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THE PUBLIC’S IMPRESSION OF LAWYERS’ ETHICS—A PANEL DISCUSSION

Members of the Panel: John M. Allison of the Tampa Bar; J. S. C. Butz, Managing Editor of The Florida Times Union; A. D. Davis, cattleman and President of Winn & Lovett Grocery Company; Giles J. Patterson of the Jacksonville Bar; Robert J. Pleus of the Orlando Bar; George E. Sokolsky, author, lecturer, and columnist; the Right Reverend E. Hamilton West, D.D., Bishop Coadjutor, Episcopal Diocese of Florida; and Henry S. Drinker of the Philadelphia Bar, Moderator. Questions prefaced with “Q.” were propounded from the audience.

Mr. Drinker: We know that the laymen’s chief complaint against the law is the time it takes to get a case through the courts. They do not recognize the court structure as an entity; they do not even comprehend the difficulty in getting a time for the hearing on the court calendar, although they know that the delay is an obstacle to justice. I have spoken to a great many people, and most of them feel that they do not know exactly who is responsible for preparing and presenting the cases. But something should be done about it.

In New Jersey, up until four or five years ago, the situation was worse than anywhere else. They were far behind; they had no justice at all, in civil cases and everything else. They finally called a meeting and elected one of their great lawyers as Chief Justice of New Jersey. They gave him power to reorganize their legal system—everything connected with the trials of the cases, not just the mechanics—and in about three years he brought them up to date.

That is the best system to use anywhere, I believe; that is, pick out a very good man and authorize him to do the job; put him in charge of the situation, and it will be remedied. In Pennsylvania the court situation is bad. It is not so bad as it is in New York, and not nearly so bad as it was in New Jersey. What do you think about it, Mr. Pleus?

Mr. Pleus: I think that the New Jersey reform came about as the result of the work of the organized bar of New Jersey. It spearheaded the entire movement for the reformation of the judicial system, for the vesting of power where it should be vested, and for the reorganization of their courts.
I would say that the layman has the right to blame the bar for the situation, because the bar is the only instrumentality that can be utilized to bring about the necessary reforms in judicial procedures, including the preparation of the constitutional amendments and the revisions that are usually necessary. In Missouri, for instance, the bar brought about the great reforms there.

The layman ordinarily comes into contact with the courts very little. His only experience is in a police court, ordinarily. The bar, however, knows all these problems, and it is the bar’s responsibility to act. The bar should recognize that responsibility and go ahead and fix things up; and one of the best indications of our growing sense of responsibility is the action of The Florida Bar in having this institute.

Mr. Drinker: Before we go on to these particular questions probably I should ask each member of the panel to speak for three or four minutes as to his views on this general subject, that is, the public’s impression of lawyers’ ethics. Mr. Butz, what is your general view of this subject?

Mr. Butz: I believe that this is one of the most momentous occasions in the newspaper profession, if not in the legal profession. Quite often one newspaperman, like Mr. Sokolsky, has spoken to a group of lawyers, but very seldom have two ever had a chance to say anything in the same evening.

I have talked with lawyers on many occasions, but never before have I talked to a lawyer. Most of my previous conversations with members of the profession have consisted mostly of nods of the head in the affirmative. I do not say this disparagingly; I have enjoyed most of my contacts with the legal life. As the saying goes, most of my best friends are lawyers. In fact, I have been surrounded by lawyers for many years, and I am not so gloomy about the whole thing as is Mr. Sokolsky, especially about the members of the newspaper profession. I think that there are good people working in newspapers, and I think Mr. Sokolsky is one. I think there are many fine lawyers and many fine judges. It is true that we find some that are not, but it has been my good fortune, almost without exception, to form good legal contacts.

The nature of my work has, of course, made me aware that not all lawyers are as forthright and as honest as my associates, but all in all I have no complaints to make of the legal profession as attorneys.
and counselors. In talking of the ethics of the legal profession I am therefore doing so in a most objective fashion, and I trust that this will exonerate me with all of my friends.

The main point that I would like to put forward is: Does the legal profession believe that ethical conduct can be legislated either by the profession or by process of the legislature? This may be an old basis of argument, and I presume it is, but I would like to hear it brought up to date.

