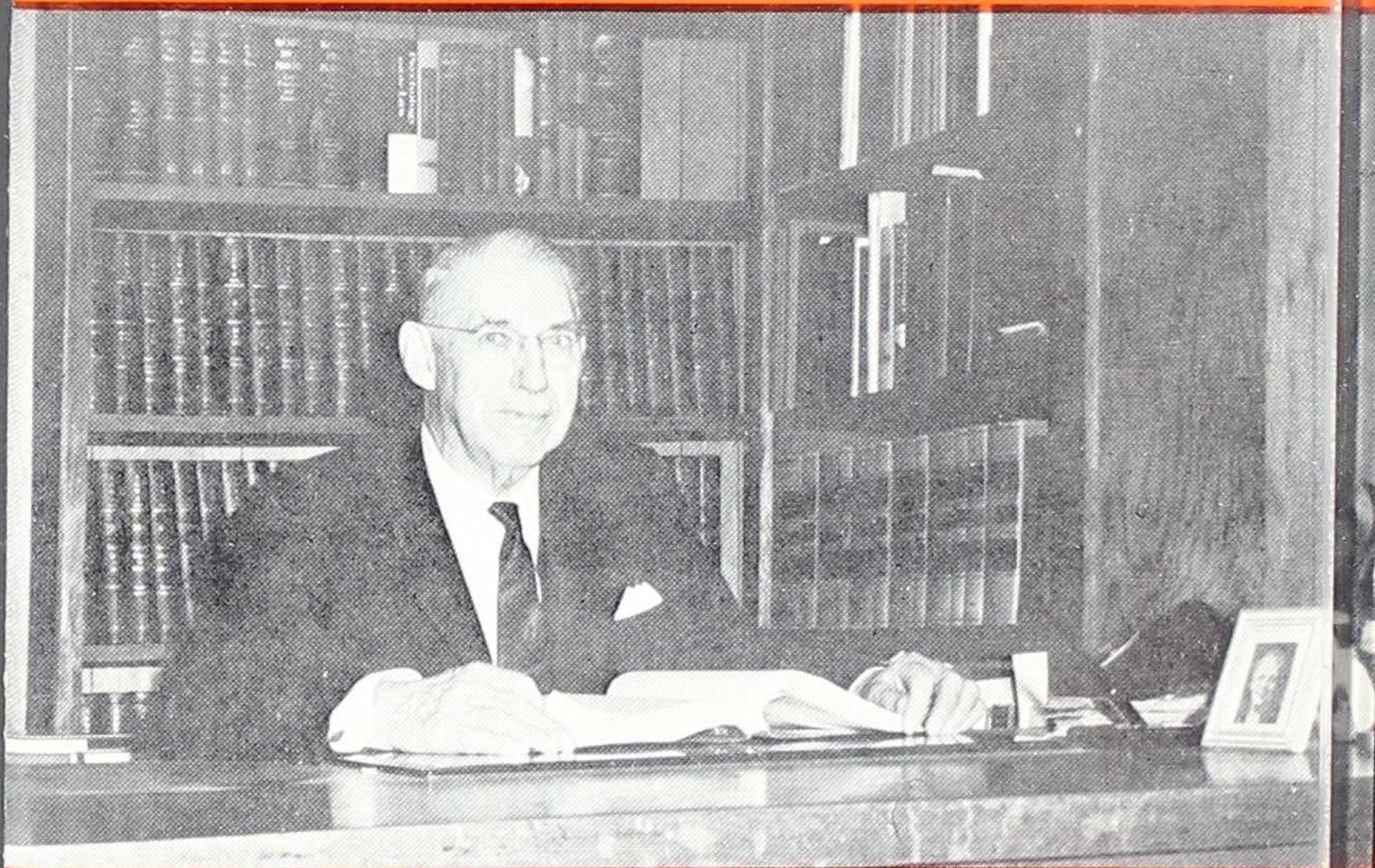


The
PALIMPSEST



Dwight G. McCarty at his desk in Emmetsburg.

Memoirs of A Legal Savant

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All Kinds of Clients

The lawyer in his practice comes in contact with all kinds of people. Especially in the consultations in his office is the confidential personal relation at its best. There are unfolded many of the intimate and family secrets that affect the personal and economic welfare of the client. To the preacher and priest they go to confess their sins and for advice and solace concerning their spiritual welfare. To their lawyer they go for advice and help in regard to their personal and economic problems. Property settlements, wills, divorces, separations, estates, sales, purchases, titles and contracts, are all grist to the lawyer's mill. He gets to know these clients and their families intimately and knows what advice and counsel will best meet their need.

So it is that our office received all kinds of clients—all kinds of people with all kinds of problems.

Many examples of heroism came to our attention. One family especially, was composed of hard

working people who were always poor and never seemed to get ahead. Even in the depression, when times were hard, they never asked the county for help. They were law abiding and religious and the mother never failed to instill in her children the ideals of good citizenship and a feeling of contentment. Though poor and humble it was indeed a happy home and the children all turned out well. That, to my mind, is a higher type of heroism than many acts attracting public acclaim.

Another side of the picture is illustrated by a certain farmer and his wife and nine children. The wife came from a cultured family, and was a natural musician. The father was shiftless and morally loose. I defended him successfully on one criminal charge, but he was caught red-handed the next time and he was sent to the penitentiary.

The wife bravely carried on with the farm work. She saved all the money she could from the chickens and eggs, and when she had enough, bought a piano. The neighbors thought that was the height of folly to spend money for a piano when the family hardly had enough to keep the wolf from the door. Said the wife:

I made up my mind that my children should have something to do besides the drudgery of work and chores all the time. They like to play and sing, and I want them to enjoy good music and have some of the cultural advantages of life. This is an investment in better living for all of us.

