1870

Hints to Young Lawyers. An Address Delivered to the Senior Class of the Law Department of the University of Michigan

Thomas M. Cooley

HINTS TO YOUNG LAWYERS.

AN ADDRESS

DELIVERED TO THE

SENIOR CLASS OF THE LAW DEPARTMENT

OF THE

UNIVERSITY OF MICHIGAN.

BY

Hon. THOMAS M. COOLEY,

JAY PROFESSOR OF LAW.

THURSDAY, MARCH 24, 1870.

ANN ARBOR:

COURIER STEAM PRINTING HOUSE, 41 & 43 MAIN STREET.

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COMMITTEE ON PUBLICATION.

H. LORENZ, Chairman.

W. N. BROWN. E. D. PRICE.

CORRESPONDENCE.

UNIVERSITY OF MICHIGAN, DEPARTMENT OF LAW,
ANN ARBOR, MARCH 13, 1870.

Prof. Cooley:

The incalculable benefits derived from your lectures, the high appreciation of your masterly knowledge of the elements of the law, our civil polity and universal jurisprudence, the profound respect and esteem your relation as Professor has won, are some the motives that prompt the Senior Class to, most respectfully, ask the privilege of publishing your last lecture.

Very respectfully yours,

J. L. STEINMETZ,
M. F. JONES,
L. L. MAJORS,
Committee.

UNIVERSITY OF MICHIGAN, DEPARTMENT OF LAW,
ANN ARBOR, MARCH 16, 1870.

Messrs. J. L. Steinmetz, M. F. Jones, and L. L. Majors, Committee:

GENTLEMEN—In compliance with the request made to me and which is expressed in such kind and complimentary terms in your letter, I have endeavored to put in form for publication such suggestions of a practical character, as have occurred to me as likely to be of service to your class. The necessary haste of preparation I doubt not has caused many deficiencies which I would gladly have supplied, but I know that you will not only, under the circumstances, excuse them all, but that you will also do your best to supply them for yourselves, by careful observation and reflection after you shall have entered upon your professional life.

Very respectfully yours,

T. M. COOLEY.

ADDRESS.

GENTLEMEN OF THE LAW DEPARTMENT:

The present is the last of my course of lectures to you for the year. We have gone together over many difficult and abstruse subjects, which I have endeavored to simplify and elucidate. If I have not always succeeded in this, my effort has nevertheless been received with the most courteous attention on your part, and as we separate I am able to look back over our intercourse without discovering the least occasion for unpleasant reflection. I recall on the other hand, invariable kindness, a general disposition to so receive the instruction of the professors as to make it of as much practical benefit as possible, and an entire absence of the careless disregard of the rights and feelings of professors and fellow students which sometimes makes the college career of a young man so far from agreeable to those with whom he is associated. I therefore can say with the utmost sincerity and heartiness, that as you depart from these walls to enter upon the duties of active life, you carry with you only kind regards, and most earnest wishes for your future prosperity and happiness. In my future years all the associations that will cluster about the recollections of the present college year will be in the highest degree agreeable, and I doubt not that the pleasure with which I shall recall them will be increased from year to year, as I receive reports of your subsequent life, and learn that you are pursuing the honorable course which your deportment here has so confidently promised. And what I say for myself I know I can say with the utmost confidence for my associates, whose dili-

gent and faithful instruction has been satisfactorily rewarded by the corresponding effort you have made to render that instruction available. For them, therefore, as well as for myself, I bid you God-speed on your journey of life, hoping and trusting that in whatever of honorable aspiration you may now indulge, you are not to be hereafter disappointed, and that your future will be as abundant in fruition as your college course has been satisfactory in promise.

To those of you who are about to bear away from this institution the certificate of its approbation, I have a few words to say in response to what I understand to be your desire, that my last address should be devoted to such hints of a practical character as may be of service to you in your professional career. The transition from the life of a student to that of a practicing lawyer is so great that it is not possible for one to be too well prepared by such aid as he may obtain from the experience of others; but it cannot be expected that any one should give you in advance anything beyond the most general advice, and the young practitioner must make that applicable under the varying circumstances of his business life as best he may. I shall therefore proceed at once to my subject, not attempting to do more than to give a few general rules, with such hints as time may allow for their application.

DUTY OF THE LAWYER TO HIMSELF.