The reason I am inquisitive about this is that we have a code of ethics in the newspaper field. It was adopted a good many years ago, and there are a few copies still in existence. I tried to find one, and I could not find it in New York. Everyone enthusiastically subscribed to this code of ethics in 1928 or 1929; and we immediately forgot about it, of course, so the ethics of newspapering are bound up in the individual. Even the most dastardly of us can offer the most convincing arguments in favor of his position. He can fall back on the freedom of the press and then go into the people's right to know. The latter-day portion of the slogan has been adopted by the scurrilous portion of the press. Of course, as is usually the case, it had an entirely innocent origin.

I wonder whether the legal profession does not find that its ethics are largely in the hands of the individual members, whether there are not loopholes in the professional code of ethics, such as are found in the newspaperman's code, and whether lawyers do not believe that perhaps the best method by which to achieve the goal is to police the matter at the source rather than to wait until the crime has been committed — in other words, to be much more careful who is admitted to the bar than might be the case at the moment.

Mr. Drinker: I thoroughly agree, especially with the last statement, that we should be careful whom we admit to the bar; and we should also be careful whom we allow to stay at the bar, and when a man gets disbarred he should stay disbarred. I feel that strongly.

I doubt that ethics can be legislated. I cannot recall too often the brilliant remark made by Lord Moulton in England, at the close of the first World War, that true civilization is measured by the extent of obedience to the unenforceable. This notion is tremendously profound, and it is the essence of legal ethics. You can not create ethics solely by discipline and that sort of thing; you have to do it primarily through a man's inner conscience. Mr. Davis, what do you think of this general subject?
Mr. Davis: My observations will be limited to the grocery business. That is the only field I know anything about. But I would like to give my observations as to how the present-day law and present-day court decisions affect the business in which I am engaged.

I would like first to tell the story of the old New England merchant who had been using the same yardstick for years to measure his dry goods for his customers. The weights and measures inspector came in one day to check him and found that the yardstick was actually only 34 inches long instead of 36. The owner of the store refused to believe he was wrong. He said that his father had used the yardstick before him and his grandfather had used it before that. They had been using the yardstick for years, so they knew that it was a proper measurement. The fact that the yardstick was worn or had been whittled down until it had lost two inches made no difference to him.

We feel that something similar to this has happened to some of our legal rules affecting public liability. I am now quoting roughly from a news article that came out in a Tallahassee paper recently: "After an $11,000 award by the circuit court, Winn & Lovett's attorney asked the court to set aside judgment granted Mrs. William DeLong by a jury, to have a judgment entered in favor of the defendant, in accordance with a motion for directed verdict asked by the Lovett's attorney. Mrs. DeLong alleged that she was injured when she fell in a Lovett's store, after she stepped on a small rock in the store. The grocery chain claims competent evidence failed to show the defendant placed the rock on the floor, or even knew it was there." Even though this was true, Mrs. DeLong received an $11,000 award in the circuit court against the Winn & Lovett Company. There are two questions that I would like to ask.

First, why is it that business is presumed to be guilty of contributory negligence to such a great extent? Whether a person is passing a place of business, or walking through the public aisles of the store or even near it, when an accident happens to him the merchant is liable. We say that a man walking through a fresh fruit and vegetable department should naturally expect that there might be a bean or lettuce leaf on the floor from time to time. Yet a bean on the floor in one of our stores is worse than a piece of dynamite. It is truly a lethal weapon. The customer will probably be careful of the piece of dynamite, but he will step on a bean. And many such incidents cost from ten to twenty thousand dollars each. We recently had a case in Miami in which a woman sixty-five years old fell on the floor, and the only damage done was a fallen womb, but it cost twenty thousand dollars.
Heaven pity Winn & Lovett if a 25-year-old woman ever falls down in the store. I am serious about that.

The next question I ask is: Why should these cases be tried before a jury rather than by a judge, who is ruled by what is right and what is wrong rather than by the legal tricks or the ability to pay? After all, there is no business that is able to pay more than the amount of money it can get out of the consumer. The consumer pays all the bills; I will guarantee you that. I understand that such cases are ruled on by the judge without jury trials in England; hence they have no ridiculous decisions such as we have here.

