Durfee

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Dedication of the
Providence County Court House

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PROVIDENCE COUNTY COURT HOUSE,

DECEMBER 18, 1877,

BY THE HON. THOMAS DURFEE,

CHIEF JUSTICE OF THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

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State of Rhode Island, etc.

In General Assembly,

January Session, 1879.

Resolutions concerning oration delivered by Hon. Thomas Durfee, at the dedication of the Providence County Court House.

(Passed March 26, 1879.)

Resolved, That His Honor Thomas Durfee, chief justice of the supreme court, is hereby requested to furnish this general assembly with a copy of the admirable oration spoken by him at the dedication of the Providence county court house, on the 18th day of December, 1877, that the same may be appropriately printed.

Resolved, That the secretary of state is hereby instructed, upon the receipt of the manuscript of said oration, to cause one thousand copies of the same to be printed; and the state auditor is hereby authorized to draw his order for the expense thereof, out of any money not otherwise appropriated in the treasury.

A true copy. Attest:

Joshua M. Addeman,
Secretary of State.

PREFATORY NOTE.

The Providence County Court House is located at the south-west corner of College and Benefit streets, in the city of Providence, and occupies what was formerly known as the Old Town House lot, a site which has been used in part for public purposes for nearly a century. The land was condemned and taken for public use as a site for a Court House for the county of Providence, by act of the General Assembly passed March 9, 1875. On the following day, Messrs. Amasa S. Westcott, Edwin Darling and Thomas P. Shepard were elected, in Grand Committee, Commissioners to build a new Court House on the above designated site, with instructions to report plans and estimates during the same session. On the 30th of March, 1875, the Commissioners were empowered to build the Court House substantially according to the plans by them submitted, and an appropriation was made therefor.

Ground for the building was broken July 30, 1875. The corner stone of the edifice was laid by the Grand Lodge of Masons, May 15, 1876, the oration on the occasion being delivered by Hon. John H. Stiness.

The building was dedicated December 18th, 1877. At the dedicatory exercises a large audience was present, embracing the members of the General Assembly, of the bar, and other gentlemen prominent in public or private life.

The dedicatory exercises comprised a statement by Mr. Alfred Stone, of the firm of Stone & Carpenter, architects, of the construction of the building: an address by Hon. Amasa S. Westcott, chairman of the Commission, who at the close of his remarks delivered the keys of the Court House to His Excellency Governor Van Zandt, by whom a suitable response in behalf of the State was made.

By the Governor the keys were transferred to the custody of Christopher Holden, Esq., Sheriff of the county of Providence, who received them with appropriate remarks.

The dedicatory prayer was then offered by Right Rev. Thomas M. Clark, Bishop of the Diocese of Rhode Island.

Hon. Thomas Durfee, Chief Justice of the Supreme Court, the orator of the day, was then introduced and pronounced the oration, which is given entire in the following pages.

The oration was followed by an address from Hon. Abraham Payne; a collation and post-prandial remarks by Gov. Van Zandt, Hon. George A. Brayton, Ex-Chief Justice, Hon. Zachariah Allen, Bishop Clark, Senators Henry B. Anthony and A. E. Burnside, James C. Collins, Esq., Nicholas Van Slyck, Esq., and Gen. George Lewis Cooke.

The cost of the building, including furniture, was $253,253.70, being within the appropriations therefor.

Dr. Thomas P. Shepard, one of the original Commissioners, deceased May 5, 1877, and was succeeded by Hon. John H. Stiness, who with his associates continued as Commissioners until the completion of the building.

Judge Durfee's Oration.

We are here to-day to celebrate the completion of this edifice, and to dedicate it to the uses of the higher judicial tribunals of the State. The Commissioners having the matter in charge have invited me to make an address appropriate to the occasion. But what can I say which I cannot better trust you to think? Certainly I need say nothing in commendation of the building. You have seen it rise from foundation to turret, and, watching the gradual development of its architectural features, have learned long ago to admire its outward grace and beauty. And manifestly it is as admirable within as it is without. Time will doubtless disclose defects; but I venture to believe that it is essentially per-

feet in its adaptations. It is a superb monument to the genius of its youthful architects. It reflects great credit upon the Commissioners who have supervised its construction. Especially does it signalize the cultivated taste and rare practical skill of that one of them who lives no longer to receive our congratulations. Beautiful is it also for situation, being close by the city's busy centre, and yet sequestered from its noise and agitations. Seldom has justice had a worthier temple. Long may it remain a blessing to successive generations. And long may the spirit of fitness and order and majestic simplicity, here so visibly enwrought, be felt as a salutary influence, chastening and elevating, in the discussions and conflicts of the forum.