I shall begin what I have to say by calling your attention to duties you owe to yourselves, and which, though intimately connected with those you owe to others, are still of paramount importance, and may well be considered first. I do not refer now to the ordinary duties of christian morality and honesty, which every man is under obligations to observe and perform, but which I trust it is not needful for me to dwell upon in addressing a company of young men educated in an American community. If I supposed there was a man in the present class

who was contemplating the practice of the law with a view to the advantages it gave him for dishonest practices, or who even failed to appreciate the strength which a pure life and an unsullied character would give him as a lawyer, I should desire to say to him here at the threshold of his career, that he had mistaken his calling, and would do better at once to seek an occupation in which the temptations were fewer, and the consequent risks of disgrace and dishonor less. But I have no such supposition, and therefore do not allow the possibility of such conduct to disturb me.

The duties which every lawyer owes to himself are of two classes: those which are due to himself as a man, and those which are due in his capacity as a lawyer. Of these the first are the highest and most important. It is of far more consequence that one should be thoroughly deserving of the respect and esteem of his fellows as a man than that he should be an eminent and successful lawyer. The one will carry with it a self respect for which no degree of success can be a satisfactory substitute, while eminence, if attained in unmanly ways, may annoy and embitter those years of one's life which need most the consolations of an approving conscience. At present, however, I do not desire to discriminate between the two classes of duties. I allude to the distinction only to say that first of all every person should strive to possess himself of those qualities and attainments which constitute the perfection of a manly character; and if having these he finds he lacks others which are essential to his success at the bar, he is not justified in regarding his life as a failure, but should cheerfully accept the fact, and turn his attention to some other occupation more suited to his peculiar abilities and disposition.

As a lawyer, every man owes it to himself to keep up after he enters practice a regular course of law reading. I know this is seldom done with system, but it is nevertheless true that where it is not done an important duty is neglected. You have endeavored while here to ground yourselves well in the general principles of the law; and now the temptation will

be strong to look upon your student life as finished, and to consider yourselves as satisfying the demands of your profession if you carefully brief up for the successive cases you may be called upon to conduct. It is impossible, however, for any man in two years to become a thorough lawyer; and if after that time he is disposed to rest contented with special investigations in reference to questions as they arise in practice, he will inevitably become a mere case lawyer, whose knowledge of legal principles will be limited and exceptional, and who, when required to act promptly on questions new to his practice, will be always hesitating, uncertain and unreliable. Systematic reading is essential to a steady advance in the law; and what is true of the student days, is true also of the lawyer's business life. The field upon which you enter now is so broad that if you would explore it all you must keep steadily and systematically employed, and if you fail in this, you will not only fail to become thorough and complete in legal attainments, but even when you make examinations with reference to particular cases, you will never be sure that you have not overlooked important principles which will have a controlling influence.

If I had time I might enlarge upon this point perhaps with usefulness, as not only a matter of duty, but of sound policy also. Of poor lawyers our country is full, but the number of those who are really able is comparatively small. He who enters the lower class finds always a sharp and persistent competition, not usually of the most honorable character; he who enters the higher will in any part of the land find a large field ready for his occupation, in which there will be employment at once honorable, lucrative and satisfactory. When one inquires whether there is room for more lawyers, the first point to be determined is the grade of the lawyer; there is always room for a good lawyer, while poor lawyers, who spend their time mainly in places of public resort, and neglect altogether anything like steady legal discipline, are superabundant everywhere.

The lawyer, also, ought to be well read in the political and constitutional history of his country and race. I need not remark to those who have read the law diligently, how largely that history enters into the law of this country. Our system of law has been a natural development, and we shall not fully catch its spirit until we understand how and under what circumstances it has grown to be what it is. Especially is this true of the principles of constitutional law, with which, as lawyers or legislators, we have so much occasion to deal. To familiarize yourselves with those principles many of you have made the literary societies of great service while you have been here, and you will do well if, wherever you go, you succeed in finding persons of kindred tastes with whom you can associtea for purposes of mutual benefit in the fields of history and politics, and indeed of general literature as well.

DUTY OF THE LAWYER TO THE COURT.

The oath which the lawyer takes when admitted to the bar pledges him to faithfully perform his duty as attorney, solicitor and counsellor, with all due fidelity to the courts in which he may practice. I am very sorry to say that this oath is not always faithfully observed. I would not say this, however, without at the same time remarking that courts do not always treat the practitioners before them with the courtesy which is justly their due. The obligation here is reciprocal, and it is often forgotten on both sides. You may, possibly, at some time have been present in court when a judge has so grievously overlooked what was due to his position and to his profession, as to amuse himself with poor jokes to excite the laughter of the crowd at the expense of the bar. Perhaps he went farther, and treated the bar with ill-natured discourtesy, in the belief that he was thereby taking the side of the public against an unpopular profession, and elevating himself in public regard by lowering those from whose ranks he has but recently

