those at the Bar after their admission, resulting in some instances in a brazen effrontery of disregard for the ordinary decencies of practice, and some of these were conspicuous, not only for their effrontery, but for the monetary results which rewarded them.

The most conspicuous firm of this sort in those days, whose name was known throughout the nation, and to many seemed to be the only recognized type of New York lawyer, representative of all, has since closed its career with one member imprisoned and disbarred, and a leading associate disbarred. Though the Association of the Bar in that day had a Grievance Committee, it was more a term than an organ; and though the examinations for the Bar, in the City, as it then was (now New York County) were sufficiently severe and exhaustive, it was a well known and common practice for ill-equipped or lazy men to stay over night in Poughkeepsie—where the examinations were superficial—swear they were residents of that district, take and pass the nominal examinations there, and appear in New York City the next day as members of the State Bar, while their more conscientious brothers and competitors were sometimes excluded by the more severe examinations to which they submitted in their actual home place. The moral calibre of the men who so evaded

the law and their influence upon the ethical tone of the Bar will be readily appreciated.

But that day has gone by, and every agency in the State participating in admission to the Bar has had an awakening; so that now it is beginning to be almost as difficult to get in and stay in the New York Bar, as for a camel to go through the needle's eye, not as I am told, an impossible task, for the needle's eye was a small gate in a large tower.

It is somewhat astonishing to observe the vigor with which the simultaneous movement for an improvement in the Bar through all agencies has proceeded, like the spread of a conflagration, which mysteriously breaks out in several places at once, and so, in rapid succession, we are treated to the installation of severe bar examinations, uniform throughout the State, close scrutiny and investigation of the character of applicants, the requirement of longer periods of study and clerkship, higher standards of preliminary education, longer terms of active practice at other bars in the case of attorneys from other States or countries, examination of applicants upon the canons of professional ethics, legislation rigidly enforced prohibiting the practice of law by corporations and associations of laymen, and legislation giving the Appellate Divisions of the Supreme Court complete supervision of the conduct of attorneys, and expressly empowering them to administer adequate discipline in all cases of any conduct prejudicial to the administration of justice.

This much has been done by the action of the judicial, legislative and executive branches of the Government (counting the law examiners as a part of the executive). The law schools, too, have extended their curriculum and improved their methods of teaching; the bar associations have gotten active, and the Appellate Division, particularly in the First Department (New York County) is efficiently supplementing their efforts.

The Association of the Bar in the City of New York, numbering about twenty-one hundred members, has what is undoubtedly the most active Grievance Committee in the United States; its diligence probably exceeds that of all other such committees in the United States combined. The New York County

Lawyers' Association, with thirty-one hundred members, has hit upon the further expedient, which I shall explain later, of trying prevention rather than correction and penalizing. It has an efficient Discipline Committee, which does a similar work to the Grievance Committee of other associations, but less of it for lack of resources, for it is the younger and poorer of the two associations. But as it lacks the resources for vigorous prosecution, it has turned its attention largely to ethical education of the Bar. This Association has a special committee on Unlawful Practice of the Law, which has laid out for itself a programme to pursue those who falsely pretend to practice law, including those who have no legal right to practice, but who do so, nevertheless, and also those who, being notaries public, impose on the ignorant foreigner by the misleading likeness of their official name to the notaries of other countries. The Membership Committee of this Association has undertaken incidentally the task of weeding out those who publicly posed as lawyers and who had never been admitted to practice. Of these it found six hundred and fifty or more than five per cent. of the entire Bar, whose activities it apparently, if not verily, suppressed.

