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INDIVIDUAL RESPONSIBILITY OF THE LAWYER AND RESPECT FOR THE LAW

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It is a fact well known to the profession, that very few lawyers are dishonest. This does not comport, of course, with the rather current belief that the lawyer and the honest man must of necessity be two separate individuals.

Large and varied interests are constantly entrusted to the hands of the lawyer with such a slight percentage of loss on the part of the client as to be almost negligible. Lawyers know the truth of this situation, and know that no matter what may be the popular estimate of the lawyer, he is in fact going along quietly caring for and transacting the business entrusted to him with competency and fidelity.

There are, of course, exceptions in the profession, but they are rare birds who generally flit into the fields of the law and as rapidly flit away again never to be heard of more.

Through a series of years there has been built up a definite set of self-imposed standards of conduct. Living up to these standards is the first duty and responsibility of any one who hopes to stay in the profession.

The practice of the law is changing beneath our very eyes. More and more, we are losing the slap-bang, roaring-bull tactics and are looking upon the trial of a case in court, for what it really is, as defined by the codes of some of the states, a judicial examination of the facts. Certainly the old methods, now so happily becoming obsolete, are giving way to an earnest, sincere and dispassionate examination of the facts under the control of the court with an eye single to the ascertainment of truth. Recently while engaged in a cause in a Federal court in another state, the trial judge remarked to an over zealous attorney: "Now let's take this a little more quietly. I think a little less heat will help to bring out the facts." Then, quietly, he reminded the witness that all they were trying to do was develop the true state of facts. Both counsel and witness sub-

* Of the Lawrenceburg bar. Judge Lowe delivered this address before the 37th Judicial Circuit Bar Association, August 8th, 1933.

sided immediately and the trial continued in a much quieter and more judicial atmosphere.

We refer to this matter for the reason that the legal profession and the courts are criticized for delay more than any one thing, and delay is caused more by a Bourbon-like adherence to needless forms, ceremonies and archaic methods of procedure and practice than any other thing. The litigant wants action. The business man wants a prompt decision. The State wants a prompt and speedy settlement of disputes.

This can best be accomplished by an orderly, quiet trial in which from first to last the earnest endeavor of counsel and the trial judge is a prompt arrival at the facts of the case and the application of the law to these facts when determined. Could not and would not the lawyer get the same fees, and get them quicker if cases were universally tried and disposed of finally in three months instead of three years. Would not the business man be better able to adjust his business affairs if suits involving the affairs of his business could be decided within such a time so that he would not be compelled to absorb large items of expense brought about solely by delay? Would not the State be more nearly performing the very function which justifies it in attempting to control the settlement of private disputes, if such disputes could be promptly disposed of so that Time could begin its healing process rather than to have disputes drag their weary way through the courts for years, disrupting neighborhoods by the bitterness of the contention.

We all agree that these things are "consumations devoutly to be wished" and we all agree that litigants, courts, lawyers, and society in general would be benefited by a system that functioned in this manner with respect to civil cases. With regard to the enforcement of the criminal law, the effect would be the same. It has passed into a maxim that it is the prompt, swift and certain infliction of punishment that deters criminals rather than the severity of such punishment. We have learned that the best way to train a dog is to punish him promptly for an offense, while the dog still remembers what the offense was. It is the same with criminals. They should be punished for offenses before they and the public in general have forgotten about the matter. Thus the punishment seems connected with the offense and to flow from the same, and the example has effect.

Thus in every department of the law we see that a prompt and speedy administration of Justice is the much-sought after

and desired result. Why, then, should the lawyer interpose himself as an obstacle to the consumation of these universal desires. It is a current belief that progress in any profession comes, and must come, from those outside the profession. This has been true in the past to some extent with the legal profession. And yet there have always been forward-looking individuals who were progressive enough to stand for sweeping changes in the practice.

Let us consider for example some of the anomalies still existing in our law. It was wholly unfair for the Prosecuting Attorney to call attention to the fact that the defendant had not testified in the days when the law did not permit him to testify. The disability of the defendant has long since been removed, yet the restriction still remains. Ohio has abolished it and other states have also. Yet there are lawyers who will oppose it today and insist upon the restriction as essential to a fair criminal trial.

In England, appeals, are disposed, as a rule within sixty days. Formalities are unknown. No long record is required. The parties are required to state informally the questions raised by the appeal and these and these alone are briefed, argued and decided. There a business man can have a litigated case, involving a contract tried, appealed and finally determined during his own lifetime.

We have heard much of late, of the proposed innovation of placing the "Rule Making power" back in the courts. Who ever took it away? Why should any other branch or department of Government have the right to lay down rules and regulations for the courts, when the Constitution expressly confers judicial power upon courts and courts alone. Who but the Courts themselves, upon whom is cast the responsibility of exercising judicial power, should make the rules for the application of such power? Would the Legislature, for example, submit to have its rules of procedure determined and controlled by another and entirely separate department of Government? Would the Supreme Court or the Legislature have the right to pass rules determining how the Governor shall exercise his constitutional prerogatives of an executive and administrative nature?

What is needed is a set of rules of procedure under which the Courts can function, as they were supposed to function, "speedily and without delay" as required by the mandate of the Constitution. Anything less than this is not carrying out the ex-

pressed will of the people and is a subversion of the judicial power delegated by the people to the Courts.

I shall not draw out the matter, further. The law business is slipping away from the lawyers and into the hands of Boards and Commissions, which are not hog-tied and fettered by rules of procedure and practice.

Why does the average lawyer oppose those things which will make for the prompt and speedy decision of causes when all of his interests lie in the opposite direction?

What does it matter to the lawyer what rules of procedure are prescribed for his client's case? He can have no personal interest in the matter. He should not oppose changes which will result in a more prompt and speedy adjudication of controversies. He can play the game no matter what the rules are so long as they affect him and his lawyer-adversary alike. It is the client's cause that is decided, not the advocate's.

The greatest individual responsibility resting upon the lawyer today is to fall in line with the demand for a speedy and prompt administration of justice. This is expected of him and this will restore business to the profession that is now drifting away to more speedy tribunals.