come. No man could make a greater mistake. The interests of the bench and of the bar are identical, and the lawyer who traduces the one, and the judge who rails at the other is equally guilty of a wrong against his own interests. The obligation to kindness, forbearance and uniform courtesy, is equally obligatory on both; and each should be ready at all times to defend the other against attacks. They are both pillars of one great legal system, and what assails or weakens the system at one point affects the whole structure. When a lawyer becomes unfit for courteous treatment from the bench, it is time to discipline him: when a judge has ceased to be worthy of professional confidence, it is time to attempt his removal; but until such time it is a mistake to reduce by detraction the influence of those upon whose support and assistance one's own standing must largely depend. The public will respect the bench and the bar if they mutually respect each other; and not otherwise.

When lawyer and judge design equally to deal fairly with each other, it is probable that the demand for kind forbearance is greatest upon the lawyer. The judge represents the public, and is endeavoring to hold the scales of justice equally; and without full knowledge of all the circumstances which induce counsel to manage the case as they do, he is often compelled to feel that time is uselessly wasted, that witnesses are unfairly treated, that the most skillful advocate is obtaining an advantage to the prejudice of justice; and it is not in human nature that he shall be uniformly kind, indulgent and courteous. If hasty and petulent remarks sometimes fall from a judge whose general deportment is unexceptionable, they are to be overlooked as having no bad motive for their cause, but as being the result rather of a sense of right, which from vexatious circumstances has expressed itself inopportunely or improperly.

The whole legal profession of this country has received a serious blow from the charges made and so generally believed, that a small portion of the judiciary of a certain state—whose bench is generally now, as it always has been, filled with able and most upright men-- do sometimes so far forget what be-

longs to their positions as to allow personal considerations to affect their official action, and let friends approach them to discuss in private the cases they have in charge for decision. Among other things it is charged that certain lawyers are employed before these judges because of the influence they have with them as individuals, independent of any arguments they might bring to bear on legal grounds. We are not to suppose that these charges are well based, but they are made with a persistency of repetition which leads large numbers of people to accept them as true; and the baleful consequences to the cause of justice are almost as serious as if they were true beyond question. I need not say to you that it is disgraceful in a high degree for a judge to suffer himself to be approached out of court concerning the cases heard before him. Everyone understands and appreciates this; but everyone does not understand and appreciate so well that it is also disgraceful for a lawyer to be the tool of such judicial dishonor. Both are participants in corrupting the fountain of justice; and each, when clearly convicted, should equally be visited with the scorn and contempt of his professional brethren. If unfortunately a lawyer should discover that the judge before whom he practiced was open to improper influences, he would owe it to the cause of justice, to the honor of his profession, to a regard for his own manliness, not to become a participant in the judicial wrong and folly, but to abstain as scrupulously from secret and underhand courses as he would if the character of the judge rendered their success impossible. He owes it to the cause of justice to pay the judge the compliment of treating him in all their intercourse, as if his judicial character was unexceptionable, even if he knows it is not so.

Nor does the mistake the lawyer commits when he practices deceit upon the court require much comment. Aside from its injurious effect upon a man's own character, it is always in a business point of view bad policy. It is generally sacrificing the future to the present. Deceit in one case may win a cause, but it sows the seeds of distrust, and undermines

the man's influence. And once successful, it is likely to be the beginning of a deceitful course of practice which will be followed through life. At the risk of becoming tedious, therefore, by the repetition of truisms, I desire to impress upon you the importance of always dealing frankly with the court, and avoiding all those little tricks which are almost sure in the end to be revealed, and which, besides their effect in blasting one's general reputation, will inevitably prevent his acquiring that just and proper influence with the court which the fair and candid counsel is always entitled to.

THE LAWYER'S DUTY TO HIS CLIENT.

But I must pass to the consideration of the dealings of the lawyer with his client. It is sometimes jocosely said that a lawyer's first duty is to obtain payment of a retainer; and the joke is not without a basis in truth. It is generally good policy for both lawyer and client that the fees should be paid as the services progress; and a good understanding between them is more likely to be perpetuated by that course than by postponing the application for payment until a bill can be presented in gross at the conclusion. The client will generally pay more cheerfully while the spirit of litigation is upon him than he will after it has passed away, and after the controversy has been disposed of either by voluntary adjustment or by the decision of the court. The extent of the labor performed for him will also be fresh to his mind at that time, and he will not be so likely to regard the charges as too high, as he will be a considerable time afterwards. Moreover, the lawyer who postpones application for payment until the immediate necessity for his services has passed, is in danger sometimes of being tempted to sue for his fees if his bill is disputed; and this, I think, he can very seldom afford to do. There may be cases of such manifest purpose on the part of his client to cheat him out of his dues as will warrant resort to the courts for redress; but if the client is honest, and from narrowness of mind or other