This era of reform began with the institution of uniform bar examinations throughout the State, which gradually became more searching, and were accompanied by a stricter scrutiny of the qualifications of those applying for examination. Then came greater activity and greater efficiency of the Grievance Committee of the City Bar Association, which has become a real power for good in cleansing the Augean stables of the condition which it found. This era began with it, when it happily occurred to some one to suggest the employment on a salary of regular counsel to prepare cases upon the complaints submitted to the Grievance Committee. Some idea of the work now done by this Committee may be gained from the figures submitted in its last annual report. The nine members who volunteer their services, without compensation, held about sixty meetings during the year, more than one a week, several of them lasting throughout the day, beginning at ten o'clock in the morning and lasting till six in the evening; the Committee or its counsel considered nine hundred

and twenty-seven complaints against members of the Bar, and twenty-nine complaints against the method of administering justice. The Association employs in this work five regularly retained attorneys, as well as clerks and stenographers; it affords them ample quarters in the rooms of the Association, and the work cost the Association last year \$23,000, beside the value of the room rent of two floors in one of its buildings,—all a voluntary contribution made by its membership of twenty-one hundred to the purification of the Bar. Of this sum about \$4000 was returned by the County as the expense of successful prosecutions for disbarment. Its attorneys sifted many of these complaints and found them ill-founded. The Committee heard one hundred and forty cases; it decided to prosecute fifty-six, and commenced forty-six prosecutions during the year. In preparing and presenting these cases it had the volunteer assistance of fifteen attorneys, all of whom served without compensation. This, it will be remembered, was the activity of a single year selected for illustration.

The Discipline Committee of the County Association does a similar but less effective work, because its resources are considerably less, only about \$4000 a year. Note that here is an aggregate sum of \$27,000 a year voluntarily devoted by lawyers to the systematic eradication of evil practices at the Bar, which ought never to have been permitted to creep in, and which are of a character to justify the carper and the novelist in their pictures of the wickedness of certain lawyers.

Most of us hail this activity with approval, and believe that it has a wholesome influence far beyond the zone of investigation and prosecution. But one often finds that what he considers a step in the line of progress is bitterly condemned by those of more conservative views. A striking instance of this occurred lately, when a member criticised the policy to me, as an unnecessary tax upon the Bar, which he pronounced wholly unjustifiable. He thought that the Association exceeded its functions, and acted the busybody and meddler, when it undertook to stop evil practices in the administration of justice, where its own members were not the offenders. And he advanced the theory, curious

to me, that the Association would sufficiently purify the Bar if it held its own members (only one-sixth of the entire profession in the County) to strict accountability. For, said he, that will establish two classes of lawyers in the community: those of approved integrity, and those of questionable integrity; and in that case membership in the Association will be a badge of integrity and will prove a pecuniary advantage, through commending members to clients who are seeking lawyers above reproach, while the balance of the Bar will be remitted for their clientage to that large class in the community that only want a lawyer to tell them how to do "their dirty work." His view was that it is wholly Quixotic for an association of lawyers to tax themselves to make those outside of the association so decent that they will become competitors for decent business.

I confess I could not look at the situation from his point of view, which seemed to be that there is room at the Bar for a class of hired scoundrels, a sort of strong arm man, to be prosecuted like other criminals at the expense of the State, when they run counter to the criminal law and can be caught, but that it is no concern of bar associations to engage in the pursuit.

The actually excellent work of the Grievance Committees is well supplemented by the courts, and particularly by the Appellate Division of the Supreme Court in the First Department, having jurisdiction in New York County, and the Second Department, in Brooklyn. The Appellate Divisions have jurisdiction over the calling of attorneys to account for professional misconduct. I addressed the New York State Bar Association last winter on the subject of Disbarment, and for that purpose considered the statistics of the subject in our State. I found that while the reported cases of discipline at all times prior to 1900 aggregated nineteen, since that date, with incomplete reports for 1912, they numbered seventy-three, and the Bar has been cleaned during that period of some of those whose practices were most flagrant.

So much for the present day correctional methods with us; the Bar is at last conscious that in New York City at least there is an alert Court, and that there are two alert and active grievance committees in New York County, and one in Brooklyn.

