

WILLIAM EPHRAIM MIKELL

WILLIAM DRAPER LEWIS †

One cold and snowy day in March, 1896, I was sitting in my small office in the Drexel Building, Philadelphia, when there entered a young man evidently a Southerner and a gentleman who introduced himself as "Mr. Mikell." His light overcoat may have been suitable for South Carolina but not for Philadelphia in a snowstorm. He was cold, very cold; the radiator was welcome. That was my first meeting with William Ephraim Mikell. It was the beginning of a close association and warm friendship which lasted uninterrupted until his death on January 20.

It was a fortunate circumstance for the Law School of the University of Pennsylvania and for Philadelphia that in the winter of 1895-6 George Wharton Pepper and I were engaged in trying to produce in many volumes a Digest of the decisions of the courts of Pennsylvania. The enterprise soon became too large for the editors and such assistance as we could secure in the City. Through discreet advertisements and letters it became known to the legal profession in New York City and several southern states that members of the bar not overburdened with clients might to their advantage secure interesting legal employment in the City of Brotherly Love. My recollection is that the number of those of all ages who sought to join the Digest force exceeded two hundred. Out of those that applied between twenty and thirty, among whom was "Will" Mikell, were given a trial. It did not take long for George Pepper and me to recognize his ability. Legal education in most parts of the country was then perhaps at an "all-time low." The South was no exception but at least it retained some good features of the old office system and very generally was spared the wave of hot-house night schools which had sprung up in the Central and Northern States. Furthermore, the Department of Law of the University of Virginia which Will Mikell attended in 1894 though its lecture system left much to be desired, had traditions, law was recognized as a science as well as an art and its practice something more than a business for profit. Nevertheless, like myself and most young lawyers of our generation, he had not a systematic legal education. On the other hand, by inheritance or self-training or both he had the instincts of a scholar. He knew when he did not know. No work was too great to make what he wrote an accurate statement of

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the law. The manuscript of his Titles in the Digest required little or no editing.

Soon our growing friendship and the good work he did on the Digest caused me to seek his help when I undertook to produce a new edition of Blackstone's Commentaries. Judge Sharswood for his edition, the one then in general use, had collected and arranged the notes of all earlier editions. My plan was to add notes based on the hundreds of decisions citing the Commentaries. Furnished with these citations, each referring to a specific page of the original edition, Will Mikell wrote a large portion of the new notes on which the reputation of the edition largely rests.

In the fall of 1896, I became Dean of the Law School of the University of Pennsylvania, charged with the duty of reorganizing the School. From the first it was my desire to have Will Mikell on the teaching staff. But the legal profession then as now was conservative. No person had ever taught in the School who was not a member of the local Bar. It was, therefore, not until the summer of 1897 that I suggested his employment and then only for the minor position of Instructor as "Quiz Master in Blackstone." When the appointment was made I hope the recording angel was not asleep, for I never did anything more fruitful in good results. It was not long before the first-year students, all of whom took his Quiz in Blackstone, realized that in him they had certainly as good a teacher, perhaps better, than any member of the faculty. His appointment in 1899 as Assistant Professor and in 1902 as Professor came as a matter of course. No one ever raised the objection, few even thought of the fact, that he had never practiced at the Philadelphia Bar and very little at any other Bar.

It is of interest to try to discover the factors which make the successful teacher. Personality, knowledge of the subject taught, and an interesting way of putting things, these all count. But Will Mikell was much more than a successful teacher. He was that rare phenomenon, a "master teacher." In the course of my own experiences in school, college, and law school, I only came under two teachers who deserved the appellation. In each instance they had the ability not merely to interest me and to make me study and acquire knowledge, they made me think; not think their thoughts and adopt their ideas but to do my own thinking—the hardest critical, constructive thinking of which I was capable. From my knowledge of Will Mikell and my contacts with his students, I believe he had in a high degree this ability. The method used and the effect were the same. An illustration may perhaps make clear what I mean.

When the Law School in 1900 moved into its present and then just completed building in West Philadelphia, the members of the faculty, instructors, and a few kindred souls from other departments of the University carried on for several years a voluntary and unorganized luncheon club in the basement of the building. The club was intentionally inappropriately called "The Arguenots." We argued on all subjects, political, legal, and otherwise. No subject, no opinion, and no "argumental strangle holds" were barred. Only pompous platitudes were howled down in the debates. Will Mikell had the maddening habit of questioning the validity of never-before questioned assumptions, facts, and principles. His criticisms seemed to his adversary to be designed not to convince but to confuse. Taking it all in all he was the most irritating and good-natured person I have ever debated with; apparently wasting my time forcing me to prove the heretofore obvious. And yet in a short time after one of these debates, I found that I had been doing conscious and perhaps unconscious thinking; that my own points of view and assumptions were modified; or if not, I had done what I had never done before, analyzed objections to my conclusions and thought out the reasons for sustaining them.