We carry public liability insurance, but this is nothing more than self-insurance for the average policyholder. Our own premiums on this insurance are 114 percent of claims paid, so we actually are paying all the claims in full plus 14 percent to the company for servicing the account.

I would like to hear some discussion from the legal profession as to the reason for the wider and wider interpretation of contributory negligence. Were not the interpretations considerably different fifty or a hundred years ago?

Mr. Drinker: That is very interesting indeed, that point of view. I know the verdicts were not so big several years ago as they have been recently.

That yardstick story reminds me of a perfectly irrelevant story about a fisherman — maybe you have heard this one — he had a scale with which he measured his fish. He was a bridegroom, and he and his wife finally had a baby. They weighed the baby on the scales, and it weighed twenty-one pounds. Mr. Pleus, what do you think about this general subject?

Mr. Pleus: The subject that we are discussing is the public's impression of lawyers' ethics, and it assumes that lawyers have ethics. Of course that is a very sound assumption, because lawyers as a profession do have ethics. They have had ethics from the beginning of their profession, the traditional ethics that were so well explained in the panel this afternoon. While it was not until 1908 that the American Bar Association adopted a code of ethics, it did nothing but embody into that code the type of conduct that has been the ethics of an ancient and honorable profession.

Now, of course we cannot legislate ethics into any man or group of men. The standard that the lawyer has with relation to his client
and before the court, and the public responsibility that he has as a leader in his profession, come from within and not from without. It is true that we can clarify specific practices that are inimical to the profession or to the public. Take, for instance, the discussion that we had this afternoon on advertising, on the relationship between attorney and client, on fees, and on the general canons of behavior of those who assume the judicial robe and take their place to administer justice. Those truly basic items, however, that constitute the code of ethics are nothing in the world except the fundamental predicates of Christian conduct that mark the moral man from the immoral man, that set him apart from the man who does not have those moral standards of which Mr. Sokolsky spoke.

Therefore we may safely proceed with this panel upon the assumption that lawyers do have ethics, and that the legal profession as an organized profession is an ethical profession. The layman's view of this ethical tradition is what we are trying to pinpoint and reach tonight—why that view exists, what the profession can do about it, and how much of the standard of conduct is due to the layman himself.

For instance, let us consider the comment about jury verdicts. The men who sit on those juries are not lawyers; they are laymen drawn from the rank and file of the population. The verdict is their idea of justice, not the idea of the particular lawyer on one side or the other; and in many instances it is absolutely contrary to the idea of justice of the judge presiding at the trial.

So, let us go on from here upon the assumption that the legal profession is an honorable profession, that it has ethics, that its conduct to its clients and to the courts is based upon those high moral principles that have been embodied in the code of ethics; and let us find out what the layman thinks about them, how much of it is the layman's responsibility, and how we can convey to the public an accurate idea of the type of profession we are.

Mr. Drinker: As regards whether lawyers are trying harder now to behave themselves in the way the members of this honorable profession ought to behave, I have a very strong opinion.

For nine years before this last August I was the Chairman of the Committee on Professional Ethics and Grievances of the American Bar Association, and all the questions from the lawyers all over the country filtered in to me. During that time I could see a marked feeling on the part of the members of the bar that they wanted to
know what they ought to do under certain circumstances. They wanted the advice of our committee, and they were ready to follow it. During the last year I kept a count, and I would receive five or six letters a day. One day I received eleven. These contained questions by the members of the bar from all over the country, saying that they were in a difficult position and did not know exactly what to do. They wanted to know whether their type of situation had ever come before our committee under similar circumstances, because they wanted to be guided by our view. They said they would be very grateful if we would give them an indication of what they should do.

Now, a bar with members that keep asking questions about what they should do, a bar with that attitude, is in a fine, healthy condition. I feel certain that the bar is in a healthier condition now than it has been at any time since its beginning — as far as I can see, and I have studied it all the way back — and much better than it was a hundred years ago or at any other time. I do not agree with Mr. Sokolsky's apparent idea that the bar is going down ethically. I think it is coming up ethically, and I think I know what I am talking about, because I have been there listening to them.