Who is there to say that that mother was not doing right for her children? It reminds me of the pitiable little flower in a pot in the window of a miserable slum dwelling in the Hull House district of Chicago, the only touch of color on that whole street. The flower in the window, the music in that home, are the tangible evidence of the soul striving to keep alive that hope for a higher life.

On the other hand there are sometimes examples of sordid selfishness that make one's blood boil. In one estate that I handled the oldest brother was the selfish, grasping one of the family. His brother was a ne'er-do-well who was always broke. His two sisters also were in needy circumstances. The older son had wheedled a deed to 80 acres of land from his parents during their lifetime without any consideration, but, nevertheless, he insisted on his full share of the balance of the estate.

This brother even added insult to injury by piously claiming that he was the only one who could use the money to advantage by adding it to the wealth he already had. Appeals on behalf of his poorer brothers and sisters found him unresponsive. He even tried craftily in every way that he could to gain still further at their expense.

Fortunately such extreme cases are comparatively rare, and it is the more common trait to find estates settled amicably. In one case the children all pooled their interests in order to give the crip-

pled sister an adequate income. It is quite common for the children of a family to deed their shares to the mother in order that she may live in comfort for the rest of her life.

A few examples taken from the files will illustrate still further this diversity of human nature.

Queer quirks of human nature often bob up. It once became necessary, in order to quiet title to real estate, to procure an affidavit from an old gentleman and his wife, in the customary form, that they had no children. He was past eighty and she was seventy-eight. He said he would sign the affidavit all right but he didn't want anything in it to the effect that they would not keep on trying.

One of my pessimistic clients who had got the worst of an automobile trade remarked, "Everybody is so damned dishonest that it is getting so that I can't even trust myself."

It is sometimes hard for a lawyer to keep from becoming cynical, as it seems as though in this economic merry-go-round each client is trying to climb on the horse in front.

There is an old Arab saying, "Trust in God, but tie your camel." That is a good maxim for a lawyer. He needs faith, but must always maintain a practical cynicism that demands proof and takes nothing for granted.

A long letter was smuggled out to me from an inmate of the County Home, who wanted me to be her lawyer. She complained of "poisonous

smells" that made her sick, and that the stewardess one day said it was gasoline and the next day that it was varnish, but she knew it was not either of them.

The letter continues:

I no what the smel of bedbug poison smels like for I have helped her clean with it. I have to contend with lotes of different smels ever since last year. This Sunday 2 weeks they was a strong smel just like burnt coffey in my bedroom in the day and night at bedtime I could hardly breath with thos old grones I have now the caus of thos poisenous smels. So in 5 minutes the smell changed its smell to roten meat then to a canday smell and burnt sugar then back to burnt coffee then rite after that one of the inmates got up for a drink and after he went to bed the lite went out down stairs and in a seckend some one shot a smell just like Solones linament came in here to my bed room. It tuck the offell smell away, Then I could rest about 50 minutes. Those offell smells is a kepening me down sick. Nerly all the time I hafto go to bed my breathening taken away from me. About those smells if kept up will finde me a corps one of these nice morneings.

Sometimes a lawyer finds it advisable to use finesse. A good example of this comes to mind. A wealthy woman came to me insisting that she wanted to recover a picture which she claimed had been wrongfully taken from her house. The picture was not very valuable and had been stored, but for sentimental reasons she wanted to keep it. It had been taken by a former friend with whom she was no longer on speaking terms.

That party, however, stoutly maintained that she had been given the picture and steadfastly refused to give it up. As the circumstances seemed to indicate that such was the fact and that my client had changed her mind after the falling out with her former friend, the chances of a recovery seemed rather remote. But I went over to the defendant's house to try to talk her into returning the picture. Nothing doing. The affair had now become a battle between the two women and no quarter asked.

The picture was hanging on the wall. As I looked at it I had an inspiration. Picking up my hat I remarked that we might as well drop the matter as it was not worth fighting about. Turning to the picture, I said: "That picture has a very interesting history. It depicts a Protestant revolt against the Roman Catholic Church at the time of the Reformation. It formerly hung in a Protestant Mission church before it came to this country."

She was a devout Catholic. Without a moment's hesitation she took the picture down from the wall, wiped off the dust with her apron and handed it to me. "You take it," she said, "I don't want it."

In dealing with contrary, stubborn individuals who are bound to have their own way, it is common technique to pretend to want the opposite of your real desire, to argue and insist upon it, and finally, as if convinced, to give in to the other's

stubborn insistence, thus gaining the desired end in spite of apparent defeat.

Then there are the bores and the know-it-alls who infest the office. They take up a lot of time, are never satisfied with anything, and seldom have any real grievance. They think they know more than the lawyer. It takes tact to deal courteously with them. You are sorry for their plight. But they do not respond to any suggested treatment and it is seldom that anything can be done for them. As someone has said, "It makes no difference what label you put on an empty bottle."

Nothing is more exasperating to a lawyer than to have his client lie to him or withhold the truth. Of necessity reliance must be placed on the client's story. That is the basis of the case. If it does not square with known facts then there is some chance to discover the truth, but when the unknown fact is sprung on you in the trial—that is something. I had that experience once when defending a man accused of driving a motor vehicle when intoxicated. He was a fine young fellow with a good reputation. His family said he did not drink at all.

He had been in an accident at a street intersection at about five o'clock in the afternoon. There was a bad gash in his forehead which he claimed was caused when he was thrown against the windshield. He said he was dazed and wobbly when he got out of the car after the collision. The

officers who arrested him said he was drunk. He had a liquor book, he explained, so he could buy liquor for his friends occasionally. His wife burned his liquor book right after the accident so I had no means of knowing how much liquor he had bought. The liquor store refused to give any information except in court. He assured me earnestly that he had purchased only one "fifth" of whiskey that day and that the others drank all of that. His story did not seem entirely credible but he stuck to it.