But the purely educational and preventive measures strike me as calculated ultimately to be also promotive of great good; these include the requirements of the Court of Appeals that applicants for admission shall pass a satisfactory examination upon the Canons of Ethics of the American Bar Association, and of the State Bar Association (practically identical); courses of instruction or lectures on legal ethics have been inaugurated at the Albany Law School, on the foundation of General Thomas H. Hubbard of the American Bar Association's Committee, and at the Fordham University and the Columbia University Law Schools; character committees have been instituted charged by the courts with the duty of investigating the character and antecedents of those applying for admission; and last, but not least, has been established what the *Illinois Law Review* has happily called the Legal Ethics Clinic of the New York County Lawyers Association. These are all recognized agencies in the recent revival of the ethical propaganda in the profession. And then there is still another agency whose progress I have watched from its start, and with whose work I am familiar, and whose influence I know to have been powerful though unrecognized. This is a social group of lawyers and judges organized to discuss and analyze practical problems of legal ethics; which was started, and has been maintained through several winters, at the suggestion of the Director of the Society of Ethical Culture.

The most novel, and to me the most interesting of these agencies, is the Committee on Professional Ethics of the New York County Lawyers Association, which I have already styled the Legal Ethics Clinic. Probably most of you are acquainted with Thomas Leaming's book "A Philadelphia Lawyer in the London Courts" and you may remember his account of the wholesome influence exercised on the English Bar, by the General Council of the Bar, in its decisions on questions of professional etiquette. That suggestion was the foundation of the power which the Committee of our Association has exercised for about two years in advising inquirers concerning questions of proper professional conduct. Anybody is privileged to address inquiries to the Committee, which it endeavors to answer in such manner

as to disclose its opinion upon the practical application of the principles of ethics. Thus far forty-seven formal questions have been propounded to the Committee, of which forty-four have been answered, and three are still under consideration. Its answers are printed, published in the year book of the Association, and sent also to a mailing list of about three hundred, including all of the law schools and all of the legal periodicals in this country and Canada.² Beside the formal questions the Chairman of the Committee has been consulted with great frequency by persons who do not care to formulate their questions. I have been much surprised and highly gratified at the results of this experiment thus far. The grounds of the surprise are the widespread interest, the recognition which is accorded to the answers of the Committee, the character of many of the inquirers, the diversified nature of the inquiries, and their sources. Inquiries have come from Arkansas, Michigan and Maine, as well as from local lawyers and laymen. The questions are so framed as not to disclose identities or cases, and even the members of the Committee are not advised of the identity of the inquirer; their answers are, therefore, not biased by any personal considerations. The work of the Committee has awakened such interest that its Chairman has been invited to address his own Association, the Section of Legal Education of the American Bar Association, Columbia Law School, The New York State Bar Association, The Commercial Law League of America, the Cleveland Bar Association, and now this Association on the subject, and to contribute articles to various magazines. Two or three surprises have arisen from the character of the inquirers: they have included established practitioners of high ethical standards, who were seriously perplexed by their own problems, and desired independent and unbiased counsel, laymen who wished to regulate their own conduct toward the profession by the advice given, young men recently admitted who were uncertain of what is esteemed the proper course, law students who have sought advice respecting their conduct during their student period, and men

² For problems and answers see: 60 *UNIVERSITY OF PENNSYLVANIA LAW REVIEW*, 665, 727; 61 *Ibid.* 45, 115, 401, 506, 678; 62 *Ibid.* 53, 140.—*Editor.*

who would probably be considered by the thoughtless to be wholly outside of and indifferent to ethical influences. Indeed, one of the chief causes of gratification to me, is that I have had the opportunity to see how anxious are many men in the profession, who have not had the opportunity to learn its traditions, now to find out what, in the opinion of their brother lawyers, is the proper course to pursue in an embarrassing situation; some of these are those who would commonly be thought to be pursuing the profession as a money making trade and without regard to its ethical demands. The most important single work of the Committee now in sight is a series of practical questions recently formulated and presented to it, by a joint committee of the Committee on Unlawful Practice of the Law and of counsel for collection agencies in the City, intended to elicit the Committee's views upon the ethical propriety of a number of practices indulged by collection agencies and in bankruptcy matters. The Committee now has under consideration this question, which includes thirty-three specific interrogatories, upon as many different practices regarded by the Committee which framed them to be of doubtful propriety.