Bishop West, would you care to comment on this general proposition about the public's view of the lawyer's ethics?

_Bishop West:_ I am in a somewhat strange position. I read a good bit in the New Testament. About two thousand years ago Christ and the Apostles were facing a magistrate; and now I am in the succession of the Apostles and find that I am in the same position, only the magistrates are up here and down there too. I suppose that in the twenty centuries I have had a lot of company.

One of the comments of laymen, of course, is on the terminology used by the legal profession. It is very difficult to understand and sometimes very difficult even to read. You talk about such things as _ipso facto, nolle prosequi, nolo contendere_, and all that sort of thing. I suppose that the clergy is guilty of a lot of high-sounding terminology, but one of the things that we try to do, or at least that they tell us to do, is to put what we have to say in English, so that the common person can understand it. Of course, I do not know whether you can have law and still have English — but if you could we should like it.

I suppose that every profession has its degree of quacks; certainly we have more than our share among the clergy, and I suppose the doctors feel that they have more than their share, and you feel that
you have to deal with your own members. Possibly one of the reasons why this panel chose to have one who officially represents the religious point of view — because there is a great feeling that there is a kinship between the two professions and the things for which they stand — is that the law and the ministry are very closely akin. You are dealing with the same persons; you are dealing with the same spiritual problems; and you are dealing with the dignity of man, with his freedom, and with his rights. One of the things that you are interested in is justice, and one of the things that we are interested in is love; and these are very closely akin, although one is fairly cold and is represented by blindness, and the other is supposedly gone into with one’s eyes open. I should think that not only does a person in the legal profession have to know the difference between justice and love, and where one merges into the other, but that he has to perceive all the shades of meaning among kindness and friendliness and thoughtfulness, all the way up to a deep conviction of the dignity of the person, regardless of his color, race, religion, or family background.

I suppose that one of the problems that you deal with also is the absoluteness of the truth for which you stand and the necessity in human situations to compromise. I suppose that one of the reasons why you chose for participation on this panel a person who officially represents the absoluteness of truth is that, if you are to compromise, it will be like tacking in a sailboat; you are heading for the goal, and you deviate only in order that you may achieve your objective. Certainly if our professions are closely akin, we are both for the man — for the whole man.

Mr. Drinker: Mr. Patterson, what have you to say about this general subject?

Mr. Patterson: On the general subject I have a comment or two, without attempting to repeat anything that has been said already.

One thought I would like to leave, especially with the lay public, although I think the lawyers too should carry it in mind, is that the ethics of the legal profession were not created for the benefit of the lawyers. A lot of the laymen seem to think so.

The ethics of the legal profession are limitations, you might say, or restrictions on the lawyers’ conduct. They are intended to protect the clients, the lay public, and the courts that the lawyers contact, to insure that justice will be properly administered by the courts when there is litigation, that business will be transacted in a fair
and honorable way, and that no advantage will be taken by lawyers of their confidential relationship to their clients or of the information they gain thereby.

I agree with Mr. Drinker, although sometimes I am doubtful whether I do or not, that the legal profession as a whole is in better shape today. My difficulty in reaching a definite decision is due not to what I think, or to what I am sure represents the view of the leaders of our profession, but rather to the presence of a great number of persons in our profession who have not lived up to these standards.

There is one thing that should definitely be brought out; laymen, instead of criticising the legal profession, should realize that they have within their power to correct conduct that does violate the morals of the profession. As long as they do not make it profitable for men to practice the type of law that we call unethical, there will not be much of it. The same thing underlay the profits that accrued in the period of bootlegging during prohibition; the business became very profitable because it was contrary to law and yet people wanted it carried on. We have seen a more recent illustration in the gambling situation we have down here. As long as the laymen make it profitable for lawyers to do unethical, or immoral, things there will always be men who will take the chance because of the large profit involved.

I think that the public generally has never realized those two important facts. While the lawyers may try, and the courts may try, to correct the evils that have infected our profession and have, you might say, lowered the standards in some respects, we will never be able to correct these evils without the creation of a standard of moral principles in the public at large, a recognition of the problem by the public at large, to the extent that laymen will not patronize lawyers who are guilty of malpractice.

