

August 2021

## A Mental Attitude

Henry A. Dubbs

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

Henry A. Dubbs, A Mental Attitude, 3 Denv. B.A. Rec. 17 (1926).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

## *A Mental Attitude*

By HENRY A. DUBBS of The Denver Bar

There is one matter on which I have seen little comment, but which I have observed with interest. I refer to the mental attitude of the lawyer at the bar toward the personality of the judge on the bench, and in particular, the effect of that attitude upon the work of the lawyer himself.

For many years I have at times heard lawyers express their fears that the judge sitting in a particular case had a personal dislike for them, and that consequently fair consideration of their arguments could not be expected. In rare instances there may have been some truth in the statement, for human nature still lacks perfection. More than once, however, I have observed that the evidence of judicial feeling of which complaint was made was not an expression of personal prejudice as between men, but a legitimate manifestation of distrust brought about by unfair presentation of the pending case or of some former case. On the other side of the matter, it is common knowledge how frequently real lawyers are highly and properly successful before judges who are far from being their personal friends.

It is my belief that harboring a suspicion that a judge is personally unfriendly, or that any feeling of personal dislike may direct a ruling, damages the work of the lawyer himself. He cannot present his argument with the ease and the force which he would command if he dismissed the feeling from his mind. He cannot do justice to himself as he could if he instilled himself with the thought that there could be no personal equation involved, and that a fair presentation must insure a fair result. Unfortunately the attitude of suspicion grows on the man who has it, and with that growth his work becomes less and less effective. I have known men in whom it developed to such an extent that in certain courts they could not present even the most excellent case with clarity or with that balanced view of the entire cause which enlightens a court.

It has long seemed to me that a man coming to the bar would make his pathway easier if he convinced

himself at the start that lawyers and judges are not and cannot be antagonists; that regardless of personal friendships and prejudices, honest work brings honest results; that no honest judge can decide for or against a case on account of personal reasons; and that the judge is entitled to at least all of the presumptions of honesty which the lawyer can claim for himself. Even as a matter of mere selfish desire for success, a lawyer goes farther if he will not permit himself to feel that any personal element can become a factor in the legal conclusion, but on the contrary feels that the court is his friend regardless of who sits on the bench.

The men whom I have known to stand out with lasting reputations in the profession have been those who knew the law and who searched for no ulterior motives underlying decisions. They were lawyers intent upon legitimately convincing the court rather than upon appealing to the man. In very rare cases they may have failed through ignoring real ground for suspicion, but the ultimate balance of success and peace of mind was overwhelmingly in their favor. Certainly also their work helped to strengthen the courts; and, for themselves, it made the judges their legitimate admirers. I cannot recall a single practitioner who stressed his fears of prejudice and did not suffer seriously in the end. Personally, and without putting myself in either class, I may say that I have lost many cases, but, whatever irritation I may have felt at times, I do not now have the slightest thought that the result in any of them was in any degree conditioned by any feeling of personal unfriendliness which the judge may have had toward the losing counsel.

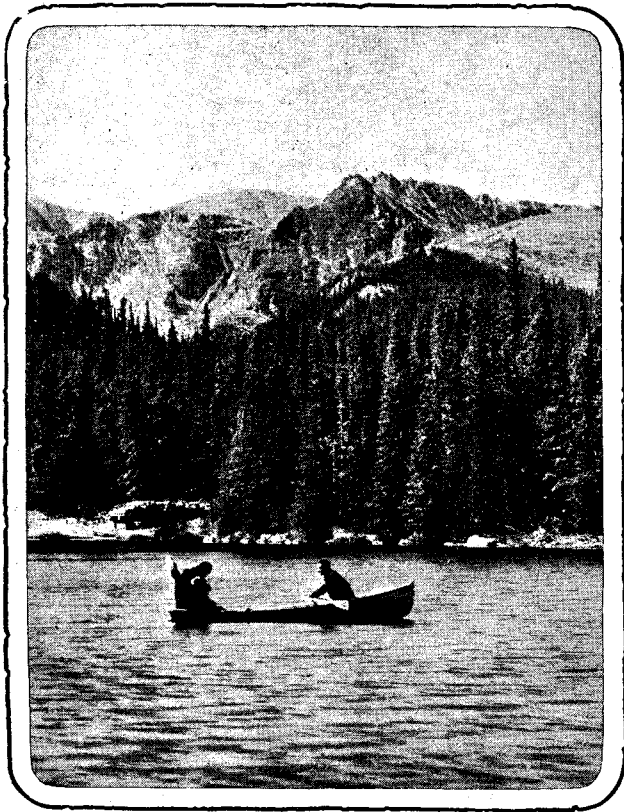
There have been corrupt judges, but the history of the law reveals the fact that there have been very few of them. There have been many judges who, without the slightest personal vice, have at times lacked intellectual honesty—that fine quality which enables the human mind to reason to a conclusion without regard to first impressions and with no desire to reach any particular end. This lack, how-

ever, is common everywhere in life, and the bar is by no means free from it. At times we all suffer from the defect, for the lawyer's desire to reach a particular conclusion is based upon considerations which do not exist upon the bench. A judicial decision may be grossly erroneous, but that is far from saying that it evidences any prejudice against the lawyer who, in another forum, can prove that he was right; and the lawyer who appreciates this in a practical way adds to his own comfort.

In a social conversation, the late Judge Riner of Wyoming once said to

me that off the bench he was John Riner, but that on the bench he was the sworn representative of the judicial power of the United States. The lawyer who assumes that all judges have this point of view comes far closer to the truth and to success for his clients and himself than he who harbors suspicions of personal animosity and of its possible influence.

I am far too young to give advice without request or retainer, but I have been asked to contribute something to the Denver Bar Association Record. Therefore I offer this merely as an observation.



*Colorado Mountain Lakes are Scenic Gems*

*Courtesy Denver Tourist Bureau.*