Although the Cleveland Bar Association has recently inaugurated a somewhat similar committee, the actual work of our Committee is, I believe, unique on this side of the water, and therefore, I think, merits a detailed consideration in this address. An analysis of the questions already answered will show many problems confronting members of the profession or those interested in its welfare. It may not be inappropriate to make such an analysis, and to show a few of the additional matters upon which the Chairman has been consulted without formal presentation of a question to the Committee.

The questions illustrate the advantage of having some advisory body whose views may prevent the commission of an offense and its punishment, or may discourage practices that, while they might injure the profession in public esteem, or its members by derogation from high character, might not be of such serious nature as to be brought before a disciplinary body. It is, therefore, I believe, destined to be a strong educational force, in

illustrating the practical application of the principles and sound traditions of legal ethics.

A summary of the questions shows them to have related to a lawyer's personal activities in advertising, soliciting business, accepting employment of doubtful propriety, accepting inconsistent employment, assuming an apparently inconsistent attitude, and his conduct as executor, in divorce matters, in making threats, demanding damages, employing detectives and demanding compensation; they have concerned his relations with others: clients, attorneys, foreign attorneys, the court, his former employer, witnesses and persons with adverse interests; they have concerned law students, non-professional persons in their relations with lawyers, and the propriety of resorting to disciplinary proceedings.

A further analysis shows, in respect to advertising, that they have related to advertising in trade journals, advertising for business without disclosing the profession of the advertiser, and advertising by a collection agency in respect to the qualifications of a lawyer whom it seeks to employ; advertising anonymously, or in a flashy or undignified way; asserting high standing, ability or reliability, offering to handle all cases, or to guarantee satisfaction or success, or quick results, or to handle strenuously.

In respect to the solicitation of business the questions have disclosed various devices including systematic solicitation by a client in the lawyer's behalf, direct solicitation of the members of an association, and solicitation by circular in various forms.

In respect to employment, apparently deemed by the inquirers to be of doubtful propriety, this has included the defense of an accused when the lawyer is to be a witness for the prosecution, and employment by a newspaper to answer questions through its columns.

Questions relating to inconsistent employment have related to acting at the same time as counsel for a bankrupt and as attorney for his petitioning creditors, accepting a retainer against a corporate client while defending it in another suit, offering a will for probate in the interest of a legatee and actively assisting the

contestant in preventing its probate, and acceptance by partners of opposite sides of the same litigation.

A question relating to a possibly inconsistent attitude involved the withdrawal of an offer, or the imposition of additional terms, after the making of the offer and its continuance had been used as an argument in court against relief sought by an adversary.

Questions relating to an attorney's attitude in his professional conduct have concerned his enjoyment of legal fees, denied to him as executor, by paying them to his counsel and then sharing them; his conduct in relation to a divorce decree prohibiting his client to marry, but operative only within the State; his acceptance of a retainer from a wife to urge her husband to procure a divorce; his resort to threats to discipline another lawyer, in order to force the latter to repay money which he claims to withhold by reason of doubt as to its rightful ownership; his demand of excessive damages in a complaint; his employment of detectives upon a contingent basis; and his demand of compensation for the disclosure of knowledge which will prevent a fraud.

Questions concerning his relations with his clients have included his duty toward the communication of a corrupt proposition to his client, and toward a client who insists upon the acceptance of a corrupt proposition; his duty where his client refuses or neglects to honor his demands for his reasonable compensation, and particularly on the eve of trial; his right to advise a client to pay a penalty rather than obey a statute; his right to communicate a client's threat to do violence to another, in order that the person threatened may be warned; his right to retain his client's money in order to reimburse himself for expenditures; permitting a client to assume the responsibility of a dummy obligor in a mortgage transaction, in order to shield the true beneficial owners from liability; his right to repudiate on the demand of his client an oral stipulation dispensing with certain testimony at a trial; and his right to collect an unpaid judgment for the value of his legal services, by resorting to property which his

client has stated to him he has concealed for the purpose of defrauding other creditors.