The dedication of this edifice marks a new era in the forensic history of the State. It is the first house ever built exclusively for the courts. It signifies that the courts have outgrown their ancient accommodations, or, in other words, that

their business has greatly and permanently increased. Thirty years ago, the Supreme Court sat in Providence from sixty to seventy days a year; now it sits two hundred days, or three times as long. The cases, now, are not only more numerous, but also more varied, intricate and important. A similar change has taken place in the Court of Common Pleas. What does it mean? To what is it going to lead? It means that there has been a great change in the community. It is going to lead, and has already led, to a great change in the professional character and forensic habits of the bar.

As respects the community, I do not think the change has come, as might be supposed, from any growing litigiousness. Litigiousness is the vice of a shiftless and vacant community, craving excitement, and therefore greedy of controversy. It is not the vice of a busy community absorbed in its own affairs, and having, to divert its leisure, the appliances of a luxurious city.

Rather does the change imply that the community, while becoming more populous, is also becoming more variously developed in its social, civic and business concerns. It is a sign of progress, not deterioration. The State is a humming hive of industry. Its industry is not homogeneous, but of many kinds, co-operative and competing. Hence new duties, new interests, new and complex relations, evolving new and complex questions of law and fact. The resources of jurisprudence are taxed to the utmost. New laws are constantly demanded, and the General Assembly, as well as the courts, prolongs its sessions. Progress has been said to proceed by the evolution of the more complex out of the less complex. It is not ascent only, but also diversification. Life, as it develops, propounds more problems than it solves, and can not multiply rights without multiplying the wrongs which result from their infringement. We, then, who are lovers of progress, have no

right to complain of its complications, nor to expect that the questions thence arising will not lead to a continual increase of litigation.

But for us to-day, the matter of interest is the effect of this increase on the bar. One obvious effect is an increase of lawyers. Thirty years ago there were between fifty and sixty practicing lawyers in Providence county; there are now between one hundred and sixty and one hundred and seventy, or three times as many. Thirty years ago the bar was not too numerous to constitute a true fraternity. Its members met often in social and professional intercourse, and they met always as familiar friends. To-day many members of the bar are strangers to each other. They meet too seldom, there are too many of them, they are too segregated in pursuit, to feel the bond of professional fellowship. Hence they are losing their *esprit de corps*, forgetting the traditions of their order, and ceasing to have any common sentiment of professional

honor or any common criterion of professional merit. This is to be regretted. The tone—the morale—of the bar suffers in consequence. The tendency is to degrade the profession to the level of a trade, and to obscure the idea of its public and quasi-official character. I would not press the point too far. There are lawyers without doubt who are sufficient to themselves. They need no incentive but their own ambition, no safeguard or support but their own virtue, and no exemplar but their own ideal. They can stand well enough alone,—and yet it is nobler for them to stand banded with their brothers. Indeed they cannot escape the solidarity of their profession. For the great majority of the bar there is both discipline and encouragement in the feeling that they belong to a fraternity which cherishes a fraternal interest in their behavior. I know the bar will pardon me if I entreat them not to let the feeling perish. There is degeneracy in its decay. It is no longer fostered as of

old by the circumstances of the bar. Let, then, the leaders of the bar create and improve opportunities for its cultivation.