That to me is fundamental in this question of ethics, and underlies the calling of this meeting, in the hope that we may be able to educate laymen to a point at which they will hold up the hands of the lawyers who are trying to uphold these moral principles. These principles require a much higher standard among lawyers than among average businessmen, because our work is in the nature of a fiduciary or trustee relationship; but if the laymen will back us up, their attitude will go a long way towards correcting the deficiencies. In other words, you cannot eliminate murder or robbery by laws, or by providing punishment, unless the morals of the people at large are such as to condemn these practices or unless the majority of the people
are so law-abiding that they will refrain from that conduct. There is not very much that the small number of lawyers are able to do; there are only about five thousand lawyers in this state among the millions of people we have here. You can see that it is essential that we have the support of the public; and, to my mind, this institute will have served a very wonderful purpose if we can bring this fact to the attention of the public at large.

Mr. Drinker: I thoroughly agree with Mr. Patterson that it is tremendously important that the public support the bar in trying to make it clean house and eliminate all these unethical practices, but I think that the primary responsibility is with the bar and the courts. They should do it rather than blame the trouble on anybody else. I think the biggest wrong, the thing that the public suspects—and there is considerable truth in it—is that some lawyers do not do what they could to police the bar. Others do things that they know they should not do; their fellow lawyers know they are doing it and the judges know they are doing it. Yet they will not do anything about it because they are sorry for these fellows whom they have known for a long time, and who may be friends of theirs and colleagues of theirs. They are sorry for their wives and children, who will be deprived of a livelihood. They write the bar committees and say they think these backsliders have repented now and can be taken back into the bar; they wink at things that should not be done. This is what the public simply will not tolerate.

Mr. Sokolsky: Pardon me. There is no way in which we can know—I am speaking for the public, the public as represented by the newspapers—there is no way in which we can know that a lawyer has done anything that is unethical or improper unless what he does is so designated by a bar association or by a court. We have no way of knowing anything about it, even when it comes to someone's attention; and therefore the primary responsibility is with the bar association or with the court. Then we can all get the right backing from the public, but the move must come from your own profession first.

Mr. Drinker: I think it is the primary responsibility of the bar. On the other hand, there are plenty of laymen who employ lawyers that are known to be shysters to do things that they know are wrong—you know that, and we know that. Nobody is in a position to cast the first stone in this situation, but I repeat that I think the lawyer has the primary responsibility.
Mr. Patterson: I agree with you, but you are not talking about The Florida Bar when you are talking about these lawyers that are not doing anything, are you?

Mr. Sokolsky: Or about the New York Bar Association?

Mr. Drinker: I do not know personally about The Florida Bar. I have had associations with them; I cannot imagine anything nicer than the way they have been to me this afternoon. I also think that this institute is a marvelous idea, that it is evidence of the lawyer's conscience and his desire to change and improve our ethical standards. It has never happened anywhere before. Mr. Allison, what do you have to say about this thing?

Mr. Allison: The subject is the public's impression of lawyer's ethics, and I suppose that, as a lawyer, I am about as competent to judge the public's impression as an old maid school teacher is to tell a person how to raise children. I doubt that anything I might say would change any ideas that Mr. Sokolsky has, or any ideas that Mr. Butz has, but I do believe that they are impressed with the fact that we are definitely interested in our problems, that we have scheduled a meeting of this kind, and that it is attended by lawyers who have come hundreds of miles. I am confident that we will have some pointed and practical comments as the questions proceed, and so I shall say no more at this point.

Mr. Drinker: Before we proceed with these questions that have been submitted to me I think it would be desirable to use a certain amount of time to ask whether anyone has any questions or comments in connection with what has already been said.

Q. May I as a visitor and British economist who is interested in this discussion ask what your reaction is, as lawyers, to the aspersions cast on the chief justice of this great and friendly republic within the past few days? To us visitors from Britain it is very disconcerting. Could anything be done to prevent such a thing from happening again — this criticism of your chief justice?