Questions concerning his relations with other attorneys have included the arrangement of a collusive agreement to defeat an attorney's lien; the division of fees by the attorney for a receiver in bankruptcy with the attorney for the petitioning creditors; a uniform refusal among attorneys to testify upon the value of legal services at the instance of one who claims to have been overcharged; and a failure to notify the opposing attorney of an intent to default at the trial.

In respect to his relations with foreign attorneys the questions have concerned the formation and announcement of associations with them, without disclosing their disqualification or non-intention to engage in local practice, the formation of partnerships with them for the practice of law, and the appearance of the firm in the local courts.

In respect to his relations to the court a question concerned the right of an ex-judge to permit his partners to distinguish an apparently adverse opinion written by him while on the bench, by quoting his present opinion concerning their present proposition; another question concerned the making and presentation of an affidavit which, though true, was incomplete in its statement of the pertinent facts, and therefore misleading.

Respecting his relations to persons with adverse interests, a question concerned the propriety of his advising them to employ counsel suggested by him.

Respecting his relations with witnesses a question has concerned the propriety of interrogating the adverse party about his discreditable and disgraceful past, when he has since reformed and has long led an estimable life.

A law student has been advised in answer to a question respecting his engaging, while a student, as a notary public and in drawing legal papers, and conducting a general real estate and insurance business.

A question concerning the relation between a lawyer and his former employer, involved his acceptance of a retainer to defend against his former employer's claim for legal services and

disbursements incurred while he was in the office and had knowledge of the relation and access to the books and papers material to the dispute.

A printer has been advised at his request respecting his advertising that he will procure the preparation of first class briefs for the profession by able attorneys, and the preparation of cases on appeal; and concerning his employment of lawyers for the purpose and their compensation by him.

This analysis will show the scope of the Committee's work in actual practice. Three additional questions are still undetermined, including the one already mentioned, submitted by a Committee of lawyers embracing thirty-three separate interrogatories upon the conduct of lawyers in respect to commercial collections.

It is unnecessary, it seems to me, to indicate the Committee's action upon those of these questions, the answers to which must to you seem obvious, but it may be of interest to tell you about those which are perhaps not so obvious. It has uniformly declined to give any advice upon the institution of disciplinary proceedings, as not within its function. It precedes all of its published answers with an explanatory note that the questions are submitted *ex parte*, and the replies are predicated only upon the facts stated. One reason for this was a complaint received by the Committee from a prominent firm stating that they recognized themselves in the question (though they were not mentioned in it) and that there were undisclosed and qualifying circumstances which would in their opinion have led the Committee to a different result. In one case it was urged that a practice which the Committee disapproved, of representing a client in one suit, while attacking him in another, was justified by the fact that both suits were in Admiralty, and the Admiralty practitioners are so few as to render such course inevitable; but the Committee expressed the view that the ethics of the Admiralty Bar should not differ in this respect from the general obligations of the profession.

The Chairman of the Committee is very frequently consulted by those with perplexities, and these have included the propriety of forms of cards and advertisements; the propriety of paying detectives larger compensation for procuring desired

evidence, than if they had failed; the duty of a lawyer whose knowledge of his client's affairs obtained in the course of professional employment and from his client, would enable him, by its disclosure at a subsequent date and in another matter and to a public officer to prevent a fraud upon the government contemplated by the client; the right and duty of a lawyer when two of his clients in the same litigation develop differences of interest; and the propriety of a lawyer demanding and receiving compensation in addition to the ordinary witness fees for appearing as a witness in a distant city, of the same State, though amenable to the process of subpoena to attend, and the propriety of his accepting a retainer as associate counsel in seeming justification of such extra compensation.

Many other cases might be cited, but these serve to show just what functions the Committee and its Chairman by virtue of his office, perform for the Bar and the public. The list of questions indicates that legal ethics gives rise to some problems outside of the usual stock questions whether it is permissible to defend on a prosecution for crime one whom the counsel knows to be guilty, and whether he may properly prosecute a cause which he knows to be morally wrong.