Another effect of the increase of litigation shows itself in the decline of forensic oratory. The lawyer who has many cases to try must husband his powers. He cannot exert them as prodigally as if he had but few. He, therefore, adopts a more simple and business-like manner of speech. Again, it is not every case that admits of oratory. Cases for eloquence are cases which involve the primary interests or appeal to the primary feelings of mankind. It is when some personal or domestic right is violated, or political privilege impugned, or historic principle invoked, or when the mystery of crime awakes curiosity or appals the conscience, or when a case abounds in revelations of character or of striking contrasts and vicissitudes, that eloquence finds its appropriate field and safely essays its sublimest flights. But such cases are few and

do not multiply with the progress of society. In our day the cases which chiefly employ the courts grow out of the complexities of business, and relate to artificial or conventional rights and duties, or to questions of negligence, or to pecuniary values, or to interests in property, or to the more delicate demarcations of power and responsibilty in business affairs. In such cases eloquence is of small avail; but it is precision of language, clearness of method, completeness of analysis, logical fertility and patness of illustration, flooding the argument with light—not the chromatic splendor of the imagination, but the dry, white light of the understanding—which carries conviction to the jury, or persuades the court. Such an exhibition of intellectual power is more fascinating often to the appreciative mind than eloquence itself; but it is not eloquence, and it does not captivate the crowd.

The same cause has contributed to the same

result in another way, namely, by modifying the relations of the court to the jury. In early times the court did little but regulate the trial and decide questions of evidence. It left the jury to find its verdict almost without guidance or instruction. Under such a system a jury trial became a sort of oratorical combat or tournament. The argument had the utmost license. It mingled ridicule with reason; it abounded in inflammatory appeals to sympathy and prejudice; it was enlivened with wit and humor; it was interspersed with anecdote; it revelled in personalities; it was eloquent, impassioned, vituperative, panegyrical, denunciatory, anything, in short, for success. The wrong, if the more ably championed, especially if it had the last word, was not at all unlikely to triumph over the right. The system presented the strongest possible stimulus to oratorical talent. It passed away with the appointment of trained lawyers to the bench, and their appointment was one

effect of the multiplication of important civil cases. It passed away, not instantly it is true, but by degrees; for the old habits long survived, and the judges were slow to assert their just ascendency.

When I say this I do not mean to indicate or justify any encroachment upon the province of the jury. The court has no right to argue a case. It ought not to express its opinion on questions of fact. But it has the right, it is often its duty, to lay down the law distinctly and authoritatively as it applies to all the different phases which a case can assume in the minds of the jury, and in doing this to present the testimony afresh in all its bearings. There is, in every case, a logical order, and, when a case is put in that order, the points, on which its decision will properly turn, come clearly out, and the relevant testimony naturally clusters about them, while the irrelevant, which is so apt to bias and mislead, drops away like dross

from pure metal when it is refining. To put a case thus to the jury is often all that is required to clarify their perceptions and make their duty patent to them. It is often all that is required to neutralize the evils of a perverse or an immoderate advocacy. And certainly before its searching operation the bombast and inflation of a spurious oratory can hardly fail of falling into ridiculous and disreputable collapse.

But, furthermore, increase of litigation discourages forensic oratory in still another way. Oratory loves the popular ear. It abhors the hollow reverberations of empty walls. It languishes without a numerous auditory. But a court always in session is not a popular resort. The public leaves the press there alone to see and hear for it. The lawyers, not actually engaged there, desert it for their offices. It is when terms are short that the court attracts the multitude; and then especially, if it is recognized as an arena for intellectual display. Such

was the Supreme Court of this State thirty or forty years and more ago. The leaders of the bar then made it a point to be in court constantly when the court was in session. Lovers of intellectual and emotional excitement visited it in crowds. The most intelligent citizens were frequent spectators of its proceedings. The result can be easily imagined. Trials were conducted under the ordeal of professional criticism and under the encouragement of popular appreciation. Advocacy acquired the perfection of a fine art. The trial of a great cause gave delight like a drama, and, by reason of its reality, had an even more absorbing interest. The fame of the leading lawyers of that day is still a treasured tradition of the bar. We who have never seen the men have yet a realizing impression of their mental characteristics, and can conjure up, as it were, some visionary presentment of their persons. To paint their portraits is no part of my design. That is for others; my palette lacks

the necessary colors. But nevertheless I may be permitted to pause for a moment and call over the roll of their illustrious names; for to do so will bring into clearer relief the reality and character of the change which I am asserting.