This experience of myself and others at the luncheons in the Law School basement was the experience of Will Mikell's students. Often I would overhear "between hours" in the great hall outside the classrooms irritated students redebate the discussion in his classroom and more than once the "Dean" was sought out by a student craving assurance that his own opinions were right. Of course, back of Will Mikell's insistence that the student face and answer for himself the real difficulties of the subject was the fact that he himself had and was facing them.

In a professional school the students come to learn. They are tolerant and most long suffering of poor teaching if the teacher is known to be recognized by the profession as an expert on the subject taught. Will Mikell had not been teaching long before he fulfilled this requisite, especially in the field of Criminal Law in which he soon became and held first place. This fact combined with his great skill as a teacher made him the really master law teacher which he soon became and thereafter continued to be.

The Arguenot Lunch Club to which I have referred argued at the "turn of the century" the pre-Civil War controversies between the constitutional ideas of Chief Justices Marshall and Taney. It is needless to say that Will Mikell, the son of South Carolina, defended Taney's decisions while I, a Northerner, espoused the ideas of Marshall. In 1904-06, I was editing the "Great American Lawyers" in which

nearly a hundred judges and lawyers then deceased are the subjects of separate essays. If the reader desires to know something of the conflict of ideas and ideals of the two great Chief Justices, he can read what Will Mikell and I wrote about our respective idols. Of his essay on Roger B. Taney, it may be said that while some of the other ninety-six essays may show greater literary skill and a greater power of interesting anecdotal descriptions, to the lawyer none is more satisfactory in its clear legal analysis or gives greater evidence of painstaking, scholarly, legal research.

When in 1914, after a year's leave of absence, I resigned from the Deanship and greatly reduced my work as a law teacher, there was in the minds of the Faculty and Trustees and in my own mind no doubt as to who should succeed me. We all wanted Will Mikell and he accepted the appointment and with it its grave responsibilities in the slack period of the University's development which followed the retirement of Charles C. Harrison as Provost. Although I retained an office in the Law School and taught one subject until 1922, I wisely determined to have nothing to do with the running of the School. That would have been unfair to my successor. I rarely attended Faculty Meetings and never discussed questions of school policy with Will Mikell or with any of my former associates. Therefore, while our close friendship continued, I know little about the School during the years in which he was Dean and I am glad to see that the account of his work at that time is to be written by Dean Edwin R. Keedy, who joined the Faculty in 1915 and ever thereafter was his close associate. This much, however, I know that during Will Mikell's Deanship the educational standards of the School were not only maintained but improved.

The period of Will Mikell's Deanship marked a new association between us. In 1923 on the founding of the American Law Institute I became its Director. Although the principal object of its formation was the creation of what the profession now knows as the Restatement of the Law, from the first there was a general desire in which I shared to do constructive work in the field of Criminal Law. This desire was realized in 1925 when the Institute began work on a Model Code of Criminal Procedure. As with other Institute projects, the preparation of drafts for the consideration of the Council of the Institute and its members was committed to a group of experts consisting of Reporters and Advisers with varying practical experience. The appointment of William E. Mikell and Edwin R. Keedy as Reporters is the best proof of the position each had acquired as experts in the subject. The work on the Code was not completed until 1930. As Director I presided

at the many conferences of the group over the successive drafts prepared by the Reporters, enjoying to the full the close association with men who knew the defects of the existing law and were in a position to judge from their various backgrounds the suggestions for improvement submitted by the Reporters or brought up in the course of the discussions. If I had ever doubted Will Mikell's constructive ability, my association with him in this work would have dispelled that doubt. He was by nature conservative but like other scholarly conservatives when he knew his subject he was quick to point out defects in existing law and had no hesitation in advocating the necessary remedy. On the completion of the Code, he became Reporter for the Institute's Model Act on Double Jeopardy, one of the best short Acts clarifying the law on a difficult subject which the Institute had produced.

As those familiar with recent work in the field of Criminal Law and its administration are aware, and as Dean Keedy will doubtless point out in his article, Will Mikell's work on the Institute's Code of Criminal Procedure is only one of a series of notable Acts and Codes with which he was connected as the responsible draftsman.

As I think of my lifelong association with my friend that which is uppermost in my mind is not his work as a law teacher and as an expert in Criminal Law but the personality of the man himself apart from the things he did,—of his keen and always friendly wit, of his courtesy so innate that it often concealed from the casual acquaintance his strong character. As he was on the snowy March day we first met, so he remained; a Southern gentleman loving the South and its sunshine, always dreading the winter's cold of his adopted city as if he had never quite thawed out after his first experience with its climate. It is good to know that the last years of his life in spite of delicate health were happy. He had accomplished much he had wanted to do. Though "retired" and called an "Emeritus professor," until last fall he was requested to do just enough teaching to make him realize that he was still needed. The summers found him with his family at Castine, Maine, and though he no longer played golf at which he once mastered many a younger opponent, there were always friends. Best of all, for three or four months in the winter and spring he lived in Charleston, the home of many of his ancestors and the city he loved best; in the mornings there was almost always the garden and the sunshine, and in the afternoons, should he so desire and he usually did, the club, his friends, and bridge.