The attitude of the Committee upon some questions may, as I have said, interest you. It does not attempt to preach unattainable ideals, but to conform with a practicable standard which will accomplish substantial results and along educational lines. In respect to advertising, it has announced no general policy; it has said that the insertion of a simple professional card in a trade journal is a matter for the sense of propriety of the individual practitioner, which, however, in the specific case the Committee did not approve; it has disapproved forms of advertisement, one of which, without disclosing the profession of the advertiser, began with the caption "Avoid litigation" and offered his services to diplomatically adjust difficulties and disputes. It has condemned a list of specific advertisements submitted to it from a daily paper, grouped under the heading "Lawyers" in which in flashy and undignified terms, and soliciting particular classes of business, such as family troubles, probate matters, accident

cases, lawyers have in various ways advertised their high standing, their ability and reliability, their willingness to handle all cases, to guarantee satisfaction or success, to produce quick results, to handle strenuously, and in which they have adjured the public to call, write, 'phone, and have advised them that they are open evenings and Sundays. It has advocated the discouragement of such advertisements as one for a hustling lawyer to solicit collections upon a percentage basis, and has received co-operation of the legal publication in which it appeared. It has disapproved the systematic solicitation of business through clients, and through circulars brought to its attention, in various forms, asking employment or annual retainers and representing the great advantages to arise to the client therefrom. It has disapproved, in general, the acceptance of the defense of an accused person by an attorney who knows he is to be a necessary witness for the prosecution, though not condemning it in the particular case submitted for its consideration. It has withheld its judgment upon the acceptance of employment to answer questions through a newspaper column, as it involved the construction of a statute which has not received judicial interpretation.

While pointing out the obvious evil in the representation of conflicting interests, it has considered the data in two cases insufficient to determine whether interests apparently conflicting were actually so; it has regarded the attack upon a client's interests in one suit, as inconsistent with his defense at the same time in another, though it might not involve the disclosure of confidential knowledge.

It has not disapproved the withdrawal of an offer, or the imposition of additional terms, where the making and continuance of the offer were urged to a court as a reason why an adversary should not have the relief sought, but where the offer was not then accepted.

It has condemned the acceptance of fees by an executor indirectly through his counsel, which he would not be permitted to receive directly, and that, though he performed the bulk of the legal services for which his counsel has charged, and though

his counsel might have received the compensation without question, if he had himself performed the service.

The Committee was divided upon the propriety of advising a client that a decree of divorce prohibiting his re-marriage was of no legal effect upon a second marriage contracted outside of the State. The majority considered that it was not improper for the attorney to advise his client of the true effect of the decree, as repeatedly declared by our Court of Appeals in similar cases. A strong minority disapproved his course. But where, as in the question proposed, he assisted at the marriage in the adjoining State, the same minority regarded him as censurable, and the majority regarded his conduct as open to criticism, in the absence of other circumstances not disclosed in the question which might show that it was for the purpose of avoiding still greater evils to follow. But their reason was that the true effect of such a decree is widely misunderstood, and because of the misunderstanding such conduct tends to diminish public respect for the courts and their decrees.

The Committee did not regard it as improper to accept a retainer from a wife to urge her husband, from whom she is irreconcilably separated in fact, to exercise his existing right to secure a divorce, though it advised the lawyer to satisfy himself that there was no collusion in their prior conduct. It has disapproved threats of disciplinary proceedings, in order to induce a lawyer to turn over money the title to which he disputes. It has indicated that the damages demanded in a complaint should not exceed the maximum amount which counsel considers his client may properly recover. It has disapproved an agreement to compensate a detective upon a percentage basis out of any sum which may be recovered. It has condemned the demand by an attorney of compensation for the disclosure of information to prevent a fraud; but having freely disclosed the information, it did not consider it improper for him then to sell a cause of action to the person to whom he furnished the information in order that he might utilize it as a set-off against the perpetrator of the alleged fraud.