At the trial the officers who took him out of the car testified strongly that he was intoxicated as did one bystander. They admitted that he had a cut on his head and that he was dazed. Their proof was not any too strong and it looked as though we had enough reasonable doubt to clear him. The defendant told the same story on the stand that he had told me. The county attorney kept asking him if he only bought one "fifth" that day and he repeatedly assured him that was all, and that he did not drink any himself.

Then the county attorney sprung the trap on rebuttal. He subpoenaed the liquor store manager whose records disclosed that the defendant had bought *three* "fifth" bottles that afternoon. He also produced a witness who had seen the defendant drink and had also seen him "kill" one of the bottles of liquor. The fat was in the fire. A defendant who would lie to his counsel and on the

witness stand, deserved little consideration and he was promptly convicted by the jury.

His wife by burning the liquor book thought she was protecting him, but only succeeded in pulling the web tighter. I found out later that this young man who tried to make himself so "lily white" was a secret drinker and had been able to keep it from his family and reputable friends.

The difficulty we have with women clients is illustrated by an occurrence related to me by an attorney friend a short time ago. He had been appointed as administrator of the estate of a well-to-do citizen at the request of the widow and after he had performed the required services in administering the estate for three years, he spoke to the widow about receiving some compensation for his work. "Why," she said, "I have paid you for your work." He replied that he had not received any pay at all. "Yes, I have paid you," she said, "I have paid you every year. Just last January I made out the papers in your office and gave you a check for \$1,200.00." It then dawned upon the lawyer to what she was referring. "Oh, those were income tax returns," he told her. "That money went to the Collector of Internal Revenue. I didn't get any of that."

In a recent boundary dispute an action was brought to quiet title. The defendant admitted that his house extended ten feet over on to the property of the plaintiff. He claimed, however, that

he had title to that ten feet by adverse possession or acquiescence. On the trial a letter was produced that had been written by the plaintiff to the defendant concerning this boundary in which she said: "I have known all through the years what my rights constitute. I purchased first and kept still. You have used my property without being molested for ten years, and you did not come over and express gratitude."

Although she knew that the house was over on her lot, she had waited more than ten years and had done nothing about it. The court found that the defendant had acquired title to the ten feet by acquiescence, and that it was established by plaintiff's own letter. (*Atkius v. Reagan*, 60 N.W. 2d 790) This is a good example of what happens when a person tries to handle her own case without first consulting a lawyer about her rights.

Women who are responsive, have confidence in you and accept your advice, make good clients; but the opinionated, bickering, know-it-all is the bane of every office.

Many clients come to the lawyer regularly about their property and their investments. A nice old lady, who has long since gone to her reward, was in the habit of calling at my office at regular intervals, on one pretext or another. She would visit for a half hour or so and then as we shook hands at parting, she would leave a dollar bill in my palm. I demurred at taking the money at first

but she was insistent, and as I knew it was no personal sacrifice on her part I acquiesced to please her.

Our talks were on a high plane and I was frankly puzzled as to her purpose. A number of doctors have told me of women patients who, though perfectly well, would come to them regularly for medicine and to tell them their troubles. I soon realized that my woman client was getting some sort of uplift out of the interviews, and did not want to take up my time without paying for it. As no catch ever appeared, I was glad to be of service in giving my time even in so unusual a way.

It is rather depressing the number of marital flareups that come into the law office. Many of them are caused by just plain misunderstandings. Sometimes there is wrong conduct on one side or the other, but often it is a case of difference of opinion or arguments that go on and on until they engender bitterness. Usually there is some right on each side. It is well to remember what someone has said, that even a stopped clock is right twice a day.

While divorce is often justified by the conduct of one or the other of the parties, yet a broken home is always a tragedy. The resulting anguish and heart-breaking social and financial readjustments, leave their scars for years. Especially where there are children, the distressing results are almost always far-reaching and sometimes

disastrous and even fatal. That kind of practice did not appeal to me, and yet I never refused to help a client in need of assistance. Moreover there was the feeling that each case presented an opportunity for constructive service in ameliorating the hardships of such a tragic situation.

The Great Master said, "Blessed are the peace makers." A lawyer is consulted only as the last resort and because his services are indispensable in procuring a divorce. As legal advisor he is required to present arguments, pro and con, and he is in a position to exert pressure to avoid disaster. It is his duty to effect a reconciliation if that is possible and if there is a reasonable chance that it will prove permanent. Even the amount of his fees is a secondary consideration. I believe that most lawyers (outside the vicious divorce mill areas) are not only conscientious in this regard, but that they have thus made a distinct contribution to the high standard of American life.

One interesting experience comes to mind. A farmer client of mine owned a 200-acre farm on which there was a fair-sized mortgage. He was a hard worker, thrifty, and anxious to get the mortgage paid off. His wife was a hard worker too, but dominant and obsessed with the idea that she could run the farm better than her husband. She liked to drive around in the car, buying high-priced feed, and better eggs or chicks than her neighbors. She was continually shopping in dis-

tant towns for clothes and supplies for the family. The result was that he called her extravagant and she called him miserly.

This quarreling finally became so bitter that the wife could stand it no longer and hired a lawyer to get her a divorce. I appeared for the husband. All our efforts to get them together failed. She agreed to take over the farm, assume the indebtedness, pay him \$10,000.00, and he agreed to walk out. The divorce was granted.

The husband got a room in town and hung around for a few days, and then decided to go out West for a trip and perhaps work at odd jobs to help pay expenses. He secured his transportation, but he had to wait several days more to get his social security card for which he had made application. Finally it came and he was in my office shortly after noon, making final arrangements preparatory to taking the train West that evening.