cause has failed to appreciate the value of the services performed for him, it is better to sacrifice largely on the best compromise possible than to bring suit. It is almost impossible to prove satisfactorily the value of legal services, simply because it is impossible to present by evidence the facts which show precisely what those services were. How is a jury to be made to see and appreciate the value of the days, weeks, perhaps months of investigation and severe thought which have enabled a lawyer fitly and successfully to try a difficult and complicated suit at law? One must expect that reasonable fees in many cases will seem exorbitant to non-professional men, and he should be careful not to invite public criticism without strong necessity. I say therefore that the lawyer should avoid suits with his clients, and if he has failed to apply for his fees in due season and suffers loss in consequence, he should charge the loss in part at least to his own want of prudent foresight.

It may be well to examine in succession the several steps to be taken by the lawyer in the course of his duty for those who employ him in the conduct of causes. And,

1. *Of the client's preliminary statement of his case.* When litigation is contemplated, the lawyer should first of all take a full statement of his client's case, with all its particulars and circumstances. In a case of any complexity this ought to be taken in writing; and as it will be made by a party in his own favor, it cannot be criticised too closely. Insensibly a man will color his statements in his own favor; and however honest the client may be, every practicing lawyer knows that something must be allowed for the effect of passion, prejudice, hope and fear in coloring his communications. But unintentional deception is not the whole danger. Experience shows that men do not always deal candidly with their adviser; but that in their anxiety to justify themselves to him, they purposely keep back damaging facts, and leave them to be brought out on the trial when their effect may be fatal. You may say that when they do this, the counsel need not concern himself with the consequences; and while I agree that morally he is excus-

able for permitting the client to have his own way, I must still say that on grounds of policy he cannot afford it. His interest is, not to bring suits where there is no cause of action; and he ought therefore, when his client's statement is obtained, to proceed to cross-examine him upon it, and thereby bring out all the facts. Frequently it is as necessary to sift his client thoroughly by this process as it would be a hostile witness in court; and it is seldom that an observance of this precaution will be entirely without value.

Quintilian speaks particularly of this difficulty. The statements prepared for the advocate to act upon, he says, "add motives and coloring and inventions that do more harm than the plain truth; and most of our orators, when they receive these farragos think it wrong to make any change in them, but adhere to them as strictly as to cases proposed in the schools. The consequence is that they find themselves deceived, and learn the cause, which they would not learn from their own client, from the advocates of the opposite party." Again he says: "Frequently too the orator will find both the evil and the remedy in particulars which to the client appeared to have no weight on either side of the question." "In a word, the best advocate for learning the merits of a cause is he that is least credulous; for a client is often ready to promise everything; offering a cloud of witnesses and sealed documents quite ready, and averring that the adversary himself will not even offer opposition on certain points." And we may add to this that a principal reason why the lawyer is able to be of service to his client is, that he comes or should come to the case with an unbiassed mind, so that he is able to discover and perceive those important considerations bearing upon it which prejudice or passion blinds his client to.

2. *The preliminary investigation of the law.* When the statement is obtained, unless the case is a plain one, the lawyer ought to take time for investigation and reflection before expressing definite opinions upon it. Some lawyers think it important to appear ready at once to give opinions on

the most difficult questions; but though they may thereby, for a time, excite the wonder of unthinking persons, the practice in the end will bring them into disrepute. Before the suit is brought is the time to investigate the law applicable to it; and counsel will then be prepared to give an opinion alike honest and intelligent.

3. *The preliminary advice to the client.* When he gives that opinion, he ought always to state frankly any doubts he may have, and call his client's attention to any thing that may tend to render his success uncertain. If authorities are conflicting, he should say so; if the case is one in which a slight variation in the proof might change the whole legal aspect, that also ought to be stated. At this stage the fullest disclosure of unfavorable circumstances is both most honorable and most politic. If the prospect is reasonable, it will not discourage the client from undertaking the litigation on which he will generally be found sufficiently determined, and if defeat results, the adviser is nevertheless justified, and will not lose the client's subsequent patronage.