The familiar names will doubtless occur to you before I utter them; blame me not if some occur to you which I leave unuttered; for I cannot exhaust the catalogue. There was James Burrill, with his practical and persuasive sagacity, cultivated mind and sterling character; Nathaniel Searle, with his unerring and lightning-like perception of the pivotal points of a case; Tristam Burges, with his brilliant but caustic oratory and audacious antagonisms; and passing to Newport, Asher Robbins, with his polished speech and affluence of classic learning; William Hunter, with his ornate and modulated rhetoric and stately elocution; Benjamin Hazard, with his withering wit and dialectical acumen; and,

passing still on to Narragansett, the late Elisha R. Potter, with his commanding personality and masculine common sense. What a galaxy of splendid and strongly contrasted minds! And others there were, their contemporaries yet survivors at the bar, who have for many of us a still more living interest. I myself can well remember the stalwart and colossal form of Samuel Y. Atwell, towering like a Titan, as with rich and sonorous voice he poured out the full volume of his spontaneous and powerful eloquence, captivating even when it did not convince. And still better can I remember the manly port and presence of John Whipple and his athletic action, as with distinct and resonant articulation, the words dropping from his mouth like coins from a mint, he developed the serried strength of his arguments and reinforced them with his glowing and impetuous declamation. Him Orville Dewey, once having heard him on the hustings, pronounced the most eloquent of men.

And again, still others there were, memorable men, but of a more modern cast of mind, though not unschooled in the earlier methods. I will mention four of them, and you will pardon me if, yielding to the suggestions of memory, I do something more than merely mention them.

There was Richard W. Greene, the safe counsellor, loving the light of ancient precedent, learned in the common law and greatly versed in equity jurisprudence before any court of the State had as yet any considerable equity jurisdiction; not a moving orator, but a consummate master of analysis, preëminent for his power of perspicuous statement.

There was Albert C. Greene, a gentleman in the truest sense, full of genial kindness and urbanity, dear to the bar and dear to the popular heart, an excellent lawyer, a favorite advocate, whose prepossessing fairness and never-failing good sense were more invincible often than the finest oratory. He was unrivaled as an exam-

iner of witnesses. The friendly witness, no matter how embarrassed, was instantly put at ease by his gentle manipulation. But his *forte* was the cross-examination of the hostile or secretive witness. It was the angler playing with his victim. Far from seeking to intimidate, he humored him to the top of his bent, putting him off his guard and getting his good-will by degrees, while he pleasantly unmasked his prevarications or concealments, and kept him all the time complacently unconscious of the operation.

There was Thomas F. Carpenter, with his Ulyssean mind and amazing art of winning verdicts in desperate cases. I have often heard him. He was exceedingly plausible and ingenious, a sort of magician of the forum. In his hands the flimsiest supposition or conjecture quickly got to looking like a solid fact. He was an actor as well as an advocate. He managed every case with imposing seriousness, as if he felt its justice and importance too deeply to

trifle with it. He treated the court, however unfavorable, with deferential respect; for he wished, if possible, to seem always to have it on his side. And deferential as he was to the court, he was still more deferential to the jury. This, in itself, was a potent piece of flattery. But it was not enough for his purposes. He knew the insatiate swallow of mankind. He plied the jury with compliments, lavished or insinuated at every point. You think, perhaps, the artifice was too shallow to succeed. I doubt not the jurors thought so too; but, all the same, he got his verdicts from them; especially when he had the closing argument. But let me not be misunderstood. I do not mean that he was great only in desperate cases, and before a jury. He was a man of extraordinary powers, as well as of extraordinary idiosyncrasies, and whoever crossed weapons with him in any cause was sure to encounter a formidable antagonist.

Finally there was Samuel Ames, not a lawyer

merely but a jurist, cultivating jurisprudence as a science or a philosophy. His capacious mind was not only stored, but impregnated and fertilized with the principles and precepts of the law as with so many living and procreant germs. His juridical fullness and fertility were apparent, not only in his forensic efforts, often too exhaustive for the occasion, but even in his common conversation, which, moreover, was as vivacious as it was instructive. As Chief Justice he has left in the Rhode Island Reports many a permanent proof of his powers, but nothing which duly represents the brimming exuberance and facility of his intellect. No Rhode Island lawyer ever exhibited so full and so supple a mastery of the complex and enormous system of English jurisprudence.