A call came in for him over the telephone. "Is that you, Mama?" he said, and they continued to talk for awhile. When he hung up he told me that she wanted him to come out and see her before he went away, and that he had promised her he would go out this afternoon. I said nothing, but I thought, "Now what is going to happen?"

About a week or ten days afterwards, he came into the office and sheepishly told me the story. It appears she had begun to realize that he had done more work around the farm than she had

thought and that it was not so easy to run the farm without him after all. So when he came out that afternoon, she had the preacher there and the license ready, and they were remarried then and there. He turned back the \$10,000.00 and she deeded back *one-half* of the farm to him, and they resumed life on the farm as it had been before the separation.

It was an expensive lesson for both of them, but during the good times they paid off the mortgage on the farm, moved to the city, bought themselves a home, and as long as they lived they got along fairly well with only the usual arguments as to the cost of the family expenses.

Then there was the case of the lady who discovered something in her husband's past which he had kept from her all the years of their married life. She blew up and came in determined to secure a divorce. I suggested that we first investigate the matter, and sure enough it turned out that the particular episode was not nearly so bad as it was painted. I talked her into going back home and she agreed to forgive and not even throw it up to her husband no matter what the provocation. She promised that she would go back to his bed and board and be faithful to her marital duties. She kept her promise, as in due time a beautiful baby girl was born to them, and they are still living happily together.

One wife testifying in her divorce case tersely

described her husband thus: "You know how it always was with Henry, big I little you. He never wanted me to have nothing."

There were many other cases of domestic trouble that have come to our office during the years, some of them in which the record would be unprintable. It was always a relief to get a good woman free from a dissolute or brutal husband, and in a few cases to cast out a thoroughly bad woman from an otherwise honorable family. The custody of the children in all these cases, presents one of the most difficult questions in all the law for the attorneys and for the judge who must decide the case.

Another type of case which comes our way is the distracted parents who want advice about their wayward son or daughter or one of their children who has run away and married secretly. The lawyer is an ever-present help in time of trouble. He talks the matter over with them and gives what assistance he can in finding the best solution of the problem. In most situations of this kind there is not much that we can do, although in some instances we have had marked success. The helplessness of the people is pathetic, and their reliance on the lawyer as a counselor and friend places a heavy burden upon him to do his best in their behalf.

A lawyer is always happy when he can be of substantial assistance in these family matters. It

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IOWA, AND THROUGH 211 NORTHWESTERN
REPORTER TO PAGE 800 TOGETHER
WITH NUMEROUS REFER-
ENCES TO SPECIAL
MATERIAL

BY
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AUTHOR OF "IOWA APPLIED EVIDENCE,"
"PSYCHOLOGY FOR THE LAWYER,"
"LAW OFFICE MANAGEMENT," ETC.

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VOLUME 1

CHICAGO
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McCARTY IOWA PROBATE

Law, Practice and Forms

By

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IN TWO VOLUMES

VOLUME I

CHICAGO
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Law Office Management

by

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MEMBER OF THE IOWA BAR

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is gratifying and one of the compensations of a strenuous practice, when clients in after-years express their gratitude for the help they received in time of trouble.

Not long ago I heard a doctor telling about a woman coming to his office with four little children to have the children's tonsils removed. The doctor examined them and told her that the little girl's tonsils were all right, were unusually good and should not be taken out. The woman insisted and said if he didn't take them all out she would have some other doctor do it. So the doctor operated on the four children, including the little girl, and removed their tonsils.

That story reminds me of an experience of my own. A farmer came to my office and said he wanted me to sue John Jones. He said Jones was a liar and a thief and an all-around crook. He was going to sue that crook for damages and get even with him if it cost him a thousand dollars. When he finally calmed down so as to state the facts it was clear that he did not have any case at all. I told him so and advised him to go home and forget it and keep his money.

But he insisted and said if I wouldn't bring the case he would hire a lawyer who would. I told him frankly I did not want to bring a "spite" case like that with no merit whatever and that in addition it was contrary to the canons of ethics. "Stirring up strife and litigation is not only unprofessional

but it is indictable at Common Law." He went out vowing to get another lawyer. Apparently he could not find a lawyer unethical enough to handle the matter as the case never was filed in court.

It is one of the most difficult tasks of a lawyer to advise a client against taking some action or course of conduct that the client desires to take. Often a full statement of the reasons and a tactful suggestion of a better method will satisfy the client, but when the client persists in his insistence, a close question of ethics is presented. He should follow his client's wishes if he can honestly do so, but if not he has no recourse but to decline the employment.

Attorneys are often confronted with close questions of ethics. Should I take such a case? Having accepted the case what can be done in preparing and trying it in court? Loyalty to a client is fundamental, but there is also a requirement of fidelity to the court. Professor Williston of Harvard in his autobiography, *Life and Law* (page 272) takes the position that having once decided to take the case, a lawyer, while he is engaged as counsel, is not only not obliged to disclose unfavorable evidence, but it is a violation of his duty to his client if he does so.

Situations sometimes arise that pose nice questions of ethics. One experience of mine is so distasteful that I dislike to mention it. However it carries so many implications that it is a necessary

part of this story. My candidacy was not going very well in my first primary election. In one township where my opponent was very strong I was having difficulty getting any workers. I was pleased therefore when Mr. X who lived in that township came to my office, asked for some of my cards and volunteered to work for me there.

When the election returns came in there was not a single vote for me in that township and I was told later Mr. X threw my cards under a culvert and worked for the other fellow. If there had been just one vote for me, Mr. X could have claimed it, but with none at all, I had his number.