Mr. Sokolsky: In the first place, there were no aspersions cast at the chief justice; he was not the chief justice until he was ratified by the Senate.

In the second place, we are concerned with a senator who is chairman of a committee, the judiciary committee. That committee has to pass on the chief justice; and we have had situations like this before. I remember when Mr. Brandeis came before the same com-
mittee, to be confirmed as an associate justice, there was a rumor afloat that the President of the United States had had some difficulties with a lady and appealed to a friend of his to take care of him, and that this friend did take care of him and was accordingly appointed to the Supreme Court of the United States. The rumor was investigated by a committee of the Congress. That is its proper function. It turned out that Mr. Brandeis was definitely not that man. There is nothing particularly wrong in this type of situation. The chief justice is an American citizen who is appointed to a job; but first he has to be confirmed by the Senate, which is expected to pay attention to anything that comes before it in deciding whether to confirm. Nothing happened in this recent instance; nobody will disrespect the man nominated for what happened.

Q. But did you see the questions? Were they not terrible?
Mr. Sokolsky: Yes, of course. But then, it does no harm, so why take it so seriously? If he is a good chief justice he will survive the questions.

Q. But is this procedure not a bad thing for the law, for the respect for it?
Mr. Drinker: I think it would be worse for the law if such things were squelched. I can understand that you in Britain would take such criticism more seriously than we do. I doubt that anybody has taken it very seriously here. The difference between Justice Brandeis and Chief Justice Warren was that the people who objected to Justice Brandeis were regular people—Mr. Story, the president of the Massachusetts Bar Association, was the principal one—and that is a very different proposition. Everyone realizes that this recent criticism was an irresponsible business.

Q. Thirty-two years ago, when I came to the bar from the teaching profession, the most serious wound I received was to hear on all sides “He is a lawyer; he is dishonest.” I had not been used to this sort of thing. Yet, after being in the profession for many years, I found from my experience—and I am wondering whether you have not found it so from yours—that the average layman feels that all other lawyers except his own are either dishonest or do a few shady things but that his own lawyer is honest. When that impression came to me I began to receive some consolation from the practice of law.

With this group here tonight are a number of young lawyers. I am wondering—and I ask you gentlemen up there, since almost all of you have gray hair—whether we do not find it much easier to
practice ethics at fifty, with an established practice, than we do at twenty-three with a family to feed. When I say that, I mean that it is very easy for me now, when a divorce case comes into my office, to assume a fatherly attitude and tell the young lady that I think she should go back to her husband; I have used hours and hours of my time to effect reconciliations and have made no charge for it. But what about the young man sitting here tonight who will begin his practice within the next year or two? Suppose that a young lady comes into his office and asks for a divorce. That $125 or $175 fee will pay his rent next week and feed his family. In discussing legal ethics must we not take into consideration some of the problems that will confront these youngsters when they get into the field, next year or next week?

Mr. Drinker: Absolutely. We have to view the matter with sympathy, but this does not mean that a young lawyer with any reasonable amount of imagination cannot see that he will be further along in twenty-five years by being on the level than he will if he does not behave himself.

As I said this afternoon, I had a job under Judge Phillips of evaluating the opinions of all sorts of people in the survey of the legal profession. We learned what people think of lawyers; and in the survey we contacted banker groups, artists, labor unions, businessmen, and all kinds of people. They agreed with exactly what you say: their own lawyer was wonderful, but most of the other lawyers were dishonest. That was the general impression. The two things they objected to most were procrastination and the tendency of their own lawyers to tell them they could not do a thing instead of trying to find a way in which they could do it.

Q. You indicated that one of your reasons for concluding that the bar is in a better condition ethically now than it was fifty years ago is the number of inquiries your committee received concerning conduct.

Mr. Drinker: And the nature of these inquiries, too.

Q. I think the language you used was that the lawyers were pathetically eager to have their problems solved. Might this concern not be due to the very lack of standards that Mr. Sokolsky has pointed out? Is it necessary for lawyers now to ask questions of other people that fifty years ago they might well have been able to decide for themselves because they had a little different education?
Mr. Drinker: I do not think so, although maybe I am wrong. I do not believe that they were thinking about ethics fifty years ago so much as they do now. Some of them were; the bar associations were, when they drafted the codes, but I do not believe that most of the lawyers were. They are thinking about it more now.