4. *The preparation of pleadings.* If after the preliminary advice suit is directed to be brought, you will proceed to prepare the necessary papers. For common cases, printed blanks of declarations, complaints, bills in equity, etc., will be found at the law stationers, and it will be well to make use of them. For special cases these pleadings must be written out, and sometimes the process is long and tedious. But do not, in order to save labor, run the risk of a defective paper. Examine the books of forms; if you find one suited to the case, adopt it, even though it seems to be long and prolix: you may generally be sure that words which strike you as superabundant, are not without meaning and purpose. If you find no suitable form, make the best possible use of your judgment, and do not file a paper until you are satisfied of its sufficiency. Do not commit the mistake of putting on the files a pleading you are doubtful about, and leave your adversary to make public your blunders in court, where they cannot be otherwise than mortifying.

5. *Whether one should engage in an unjust cause.* It will perhaps be expected that I should say a word on a question that disturbs casuists somewhat, and in reference to which complaint is sometimes made of our profession. I allude to the question whether a lawyer may properly engage in a cause which he knows to be unjust, even though he thinks the law may be in his client's favor. The moralists say, no; and when the legal profession fails to follow the course which is pointed out by the abstract reasoning of these men, its members are charged with being mere mercenaries who are as ready for pay to do wrong as right, and who would deprive the widow of her mite, if they could do so by the forms of law, with as little compunction as they would enforce a just demand against a miser. Now the view which such men take is generally a very partial and imperfect one, and without any such knowledge of the general nature of litigation as entitles them to speak with the least authority. It is generally assumed by them that each case can have but one right side; but in truth, litigated cases are generally so circumstanced that whichever party the law and the evidence permit to succeed never finds his conscience reproach him with being guilty of a wrong. Frequently the parties have conflicting equities, and each is justified in sustaining his equitable right by the law if he can. This is generally the case in disputes about land titles. Nor do I think that where the law prescribes for the citizen a definite rule of action, as it does by the Statute of Frauds and the Statute of Limitations, that a lawyer need reproach himself for assisting to enforce it against a negligent party, even though that party loses a consciencious demand by reason thereof. These rules were prescribed because they were found necessary; and if beneficial statutes are allowed to remain a dead letter because they result in cases of individual hardship, the legislative authorities may well exclaim

> "Our decrees,
> Dead to infliction, to themselves are dead,
> And liberty plucks justice by the nose."

The sufferer must reproach his own negligence, and not the party who has insisted upon a salutary rule of law. There are cases, however, which no decent counsel would taint his reputation by meddling with. There are cases so contemptible for their pettiness that he will always frown upon them; cases of petty trespass, vexatious words which after all hurt nobody, debts so small that any suit for their recovery must necessarily cost a large sum. Let the pettifoggers have all such cases; or, if your regular clients desire to bring them, dissuade them if possible from so doing. I once knew a suit which was tried in two courts, and in which at the conclusion the only question in dispute was, whether one party should pay the other for six feet of rope he had borrowed. That rope cost the public hundreds of dollars, and you may be sure that it was impossible for the lawyers to make such charges as fully to compensate them for engaging in business so contemptible. But there are also cases of more magnitude which no man should touch. Some of these are frauds upon the law; such as the secret divorces which parties obtain on false allegations of residence, and on testimony which makes a false presentation of facts to the court. Others are cases where by fraud, accident or mistake, a party has obtained an unconscionable advantage which he may be able to sustain. I do not think the lawyer is to lay aside his conscience in these cases, and consider himself justified in acting as if the mere instrument of any one who sees fit to apply the proper motive power; he has his sense of justice and his own self respect to guard and protect: he is to bear in mind that he is the officer of justice, and he ought to treat with contempt all offers to employ him as the insensible machine is employed, which indifferently, when put in motion, cuts the golden harvest, or the limbs of the little child that chances to come before it.

The defence of criminal prosecutions stands on a different footing. You need not trouble yourselves with the sentiment sometimes uttered, that the lawyer should not lend his assistance to the atrocious offender. In the first place whether he is

an atrocious offender or not is to be determined upon the evidence; and the jury, not the lawyer, are to judge of it. In the next place, if it belonged to him to judge, he would be subject to mistakes even in cases apparently the plainest. We are compelled constantly to take notice of the fact that confessions of guilt are unreliable; and that especially in cases of crimes which powerfully affect the public mind false confessions of guilt are frequently made, either because the parties who make them court the terrible notoriety, or because the excited imagination has dwelt upon the crime until it has overcome the mind with delusions. The lawyer would incur a terrible responsibility in many cases if because his client had confessed his guilt he was therefore to refuse him assistance. Insanity, however, is perhaps the principal agent which misleads the public in the case of apparent crime. This subtle deceiver succeeds often in concealing his presence so successfully as to defy all attempts to detect it; and many a man has gone to the scaffold amid general execration whose only crime was a disease inherited from his ancestors. The defence of insanity is an unpopular one, but in my opinion the number of insane persons who are ignorantly punished, is much greater than that of the sane who escape by setting up this defence. But whatever may be the case, a man accused of crime is entitled to a fair and full defence, and to be convicted, if at all, by the strict rules of law; and if he applies to you for aid, defend him; defend him fairly, defend him honorably, defend him with a due regard to your obligations to the public and to the court, but, observing these precautions, defend him to the very best of your ability.