Several years later, I was attending a meeting of the bank directors of which I was a member and the application of Mr. X for a loan came up. The thought came to me, now here is my chance to get even with that double-crosser. On second thought I realized that I did not want to be vindictive nor would I allow myself to prevent any person from getting a loan if he was entitled to it, merely from personal prejudice. But was this man entitled to a loan? A good moral risk is a consideration that is more important than any amount of security as far as a bank is concerned.

They were about to approve the loan when on a quick decision I told the board that I would not vote on that loan but would tell them what happened and they could decide. I related the story and then left the room so they would not be influ-

enced by my presence. Mr. X did not get the loan. That was not surprising, for a man who would volunteer to do a favor and then deliberately double-cross his friend, could not be trusted, and would be a doubtful moral risk under any circumstances.

That this was a correct character analysis was proved later when Mr. X became a defaulter and absconded, leaving nothing but debts behind.

A story is being told about a client of mine, and his nephew vouches for its truth. The old gentleman had just received the rent from his farm and had gone down to the bank to cash the interest on his bonds. His nephew noted the tattered and much-patched overalls he was wearing and said, "Uncle, don't you want to buy yourself a new pair of overalls, now that you have the money?" "No," he replied, "These are all right, they will last a long time yet." "How about some groceries?" suggested the nephew. The old man hesitated, "Well, I would like some bananas," he said. Then as the lifetime habit of thrift asserted itself he added hastily, "But they are too expensive. I can't afford them. Do you know what they do? I saw them myself, they weigh them with the skins on!"

During a term of court I chanced to walk into the court room just as two Negroes and a white woman, charged with larceny, were brought before the judge. They had been driving around the

country in a pick-up truck, evidently of the impression that they could "pick up" anything that was lying around loose. After asking the elder man his name, the judge said, "How old are you?" "Fifty-one, your honor," he replied. "Are you married?" "No suh! No suh! judge, I ain't married." And then with a wide grin, "But I sho has lived with a lot of women."

The late Professor Matlock of the Grinnell College School of Music, when repairing and tuning the Methodist Church pipe organ here a number of years ago, referred to the "grapefruit" tones of the organ, the "sweet-sour" notes. This characterization would seem to apply to some human personalities. When you find one of those saccharin persons, every word dripping sweet, it rings a little bell of caution. To change the simile, you look for the claw beneath the velvet. A person with a grapefruit personality, on the other hand, is different. You like the "tang" because it seems more natural and has the ring of sincerity. You can win friends and influence people by deeds more than by mere words, although a kind word now and then helps, if genuine. Lawyers are naturally cautious because they have learned from experience that it pays to be cautious.

A farmer came charging into my office one day mad as a hornet. His neighbor's hogs were running in his cornfield rooting up the hills, destroying the stalks and generally doing considerable

damage. He had asked his neighbor several times to keep his hogs at home without result. He said he didn't want any trouble with his neighbor, but he just couldn't stand that any more. After ascertaining that the animals were not coming through because of his failure to fence, I advised him to shut up the hogs and then give the legal notice of distraint to the owner. This was done, and he and his neighbor got together and amicably fixed the amount of damage at \$200.00.

It developed, however, that the hogs were mortgaged to a finance company, in a neighboring town. The mortgage holder was notified but wrote back saying that all farmers were "crooks" and the company was not going to stand for any frameup by the parties and demanded that the township trustees be called out to assess the damage as the law provided. This letter naturally made the farmers furious but they called out the trustees, who, after due inspection and consideration, assessed the damage at \$500.00. This required the sale of the hogs and after the trustees, the costs and the damages were paid, the finance company was left holding the sack. No one felt any compassion for them, however, as the letter was poor business and the aspersions were unjust and indefensible.

The vast majority of farmers are honest and fair-minded. The farmer is an individualist. He buys in the lowest market he can and sells in the

highest market available. He never has taken kindly to organization and has been slow to espouse cooperative movements. In recent years, however, farmers' organizations have been growing in power, resulting in more scientific methods of farming and increased returns and prosperity. The cooperatives have grown to such an extent that now the cry has been raised that they are encroaching on business and should no longer be tax free.

One of my brother lawyers was out hunting and shot a fox. Arriving home rather late he put the rather smelly animal in the garbage can to keep it safe until he could collect the bounty on it next day. The garbage collector, on his early morning round, picked it up with the rest of the garbage, carted it away, and then took it up to the court house and collected the bounty. My friend for some time accepted commiserations with a red face, but has not yet announced any decision on the legal question as to who was entitled to the bounty on the fox.

One of the most difficult of clients is he who is swayed by every wind and influenced by every advising friend. A young farmer, indicted for a felony, employed three lawyers to defend him. His family came to consult me four different times during the course of the proceedings, although they already had competent counsel. At least three other lawyers were also contacted.

He was convicted and about a year later I was employed to try and get a parole. While at work on that I was advised that I was no longer needed, as a friend had advised them to get a certain lawyer who was more "influential." He did not last long and at least three others that I know of were given a try at it. The last I heard the prisoner was still languishing in the pen in spite of his multifarious legal counsel. One earnest attorney really interested in the case could have accomplished satisfactory results, where constant turmoil and changing leadership only succeeded in muddying the waters.

Many a case has been lost and many hardships resulted from the lack of confidence in a legal advisor. It is important that a capable lawyer, in which the client has complete confidence, be employed at the very outset when the need arises. Then his considered advice should be followed. Additional counsel may be employed if the case is important enough to warrant it, but confidence in the integrity and ability of the lawyer employed is absolutely necessary to secure the greatest measure of justice to which the client is entitled.

Ephraim Tutt in his so-called *Autobiography* tells about liking "humble folks" for clients. But when he joined the large firm, "The Wall Street Law Factory," he had more prosperous businessmen for clients, men who, regardless of how their case came out, were as comfortable as before.