This brief retrospect confirms my view.—Among the lawyers just named, the two who are most familiar to us are Richard W. Greene and Samuel Ames. They were neither of them

splendid orators, like Whipple or Burges. They were effective speakers; but for us their chief distinction is that they were masters of the modern method, and so can teach us more than their more eloquent contemporaries or predecessors. Another master of that method, known to all of us, was the late Thomas A. Jenckes. He had the intellectual weight and momentum and the large utterance, but not the magical manner and self-enkindling enthusiasm of the orator. The track of his career lies shining along the steeps and among the summits of his profession. It indicates the path of success for our day. What is that path, — the modern method, as I have denominated it? It is not a path for lazy genius, dreaming of unearned renown. It is not a showy method, in which sham can serve for substance. It is the method of prudent business, seeking valuable ends through means appropriate to them. It is the method of indefatigable study, of disciplinary practice,

of varied and accurate acquirement. It is the method which demands for particular cases the mastership of particular preparation. It is the true method for all earnest aspirants to juridical distinction. Profit may be reaped on the lower levels; but honor and fame grow aloft, where they cannot be reached without climbing for them. Let the brave student gird himself for the ascent. It is difficult, but full of exhilaration. Just now, too, there is a fresh breeze blowing, vivifying what it blows upon. A new light, rising in the dusky dawn of the primeval world, is just beginning to shine through the lenses of history and archæology into the obscurer provinces of the law. The study of comparative jurisprudence is showing that there is in law, as there is in language, a substratum common to the Aryan nations, pointing to their common origin, and so imparting to the dryest and most crabbed of legal antiquities a truly human and philosophical interest. The profes-

sion of the law, therefore, though it may have lost some of its oratorical prestige, was never more attractive than it is to-day, as an intellectual and liberalizing pursuit.

But because forensic oratory has declined, it is not to be presumed that it has perished. It has merely descended from the chief to a subaltern position. Even there it can often be used with enchanting and irresistible effect. Oratory is one of the divinest of the arts, and it cannot lose its potency so long as the human heart retains its human sensibilities. No young lawyer who feels its birth-throes need smother them in his bosom; for eloquence, if genuine, is always well received. How quickly does the court-room fill, even in our day, when it is bruited abroad that some case is coming on which involves matter of deep passion or popular concern, to be handled by eloquent and well-matched advocates. How eagerly the spectator listens to the opening words. How curiously he scans the parties.

How soon his curiosity warms into interest, and his interest into partisanship. For what is there more fascinating than a great trial conducted by great lawyers. It is a battle in which powerful antagonists contend for victory. It is a drama in which the innermost phases of human nature are developed and displayed. It is an arbitrament where justice holds the scales and pronounces her dooms. No wonder men flock in crowds to witness it.

For one I rejoice to have them do so. I want no secret tribunal. There is nothing like publicity to make the administration of justice pure and upright. Moreover, the presence of the people in court-room and jury-box have done much to keep the law on a level with their plain sense and wholesome feeling, and to save it from over refinement and piddling distinctions. We all know, too, that the time has been in England when the jury box was one of the strongholds of freedom. It is well for justice herself to feel

the influence of fresh and ingenuous minds, to deliver her from the bondage of her own precedents. It is well for bench and bar to have the public eye upon them; for men are kept at their best by observation and criticism. Finally, it is well for the people, for their own good, to frequent the high tribunals where their rights are vindicated and their wrongs redressed. I am glad that *here* there is provision for them. And here I trust, for many generations, forensic oratory, not so transcendant it may be as of old, nor yet so unbridled, but chastened and subordinated, will continue to attract and delight them.

One other effect on the bar of an increase of litigation remains to be noted. DeTocqueville, in his book on Democracy in America, celebrates the predominance of lawyers in American politics. He holds that lawyers as a class are conservative, lovers of order, foes to innovation, followers of precedents, and so the natural coun-

terpoise to popular excesses; and he predicts the ruin of the republic unless their influence keeps pace with the growth of popular power. No one who knows the past will deny the fact which he asserts, whatever he may think of his prophecy. Consider a moment the century which has just closed. What a host of brilliant names come trooping to remembrance: Hamilton, Adams, Jefferson, Madison, Marshall, Webster, Clay, Calhoun, Benton, Seward, Lincoln, Stanton, Chase, Sumner and a hundred others. To pluck them out of American history would be like plucking the stars from the firmament. Great lawyers in great places! But consider also the unhistoried myriad who, in obscurer offices and narrower spheres, have been fashioners of public opinion. Who can estimate the value of their influences? Who can tell how different the political history of the century might have been but for their enlightened patriotism?