It has expressed the view that it is not a lawyer's duty to communicate a corrupt proposition to his client, and that he may withdraw from the relation, if the client insists upon accepting a corrupt proposition made to him, from which the client will not be dissuaded, though a mere difference of view would not require his withdrawal. It has considered that it is not improper for a lawyer after due notice to terminate the relation where the client unduly fails to respond to a demand for reasonable compensation, but that it is improper for him to withdraw on the eve of trial and to refuse to release, without security or payment, papers essential to the trial, and to consent to the substitution of another attorney. It has considered that it is not improper to warn a person to whom a client has announced to his lawyer that he intends to do bodily harm. It has seen no impropriety in permitting a financially irresponsible client to act as a dummy in a mortgage transaction, and incur the obligations of the bond and mortgage, as a shield to the true beneficial owners, provided he advises his client of the liability which he assumes. Its reason for this view appears in the fact that no deception or imposition is implied and the parties are free to make such contract as they agree upon. It has condemned the repudiation of an oral stipulation to dispense with certain testimony where the adversary is thereby prevented from supplying it, notwithstanding the rules of court require stipulations to be written, and the client has insisted upon the repudiation; in this connection it called attention to decisions that the client was estopped.

It has declined to express a view upon the propriety in general of the attorney for petitioning creditors becoming the attorney for the receiver of a bankrupt; since under a special rule in this district the court itself undertakes to safeguard the propriety of such representation in each particular case; and such appointment having been made, it did not consider the division of fees of the receiver's attorney, with the attorneys for other petitioning creditors to be in itself unethical. It has disapproved an attorney's advice to a client that it is better to pay a penalty than to obey a statute, but it stated that was not considering a case where there is a *bona fide* intent to test the validity of the statute. It

saw no impropriety in retaining a client's money to reimburse for expenditures in the same or another matter, subject, however, to a judicial determination of their reasonableness and propriety, and it advised that the attorney should not so dispose of the money as to be unable to comply with an order of restitution. The Committee was divided upon the right of an attorney, who had exhausted his legal remedies to collect an unpaid fee for services from a client, to resort to a remedy in which he himself should disclose, or should call upon another acquainted with the fact to disclose that the client had fraudulently concealed some of his property, when the attorney's knowledge of the fact arose from a statement made by his client to him while the relation of attorney and client existed. A majority of the Committee disapproved the disclosure by the attorney or his utilization of the knowledge so obtained from his client, by calling upon another to testify to the fact. It is perhaps needless to say that this involved no approval of the client's wrongdoing.

The considerations which prevented a minority from accepting this view arose, in the case of some, from the inroads upon the former strictness of the rule of privileged communications which have resulted from the decisions of some of the courts upon the right of an attorney or counsel to sue for his services and pursue the ordinary remedies to enforce his right; in the case of others it arose from their opinion that the rule itself is immoral, when its application would secure to any person the fruits of his own fraud, and in such cases ought not to be enforced, and there is no impropriety in a lawyer's disregarding it, even in his own interest.

It has condemned arranging a collusive agreement between parties, to defeat the lien of another attorney, and it has advised that considerations of courtesy or fraternity should not deter lawyers from testifying to the value of legal services where a person claims that he has been overcharged.

It has not disapproved as unprofessional a failure to notify the opposing counsel of an intent to default at the trial; though it has recognized and stated that it would have been proper courtesy to give such notice, and with the assent of the client,

to consent to discontinue. In this case, the circumstances seemed particularly aggravating, if not aggravated, because the defense was, another action pending in another court, for the same cause; it was first set up by demurrer, the demurrer was overruled because the defect did not appear on the face of the complaint, costs were imposed and collected, and then when the defense was properly presented by answer, neither plaintiff nor his attorney appeared at the trial.

It has given due consideration to the fact that the position of attorney and counsellor-at-law of the courts of record of the State of New York is an office, and that it imports a specific relation to those courts which no one, not admitted to such practice is entitled to enjoy. It has therefore disapproved the announcement of the association of domestic and foreign attorneys for the practice of law, without disclosing that the foreign attorney has no right or intention to practice in the State. It considers that a firm can not be formed between a domestic and a foreign lawyer for practice in the State courts and therefore it has disapproved such a partnership as improper, and its announcement and its practice in the State courts in the firm name as likewise improper, though the foreign attorney does not himself appear or give counsel in matters pending in the State courts.