"They did not seem like real people," he said, "or their problems real problems. In a criminal trial one is fighting for a man's liberty or perhaps his life; in civil cases such as were now given me to try—even though they involved complicated questions of corporation law or had resulted in long-drawn-out litigations—I was just quarreling over a wad of dough."

Clients with money and cases involving substantial sums, are all right of course. Yet it must be admitted that the tribulations of the poor and needy always had a fascination for me. Yes, I am a sucker for a hard luck story. It seems that I have had a longer parade of ne'er-do-wells, and listened to more tales of woe than any other lawyer around here. However, a lawyer soon learns to weed out the phonies. I tried to do what I could for the deserving ones and it has been a pleasant thought that perhaps some people as a result have been made happier.

It is surprising how many people came to the office bewildered, their faces troubled. They needed help and assurance. Whatever their trouble they were treated kindly, given the help they needed and sent on their way with confidence. It gave a glow of satisfaction to feel that amid this pulsating throb of human emotions, the lawyer was able to bring relief from depressing troubles, and comfort to worried souls.

My good friend Francis A. Heald of Cedar

Rapids, who won the state oratorical contest for a rival institution during our college days, very aptly expressed that thought in a bar association address when he said, "As long as our courts last, the high and the low, the rich and the poor, the just and the unjust, our defenders and our detractors, will alike keep on coming after us when they are in trouble."

Our pastor each Sunday a few years ago, was in the habit of asking the divine blessing on all those who were sick or in trouble, and in that connection regularly added a prayer for the doctors and nurses. I asked him why he did not pray for the lawyers also as they were constantly striving to alleviate the burdens of those who were in trouble. He replied that he had not thought of that as he supposed the lawyers were well able to take care of themselves. I assured him earnestly that our profession was more in need of divine guidance than others because of the moral and spiritual issues involved. After thinking that over he finally replied that probably I was right and that he would rectify the omission.

He did. The next Sunday he included such an eloquent and impassioned plea for the legal profession that it left the congregation wondering what deviltry the lawyers had been up to now. However, the main objective had been attained as the attorneys were thereafter included with the doctors and nurses in the Sunday morning prayer.

There is no question about it. The law practice is full of surprises. There is plenty of variety to spice the steady grind of hard work.

People come to a lawyer to solve their troublesome problems which they cannot solve themselves. Many of these are very intelligent people. The lawyer must have more than ordinary ability and a broad general knowledge in order to be able to settle these questions. The law touches all phases of human life. Law is a social, economic and political science and must change as those concepts of human activity change. Constant study and alertness is required to keep up with the changing times. This is what Oliver Wendell Holmes had in mind when he referred to the law as "the calling of thingers."

Then, again, there are people who do not have the least idea what it is all about and go to their lawyer with absolute confidence that he will take care of the matter that troubles them so deeply. It may seem terrible to them but probably is commonplace to their legal advisor.

The relationship between an attorney and his client is personal and confidential. He owes a duty to his client to serve him faithfully and with a loyalty that transcends all other considerations. If he cannot thus represent his client, then it is his duty to withdraw from the case.

DWIGHT G. McCARTY

The Case of the Attempted Murder

A number of years ago I was busy at my office when the sheriff phoned me that he was holding a man in the jail who wanted to see me. Would I come to the jail soon? "What is the charge?" I asked. "Assault with intent to commit murder," he replied. That sounded ominous so I told him I would be right over. Before seeing my prospective client I asked the officers to tell me what it was all about.

The officers told me that my client's name was Abbot and that he and a neighbor named Klumber lived on adjoining farms near one of the towns in the county. As Klumber told them the story the two met in the road outside their farms and Abbot pulled a revolver and pointed the gun right at Klumber's face and demanded \$1000 from him for what he owed or he would kill him. Klumber denied he owed him anything and Abbot pulled the trigger but the gun failed to go off. Then Klumber fled to a neighbor's house and called the officers, who arrested Abbot and filed the charge with the Justice of the Peace.

Klumber also told them that Abbot had accused him of poisoning his livestock and that Abbot said he had consulted a fortune teller who told him

that one of his neighbors was poisoning his livestock and as they had so much trouble between them he knew it was Klumber. But Klumber told the officers that he never poisoned Abbot's or any one else's livestock and the officers said they had no record of any such complaint or case. No doubt there had been bad feelings between them for a long time. The officers seemed to think it was a serious matter.

I then talked to my client who assured me earnestly that he did not intend to shoot Klumber. He said, "I knew the old gun would not shoot. I only wanted to scare him and keep him from hurting me. Klumber had been bothering me for a long time. He tried to buy my farm but it was not for sale. He kept knocking me down and hitting me in the jaw and hurt me bad. He kept coming to our place and making all sorts of trouble." Abbot also claimed it was Klumber who had poisoned his livestock. I was surprised that Abbot was so meek and such a small man. He said he was 70 years old. Klumber was much younger and a big man so my client's story sounded quite plausible.

I knew then that they could never pin a murder rap on him. There was no intent to kill.

I asked to see the gun. The officers admitted they couldn't make it work. It was an old obsolete 22-caliber revolver "Young America" model and five of the six chambers were loaded. Plainly it could not be made to fire a shot.

I got Abbot out on bail and took him home. Mrs. Abbot turned out to be a sturdy hardworking woman with a trenchant tongue who could swear as effectively as any man. She gave Klumber a thorough dressing down and told how he had abused her husband and kept making trouble. She said Klumber had "propositioned her" but she wouldn't have anything to do with him, and chased him off the place twice with an axe handle.

The murder charge created a great deal of publicity as it was written up in all its lurid details and even the city papers played it up.