Now I think it is evident that the influence of the profession in public and political matters is waning. This is attributable to several causes. Chief among them is the diffusion of education, which, by raising the general level of intelligence, lessens the difference between lawyers and laymen. But the increase of legal business is a cause which is hardly less powerful. The leaders of the bar are absorbed in their profession, to the exclusion of other interests and pursuits. And this absorption is intensified by augmented fees. The love of lucre is the great lever of the modern world, and is, I fear, as potent with lawyers as with other men. The prosperous lawyer has no leisure for politics unless he makes it; and his practice is so profitable that he too often refuses to make it. And so he toils and moils, and gathers gain and ends by becoming the slave of his own speciality. Of course this is all wrong. No citizen has a right to abdicate his citizenship. The abler he is, the

more sacred his duty is, to think for and counsel and serve the State. I admire the ideal exemplified by the great lawyers of Republican Rome, who, however numerous their clients, never forgot to be citizens and patriots, and who, whether in or out of office, were always a power in the commonwealth. The word which the old Latin writers select to express their quality is "*auctoritas*," meaning not so much official as personal influence and authority, or weight of character in public matters. I wish our great American lawyers would aspire to the same distinction.

Permit me a moment more on this point. We live in an age of political and social ferment. The spirit of communism is abroad. The old Hydra of inflation grows rampant again. The relations of labor and capital are disturbed. New ideas in regard to property are promulgated. New and unsettling ideas in regard to all things are freely broached and discussed, not alone in speculative circles, but among the com-

mon people. Visionary reformers teem with projects of legislation. Innovation is the order of the day. I trust that in the end some good will somehow come out of all this turmoil of revolutionary thought. But meanwhile it affords tempting opportunities for demagogy. The crying need of the times is wisdom and ripe experience, combined with disinterested patriotism, to enlighten public opinion. Where can we look for them, if not in the legal profession? The accomplished lawyer is by education nine-tenths of a statesman. He has what, in the conglomerate of races which constitutes the American people, so few have—a living sense of the continuity of our civilization. He knows how it has broadened "slowly down from precedent to precedent." He can trace through a thousand years the glorious lineage of our liberties. He can follow the right of property back almost to its origin. He knows the steps by which it has been emancipated from feudal fet-

ters. He knows the sanctions by which its inviolability is secured. He can see how, pivoted upon that inviolability, it has become the mainspring of modern progress. For him, to-day is but yesterday unfolding. He distrusts the bastard progress that cannot find its pedigree in the past. It is this peculiarity of his education which makes him conservative and fits him to play the part which De Tocqueville assigns him in American politics. It is true, conservatism is never safer than when it is progressive. This the accomplished lawyer knows; for the common law is an example of it. He has learned from that law to reason and generalize and advance; but always step by step, feeling the ground before him. There is no leap in the dark—no abstract theorizing—no coursing with the winged Pegasus of phantasy. Besides, his practice brings him into acquaintance with many minds and shows him human nature as it is. He has learned what it is, too well, to mistake the Uto-

pia of the enthusiast or charlatan for the real world. Having a mind of such prudence, such knowledge, such various training and capability, he needs only preserve his probity and patriotism and keep himself conversant with the questions of the day, to be the weightiest of public counsellors. To be so is surely worth some sacrifice. Indeed, the profession ought to consider that it cannot lose its political ascendency without losing character and caste as a profession.

I must bring my address to an end. This house is designed to endure for ages. To-day it is barren of all forensic associations. It has no history. A century hence, and what a multitude of memories and traditions will cluster about it. What revelations of human character and destiny will have been made within it. Add yet another century, and no many-chaptered chronicle of Eld were more multifariously curious and instructive than these dumb walls, if,

then, they could but report their past. In creating their history, the bar and the bench will necessarily play a principal part. Upon them will it depend whether the history shall bring honor or discredit. Let us then, my brothers of the bar and bench, realizing this, elevate ourselves above all mean and all merely mercenary views to a high and just conception of our vocation; and now, while we dedicate this temple of justice, let us also dedicate ourselves, as ministers of justice, to an upright, pure and honorable service within its consecrated precincts.