It has disapproved as outside the scope of allowable argument, a statement upon a brief of counsel, that a member of their firm, an ex-judge, who wrote an opinion cited against them, has now expressed his opinion that such counsel is now right and their attitude has his express sanction.

It has disapproved a true but partial and incomplete and therefore misleading statement in an affidavit presented to the court, and has taken occasion to say in this connection that all statements likely to mislead the court, whether through design or inadvertence, should be carefully avoided.

It has disapproved the acceptance by an attorney of a retainer against his former employer, involving matters of which he might have obtained knowledge while in such employment, and by reason thereof. It has considered that it is improper for a lawyer to volunteer the name or urge the employment of an at-

torney to represent parties whose interests or position on the record may be adverse to that of his client.

It has disapproved as unprofessional wanton, unnecessary or unreasonable inquiry or comment respecting the discreditable past history of a witness or party; though it declined to say whether the particular facts presented to it came under this condemnation.

It has advised an inquiring printer that it disapproved his advertising that he will secure the preparation of first class briefs for the profession by lawyers of ability, and that he will have cases on appeal prepared; and it has expressed the view that it would be improper for him to so employ lawyers for his customers, paying them out of his own compensation. Its reasons, it has assigned, substantially as follows:

This is probably the unlawful practice of law, in violation of a state statute; it contravenes the spirit of the state law which prohibits corporations from practising law; the arrangement lacks the fiduciary relation which should exist between counsel and the person in whose interest he acts; it disregards the dignity and responsibility of counsel's relation to the court; it is derogatory to the dignity and self-respect of the profession, and tends to lower the standard of professional character and conduct.

A law student who asked concerning the propriety of his acting as notary public (which office he holds) drawing legal papers, managing estates, collecting rents and doing business in real estate and insurance, was advised that he should refrain from drawing legal papers, as the giving of legal advice prior to admission to the bar is regarded as a danger to the public; but the Committee sees no impropriety in his engaging in the other activities, if they do not interfere with his law course. The student having asked if this would prejudice him with the Committee on Character, the Ethics Committee declined to express any opinion for it.

I have thus put before you at length and in detail an account of the recent activities of this Committee as an educational factor in the legal life of New York. This account subtends a large angle in this address, but it is because of the novelty of this practical application of the principles of legal ethics to concrete cases

as they have arisen, and because also of my great familiarity with the work of the Committee

There is another committee of which I would speak before closing, and this is the Judiciary Committee of the Association of the Bar of the City of New York. We have not in our State any canons of judicial ethics, as I understand you have adopted in your State Bar Association. But this Committee is charged by the Association with co-operating with other organizations and nominating conventions to secure the nomination and election to office of men of recognized ability and especial fitness for judicial office. Unfortunately it seems that the powers that be in our nominally democratic form of government pay little heed to its specific recommendations. But it still keeps faithfully at its work, and apprises the Association of its efforts. It reports, likewise, upon the fitness of candidates nominated by the various political parties for the superior judicial offices. The inferior courts appear to be left by it for the unaided domination of those who control; the reason assigned in connection with the last report being that the Committee could not find out enough about the candidates for these offices to justify any report whatsoever.

While the condemnation by this Committee of particular candidates as unfit appears to have no deterrent influence whatsoever upon voters, I have noticed that they who receive its commendation utilize it as a campaign argument; and the newspapers chronicle the recommendations and action of the Committee. The recent Governors in filling temporary vacancies on the bench have consulted this and the similar Committee of the New York County Lawyers Association upon the fitness of their intended nominees. In some instances this appears to have resulted in selecting the better equipped of candidates suggested by the Governors. Even this very limited recognition of these Committees is an advantage to the people, particularly when the judge so chosen is, as he sometimes is, re-elected for a term of fourteen years.

I have now recited the practical activities in legal ethics, in their relation to both Bench and Bar, which are at work in the

City of New York, and they will serve as illustrations of what might be done elsewhere, if necessary, to raise the standards, which by restoring public confidence would certainly tend to diminish the present widely extended public criticism of both Bench and Bar.

Charles A. Boston.

New York.