A large picture of Abbot, snapped when I was talking to him in the jail, was published in the local paper, although it was taken without my knowledge. I was standing looking down at him at the time and the angle of the camera made me loom up above him while he seemed small, scared and rather insignificant. He did not look like a murderer and it was one of those unexpected breaks that helped change resentment into sympathy.

I spent two days openly interviewing the neighbors and townspeople about Klumber and soon found out he was considered a bully and that the sympathy was all for my old man. I even found one witness who saw Klumber knock Abbot down.

All this activity and the way Mrs. Abbot flayed him publicly in her picturesque language finally got to Klumber and when his friends began to kid him about being "shot" by a toy pistol, that broke

him down and he went to the Justice of the Peace and withdrew his charge and refused to prosecute the case.

It was then that we forced the dismissal of the case and had the bail bond released and my happy client was free and cleared of any charge.

The local officers who were called and made the arrest and also the sheriff were very much embarrassed at having been taken in by Klumber's "attempted murder" tale and were rather resentful.

We talked big about suing Klumber for damages for a false arrest, mainly to continue the jittery state of mind of the accuser. However, Mr. and Mrs. Abbot were happy about the outcome and their troublesome neighbor left them alone after that, probably because he did not want to take a chance of being "shot" again and certainly because he did not care to be chased off their place again by an irate woman with an axe handle.

DWIGHT G. McCARTY

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Volume I

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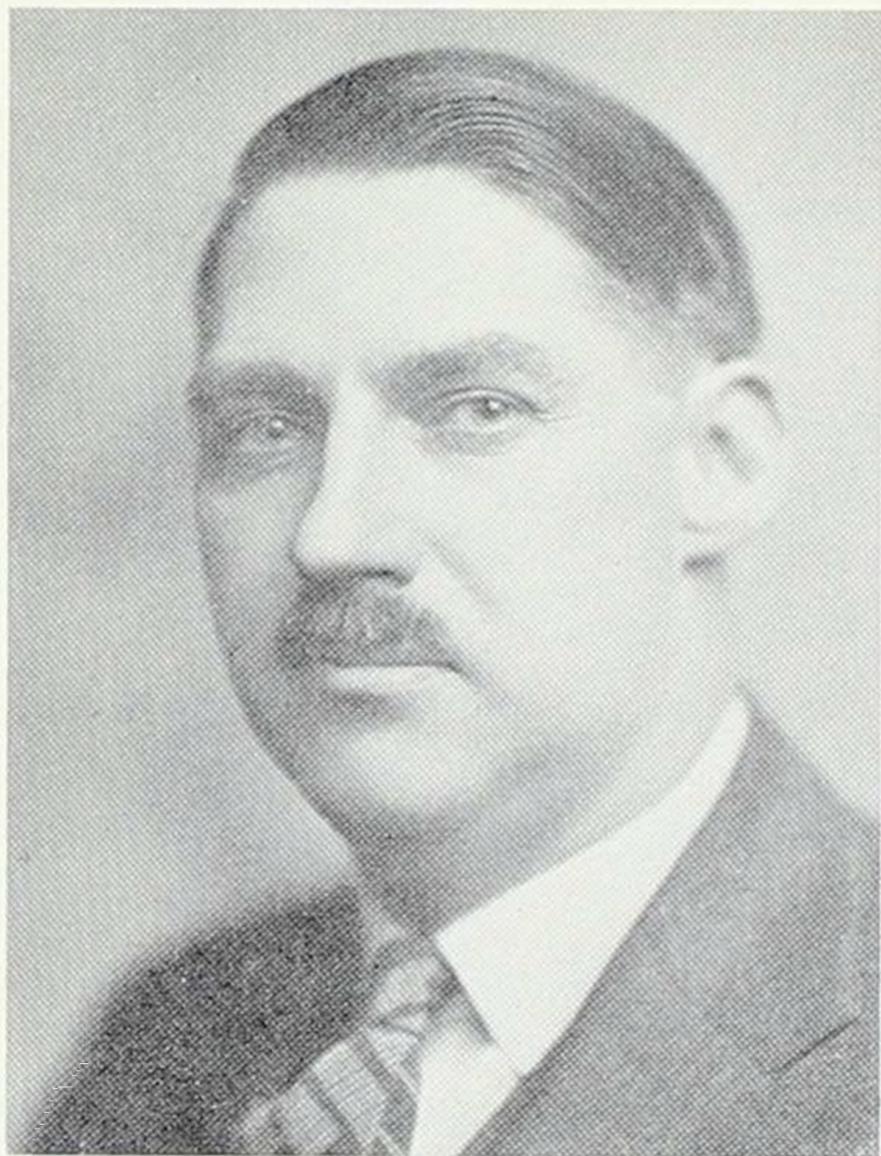
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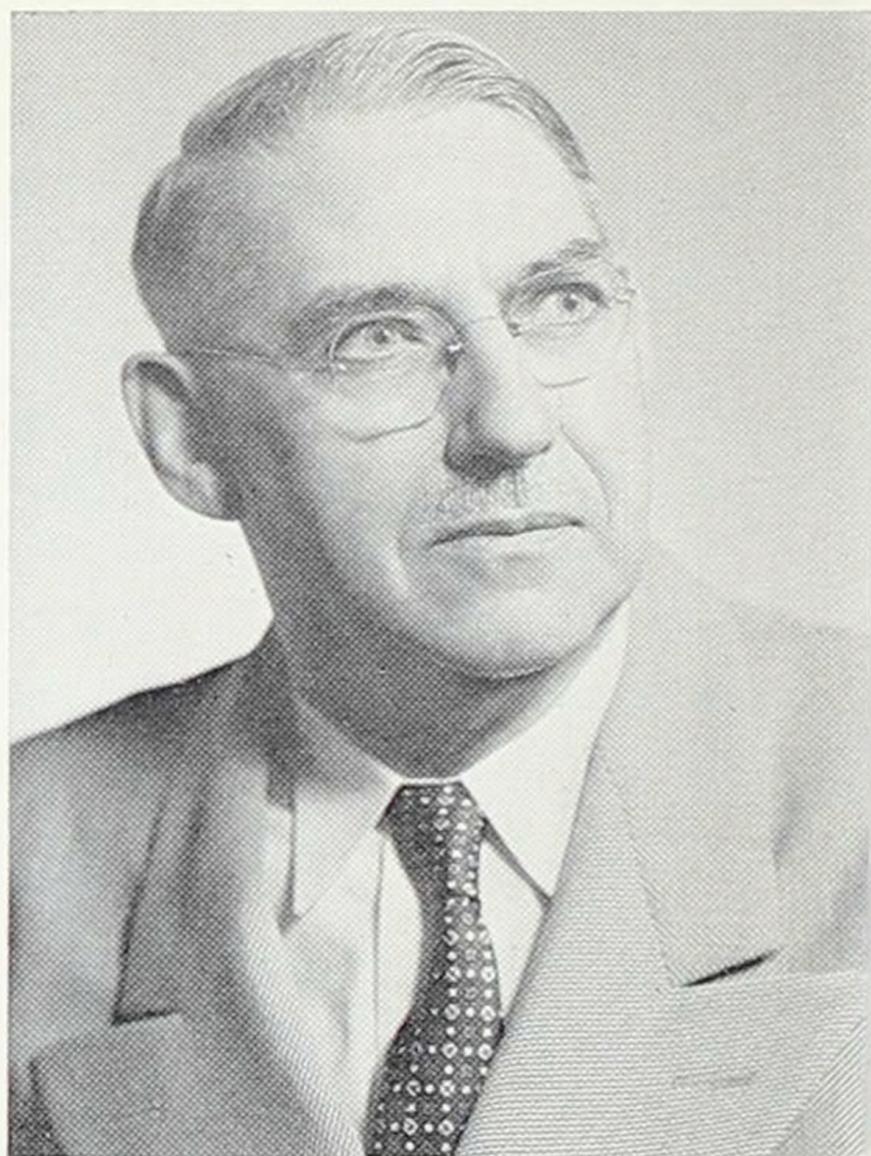
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STAGES IN THE CAREER OF A LEGAL SAVANT — DWIGHT McCARTY



