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The President's Page

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THE PRESIDENT'S PAGE

The automobile is becoming an ever more important problem in our life and in our legal procedure. The article "Flirting With the Undertaker," in the Saturday Evening Post of February 9th, by the motor vehicle registrar of Pennsylvania, is well worth attention. So far as legislation goes, the ends to be aimed at are two: To bring about the decrease of accidents, and to secure to those injured a reasonable chance of compensation. Of the two purposes, it can hardly be doubted that the first is the more important. Both, however, can be secured to some extent by carefully framed legislation.

Probably the greatest desideratum is the requirement of a driver's license, after an examination to test fitness. This is in force in many states, but in others, especially those less thickly settled, it is regarded as an undue interference with personal liberty. Inevitably public opinion will in time uphold it, and lawyers may well do their part toward hastening this development of opinion.

Most accidents result from individual carelessness, but faulty mechanism has some part among the causes. A law requiring periodical inspection of cars, and a certificate of such inspection, as suggested in the Post article above mentioned, might well be adopted.

Nowadays the roads are full of drivers of no financial responsibility. Substantial men regularly carry liability insurance, but the owner of the battered wreck is apt to be without it. What is the most feasible method of securing protection against him?

Massachusetts has taken the bull by the horns and enacted a compulsory automobile liability law, by which every car owner in the state, before he can secure a license, must take out a liability policy. The results for the two years this has been in force have been by no means entirely satisfactory, although too much stress must not be laid on difficulties that develop under a new law, which may be straightened out as time passes, experience develops, and amendments found necessary are made. So far, the Massachusetts law has not caused a decrease of accidents; in fact, whatever be the cause, they have increased. A large number of "strike" suits have been brought. Massachusetts has required insurance against personal injuries only, not against property damage, and it is said that cases of alleged personal injury are often brought where the real purpose is to collect for property damage. The Massachusetts law is undoubtedly bad in one respect. Where insurance is once written, it cannot be cancelled by the insuring company except subject to an appeal by the insured to a "board of appeal." In this way one of the most valuable incidents of insurance, the selection of risks, is destroyed.

Connecticut, Vermont and perhaps some other states follow the so-called Connecticut plan, whereby insurance is only required when the car owner has already been in an accident or been convicted of the violation of certain traffic laws. Then his license is forfeited, and cannot be restored without insurance or the deposit of indemnity. This method, it would seem, tends more toward developing careful drivers than a plan of universally compulsory insurance. It is objected to because it does not give full protection, and goes on the principle of "giving the dog one bite." This objection might be met in part by combining with it the so-called Pennsylvania plan—which, however, is not in force in Pennsylvania—which provides that when one has a final judgment against him for damages in an auto accident, he cannot have his license renewed until he pays such judgment.

The problem of the automobile is not so acute in North Dakota as in more thickly settled states, but everywhere it is fast becoming one of vital importance. It has not yet been dealt with by our Bar Association. I feel that its importance is such that we should no longer neglect its study. I have, therefore, appointed a special committee on "Automobile Safety Regulations and Insurance," to study the problem and report to the next annual meeting. That committee, announced elsewhere in this issue, includes many of our leading lawyers selected partly because it was believed they would entertain many different viewpoints and shades of opinion, and I believe it will give us a very interesting report. I hope the membership of the Association will give the subject thought beforehand, and come to the meeting prepared to discuss it.

From the above the mind turns naturally to another subject that is attracting much attention at present—that of "ambulance chasing." The February issue of the Journal of the American Judicature Society contains an interesting article on a recent investigation in Philadelphia. In this matter, too, our state is fortunate in not being confronted with the problem to the extent to which it exists in large cities; nevertheless, it is a universal problem, and we ought to face it.

Laymen, and some lawyers, often find it difficult to realize why the solicitation of business, of the division of fees outside of the profession, should be under the ban of legal ethics. Not because of the dignity of the legal profession; in this democratic age such dignity is inevitably, and I think properly, largely a thing of the past. The rule is not founded on eternal verities, but on practical considerations of the public good. There are certain cases that cry aloud for volunteering of legal services; but, by and large, those services are going to be demanded, without volunteering, solicitation, or the payment of commissions, about as extensively as litigation is for the general benefit of the community. As with certain other rules that have no innate justice behind them, such as the statute of limitations, the violation of the rule causes, in the long run, more injustice than it prevents.