6. *The necessity of system.* When you are retained in a case, you should enter it upon your Law Register; a book prepared for the purpose, and which should contain a condensed history of each case, giving the time when the several proceedings were had. Whenever any thing is done in a cause, the entry ought to be made at once in this book. The rules of court require that certain steps should be taken within a specified time; and unless the record is properly kept and fre-

quently referred to, you will find yourself constantly forgetting important duties, and under the necessity of applying to the court to set aside your defaults and grant you other similar favors. A diary also, upon which you could note in advance any thing required to be done on any particular day, would also save you mistakes and losses. Bankers always keep something of this nature to inform them when paper needs attention, and lawyers with much business would find it nearly as useful. Keep also in your office copies of all the important papers you put on file, or serve on the opposite party. You not only want them there for convenience of reference, but you want them in order to supply the place of the files in case they should be accidentally lost or destroyed. Make neat copies, too, and not slovenly ones. The hand writing of many lawyers is atrocious, and their papers always blotched and blurred and dirty; and some persons seem to regard these things as signs of genius. As well might we look upon the slovenly habits of a dirty housekeeper as evidence of inherent loveliness. I do not believe that the best law is to be obtained in those offices where the floor is unswept, the tables are covered with dust, the windows with tobacco pipes, the stove with tobacco spittle; where the lawyer writes on dirty paper what nobody can read, and puts his document when finished where nobody, himself included, is likely to find it again. Slovenly habits of person are apt to accompany or to breed slovenly habits of mind; and in these little particulars we cannot be too careful to avoid them. A client, too, is entitled to require that the papers prepared for his use—the deeds, wills etc.,—shall be written neatly and legibly; and if a young lawyer at the beginning of his career has fallen into bad habits in this particular, he should set at once about correcting them. Haste is no excuse for bad writing; a good hand may be written as rapidly as any other; and indeed the very best penmen are frequently among the most rapid writers.

7. *Preparation for trial.* In preparing a case for trial, you ought to make out a full brief on the law and the evidence.

This brief should contain the names of the witnesses, and what is expected to be proved by each. Wherever witnesses can be seen, it is desirable to ascertain in person just what they know, that you may not be surprised by their testimony on the trial. Anything of which you wish to be reminded in court, had better be mentioned in the brief, lest it may slip your mind at the time. Do not confine your brief on the law points to those you *know* will arise, but endeavor to anticipate any that may be raised by your adversary, and have the authorities noted so that they may be brought forward without delay. Fullness of preparation on collateral questions sometimes gives the party who has made it a controlling advantage over the other. Indeed I may say generally, that preparation goes vastly further as a general rule in ensuring success than any display of ability on the trial; and the lawyer, therefore, cannot afford to treat it as of little consequence.

8. *The trial.* A few hints regarding the management of a trial may be dropped here. One is, always to preserve in court complete control of the temper. Have no quarrel there with the court, or with the opposite counsel or party. A man is almost always put at a disadvantage when he gets angry, and the more he is subjected to annoyances, therefore, the more carefully should he cultivate the virtue of equanimity. It is not often a cause is aided by abusing a witness on the stand. Unless he is palpably dishonest, the abuse will give him the sympathy of the jury; and if he is dishonest, you will be more likely to make that fact apparent by your cross questioning, if you keep your own temper and do not put him upon his guard by your abuse. In ordinary cases avoid the temptation to flowery eloquence. It will not reach the heart of the jury. Beautiful figures of speech they are not likely to be much affected by, unless there is something in the case at the bar which renders their applicability peculiar and striking. It is very much better to talk in a straightforward way about the actualities of the case in hand, than to attempt to excite admiration of your oratorical attainments. Within proper bounds

the graces of oratory are to be cultivated; but if an audience is to be moved by an address, the manner must be such that they forget the speaker while they become absorbed in what he says. Homer admirably portrays two styles of effective oratory:

"When Atreus' son harangued the listening train,
Just was his sense, and his expression plain,
His word succinct, yet full, without a fault;
He spoke no more than just the thing he ought.
But when Ulysses rose, in thought profound,
His modest eyes he fixed upon the ground;
As one unskilled or dumb he seemed to stand,
Nor raised his head, nor stretched his sceptered hand.
But when he speaks, what elocution flows!
Soft as the fleeces of descending snows,
The copious accents fall, with easy art;
Melting they fall, and sink into the heart."