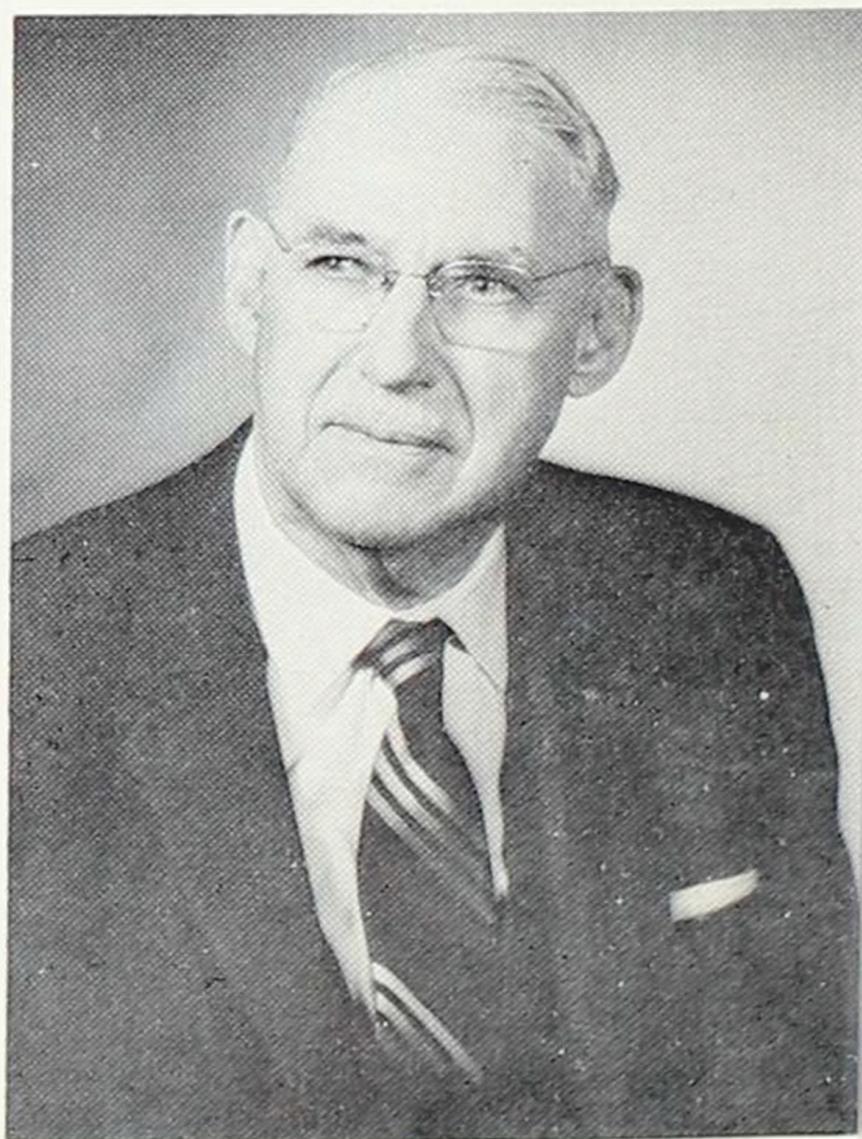
McCarty in 1927



McCarty in 1955



McCarty in 1960



McCarty in 1970