The practice of contingent fees is full of danger. Experience has shown that the number of cases which, practically, must be brought on a contingent fee basis or not at all are so many that it would not be wise or feasible to forbid this practice, but it must fairly be regarded as in the extra-hazardous class and properly subject to special regulation. There is no moral objection to contingent fees in themselves. The lawyer who, while conducting himself properly, takes cases on a contingent fee when his client cannot pay him otherwise, often is rendering a great service to the cause of justice; but he is also subjecting himself to many temptations, and should not object if a considerable degree of court supervision is required.

How far the actual practice of solicitation of cases, either personally or by runners, prevails here is a matter of conjecture. Certainly there is no such well developed system as in congested centers. We hear rumors, but they are not easy to substantiate, and may be quite without foundation. A lawyer's reputation for successful jury pleading spreads more easily in our country districts than in large cities, and draws to the successful specialist an ever larger circle of clients. Business gained in that way is a well deserved reward of efficiency.

In England, where the profession is divided into solicitors and barristers, the barrister, who tries the case, does not interview the witnesses beforehand. Some Englishmen say frankly that the purpose of this custom, strange and inefficient as it appears to us, is to prevent the shaping of testimony by the barrister.

The faults in accident litigation have not been all on one side. Attorneys for the defense, and claim agents, are said at times to make settlements for notoriously insufficient amounts, and by means very closely approaching fraud. The feeling that this happens has resulted in some states, as here, in the provision that no settlement made within a certain time after the accident is final. On the whole, such a provision has probably worked well, though the time for overthrowing the settlement in this state—six months—is perhaps too long. When settlements are negotiated during that time, the only way to make them binding is by a "pro forma" suit, fairly conducted, where the facts are honestly brought out before the court, which considers whether the settlement is fair, and enters a judgment which in substance approves it.

The temptations which assail a leading jury lawyer are many and strenuous. If he withstands them, all honor to him as a shining light of the profession. If he yields to them, the fact that he is—as he generally must be to attain his position—a man of striking ability and personal charm, cannot change the fact that such conduct is cause for discipline, and if deliberately persisted in, good ground for disbarment.

To take the facts as he finds them, and make of them the most convincing picture he can, is well within the rights of the lawyer. To interview his prospective witnesses, sift out their stories, and make of such stories a connected whole, is proper when it does not involve suggestion of falsifying testimony. To point out a discrepancy for the purpose of having a fact changed to a falsehood in order to fit the desired picture, is nothing but plain subornation of perjury. And the line is not always easy to draw.

It has been suggested that the amount of contingent fees which might be contracted for should be restricted. The wisdom of this provision is doubtful. Different cases demand different arrangements. A much wiser suggestion is that contingent fees should always be subject to the approval of the court, or that the court should in each case fix the amount of such contingent fees. This is no more than is done by the court in cases of minors and receivers, and would seem to be a restriction warranted by the dangers inherent in the practice.

In conclusion, it may be suggested that there are certain definite rules which the public good requires a lawyer to follow in every case, but which are of more than ordinary importance in accident and contingent fee cases.

First, he should never solicit business.

Second, he should never pay a commission or reward, directly or indirectly, to any layman bringing business to him.

Third, he should never bring a "strike" suit—one where he hopes the defendant will settle rather than undertake an expensive defense, but where there is no reasonable ground to believe that a cause of action exists.

Fourth, he should, while sifting the stories of prospective witnesses, carefully avoid suggesting to them, directly or indirectly, the giving of false testimony.

Fifth, he should consider his client's interests and not his own, either in settlement or trial.

Sixth, he should confine his demands for fees within such bounds as, all things considered, are reasonable in the particular case.

Seventh, he should be entirely willing to submit such fees to the approval of the court.—PRESIDENT JOHN H. LEWIS.