The advocate should never allow himself to become tedious in a cause. The most persuasive speech will generally be short. He should choose the points that are most likely to be effective in his behalf, and press them earnestly upon the attention of the jury, giving less heed to those of minor importance. It will often be found that he who makes as many points as possible, and makes all equally prominent in his argument, will at the conclusion leave upon the minds of the jury the impression that his chief reliance was upon some point which they can plainly perceive was untenable; and they decide the case against him upon that, overlooking others which were sound. The same mistake is made in briefs sometimes; they convey a general impression of unsound law, because with one or two good propositions they combine others that the lawyer has not the least confidence in, but has inserted apparently under the impression that the value of a brief was to be estimated by the number of points made by it. The opposite is more nearly the general rule.

The advocate who presents his case as he ought, will seldom have occasion to complain of want of attention on the

part of either court or jury. But he should always show himself sincere and earnest, and always keep his mind upon the case, and not upon himself. The success he should seek should be the success of his client, and not mere applause for his own effort. There are cases where the advocate, who prides himself upon his eloquence, so shapes his forensic display that while it may delight his audience, and elevate him in their eyes as a great orator, it nevertheless has a damaging effect upon the cause it was nominally designed to aid. so that the client is sacrificed to the orator. This is especially the case when he allows himself to deal in invective, which even when applauded, will generally have an injurious effect upon his cause. Do not go into your final argument in a case tried upon the facts without a very full brief on the testimony which has been taken, if you have time to prepare one. Few men can fully trust their memory with the details of evidence on a long trial, and if they could, they would find their statements of it frequently disputed unless they were prepared to support them by reference to the minutes. This final brief in the case of a long trial is often fully as important as the one prepared to begin the trial upon; and though it must generally be prepared in the evening after the day's work in court is over, it is not to be overlooked on that account. Hard labor is the indispensible condition of success in all difficult cases. Even Demosthenes was unwilling to speak extempore, or before, as he expressed it, his argument had been *hewn into shape.*

9. *Fidelity to clients.* Throughout the trial and afterwards, adhere faithfully to the cause of the client, and allow no consideration of private advantage or of public clamor to influence you to do otherwise. This caution is specially important in criminal cases, where the public mind is greatly excited, and where a mob spirit prevails or threatens. Then if ever it is the lawyer's duty to stand unflinchingly by the accused. Then if ever he should face obloquy and detraction, trusting to the future to set him right. If temporarily he is affected in his standing with the public, and loses friends and

business, it is better so than that he should sacrifice the interests of one who has confided life, liberty, reputation, property —one or more, and perhaps all—to his fidelity. The highest considerations of personal and professional honor demand of him that he do not undertake the trust and then betray it; and he does betray it in greater or less degree whenever he permits the clamor of others to relax his efforts on his client's behalf. The louder the clamor, the more imperative the duty on his part to face it and to defy it. His duty is to see that his client is tried by the law. He is not tried by the law if the public outcry secures the result. Any man who sees how a single sensational article in a newspaper, with the smallest possible share of reason for its basis, may be caught up and repeated and exaggerated and "worked up" until it seems as if the whole press of the country was uttering a settled conviction in the public mind that the person against whom the article was directed was the vilest of criminals, will appreciate how important it is that the judicial tribunals and the legal profession should be removed as far as possible from the influence of popular excitements, and that they should firmly set their faces against any attempt to coerce their judgment or control their action by any other than the legally appointed means. Popular excitements are as unreasoning as the winds; and they are as likely to demand immunity for a cold blooded murderer who is able to throw a glamour of romance about his case, or to cunningly appeal to some mawkish sentiment prevailing for the time being, as they are to seek the punishment of the guilty. But whether they favor your case or oppose it, I say stand by your client; through the trial and after the trial; if he is unjustly convicted, do your best to secure him a new trial; if you fail in that, and he goes to prison or to the scaffold, let him feel to the last that his professional adviser has done his best to stand between him and outrage, and has never in any degree disappointed the confidence reposed in him. The public, when it recovers its senses, will respect such fidelity, and in the long run it will be fully rewarded. Mr. Webster has said that "a

time-serving Judge is a spectacle to inspire abhorrence;" but a time-serving lawyer is only so in less degree, and the public in time will come to estimate him at his true value.

10. *General considerations.* Many considerations of a general nature press upon us as we consider this subject. One I will mention is the importance of making a thorough study of human nature. For this purpose a lawyer should keep his faculties of observation active wherever he goes. He needs to study the motives which influence all classes of people under all varieties of circumstances. To this end, however, it is not necessary to fall into bad habits, or to become the constant associate of vicious men. Nor does one necessarily make friends of even the vicious classes by these courses. On the contrary the very men who indulge in strong drinks, who spend their nights in unlawful games and their days in anything but steady labor, respect a man who has better control of his actions; and if they even have important business to transact, will be likely to seek aid from one who keeps a cool head, and never allows a vice or an idle habit to master his intellect. But to be able to judge well of the secret influences which move men is a great power, and one which can be wielded with wonderful effect in the courts. It is remarkable, sometimes, what slight touches of human nature in the speech of the advocate will control the action of the jury against the best efforts of the most polished orator. Little circumstances of the least possible apparent consequence will sometimes seem to the jury to characterize the whole case, and in their minds all the evidence will be colored by it, so as to seem to prove the opposite to what it did before this circumstance was brought forward. The appearance of a manifestly dishonest witness in a case may defeat the party who called him, notwithstanding his other evidence was abundant and unexceptionable. The manifest dishonesty of one affects with suspicion all the rest. One must have his eyes open to detect these damaging circumstances, and if they operate against him, he must be prudent and watchful in his endeavors to obviate their effect. If he

knows men well, he may know precisely the chord to touch for that purpose; if he does not, he will be likely to blunder, and thereby deepen the effect already created against him. It was this knowledge, and not logic or learning that made Patrick Henry irresistable, and gave him the title of The Forest Demosthenes.

And here I will add a caution in regard to that portion of the lawyer's business which does not relate to litigation. I refer to the drawing of deeds, contracts, wills, and other private papers. These are often prepared without the least reflection, as if they were papers too simple to need thought or anything more than mechânical accuracy, when in fact the most serious study is often required to put them in the shape that will effectuate the intention of the parties. This is especially true of wills, which, except in the case of the most simple, ought never to be drawn in haste, nor without considering with the party very fully and in detail all the collateral consequence of what he proposes to do. It will sometimes be found, when this has been done, that if the will had been drawn according to first directions, it would have defeated, rather than effectuated, the testator's real desire. A lawyer does not discharge his duty in these cases by simply doing like a machine what is directed: he is applied to because of his superior knowledge and skill; and he should not allow the client to be led into error by a failure to employ those qualities.

PROFESSIONAL COURTESY.

The obligation of courtesy to professional brethren has been indirectly hinted at, and it seems not necessary to do more. To preserve a good understanding it is important to avoid the occasions of dispute. With this in view, if for no other reason, it is well always to put stipulations between the counsel on opposite sides of a cause in writing. Oral understandings are too liable to be misunderstood, misinterpreted or

forgotten. Besides, as they cannot generally be enforced, the party who relies upon them sometimes puts his client's legal rights at the mercy of his adversary; and this he cannot justify himself in doing. On all grounds, therefore, the written stipulation is the only one to receive or to offer to give.

If witnesses are to be treated courteously, it is still plainer that the opposite counsel is not to be made the target for abuse. How foolish is that lawyer who lays aside his dignity, descends to the position of blackguard, and attempts to benefit himself by ridiculing the personal peculiarities of his opponent, and by calling attention to unfortunate circumstances of person or life for which the other is not in fault, and which a gentleman will always avoid noticing! Men whose opinion is of value despise such behavior, and will not confide in the man guilty of it; the low and contemptible may applaud it, and among them such a lawyer must expect to find his congenial associates.

DUTY OF THE LAWYER TO THE STATE.

In performing faithfully and honorably his duties to his profession and to his clients, the lawyer is also performing important duties to the state. If he restrains the violence of passion in his client, sets before the community a conspicuous example of honor and honesty, practices decorum in the courts, interferes to prevent mob violence, and braves the anger of the public when in those outbursts of unreasoning ferocity which we occasionally see, a victim is demanded to satisfy the popular vengeance; if he does all these things he will be a public benefactor whose services will not fail to be appreciated. And he will at the same time do much to advance his order in the public estimation, and do something to relieve it of the distrust and suspicion which unworthy members are constantly bringing upon it.

With these few words of advice, hastily prepared and necessarily imperfect, I now take my leave of you. That your

subsequent life may be full of enjoyment, that your career may be honorable, that your influence upon community may be good, that your efforts in behalf of justice may be successful, that you may labor not for emolument merely, but

"Do justice for the truth's sake."

that you may be able to shield the innocent who seek your aid, and protect the interests of those who may most need protection; and that a high and honorable professional course may crown you with suitable rewards, is my most sincere wish as I bid you adieu.