Q. Mr. Drinker, I am a student in the law school here, and I would like to pass on something that has come to my attention from a lot of other people. They think that the law practice is being flooded, and this raises the question whether it is the duty of the bar to regulate the number of practitioners so that it will not become overcrowded and thereby possibly drive some lawyers to engage in shady practice in order to make a living. In other words, with the tools that they have for making a living by practicing law, if too many men enter the profession some may be tempted—and unjustly so—to stoop to lower standards of practice.

Mr. Drinker: I think that this is a danger, but I do not believe that you can eliminate it by limiting the bar deliberately. I think the bar should make the examinations very difficult, on character and performance, and make it so that no one could be admitted unless thoroughly qualified. If he is admitted and cannot make a living he will have to sell insurance or something.

Q. Do you limit them in Pennsylvania?

Mr. Drinker: No. In Montgomery County they do, and we are trying to stop that.

Mr. Patterson: I thought that this limitation extended all over the state.

Mr. Drinker: No.

Q. May I ask what you are doing under your apprentice system?

Mr. Drinker: It is not really an apprentice system; that system has only been discussed. After a lawyer has been admitted he has to serve a six months' apprenticeship in another lawyer's office in order to find out what that older lawyer is doing; but he is admitted before he does that, or, rather, he serves two months before he is admitted and four months afterwards. It is not an apprenticeship.

Mr. Sokolsky: Is it not like an internship in a hospital?

Mr. Drinker: Yes.

Mr. Patterson: They do have that in New Jersey, do they not?

Mr. Drinker: I believe so, but I am not sure.

Mr. Allison: It is my feeling that an artificial limitation in any
Profession is the wrong approach. I think natural selection will settle the problem in due course, but I do feel that the increased standards for admission to the law schools will tend to limit the flood that has come within the past few years. Also, here in Florida, the fact that we have more and more lawyers is perhaps due to our very large growth percentagewise in population. But I do feel that, with more and more law schools requiring an academic degree for admission, the problem that you have in mind will eventually take care of itself.

Q. This question is addressed to Mr. Allison. I am one of the lawyers that came out in the past few years. I would like to ask Mr. Allison, on the point of ethics, what objective should the lawyer always seek. Is not this objective the truth?

Mr. Allison: Yes.

Q. Yet we go through school and learn the different phases of the law, and then we get out and read a book that teaches us every way in the world to come into the courtroom and suppress the truth if the truth hurts our side. How is the young lawyer of today to treat that sort of thing?

Mr. Allison: I will be glad to answer that question, and maybe in fifteen or twenty years you will appreciate the answer more. You can find all kinds of textbooks, and you can find all kinds of practitioners; but if you follow the advice of Polonius, "This above all: to thine own self be true," and if you are honest with the court and honest with your client, you will be all right. I do not mean that you have to show all your cards to your opponent; that to me is completely distinct from secreting from the court something that should come out. You must always be honest with the court and with your client; but there is a great difference between the statement you have made and the point I have made. I think that when, later on, you look back you will see that whenever you were true to your conscience you also profited materially—perhaps not immediately, but definitely within even a few years.

Mr. Sokolsky: Could you not say that a man can be honest and truthful without being a fool?

Mr. Drinker: You see, you have to understand the system on which our law is based, that is, the lawyer is not the judge of the righteousness of his cause. The principle is that if you take an able lawyer on one side and an able lawyer on the other side, and if each tries to bring out all the legitimate advantages and all the strong points in favor of his client, and if there is a judge ruling on the presentation and a
jury to decide the facts, you will be more likely to get justice than you would if you let the lawyer decide in the first place whether his client is right. When you have been practicing law for fifty years, as I have, you will know that lots of times you take a case in the beginning and you believe that the right is on one side, and yet when you get into the matter you find that you were entirely wrong. The best justice to be obtained is achieved by having the matter presented fairly on both sides, and as strongly as possible, with each lawyer doing his best to win the case. It is not his province to prejudge the morals of the litigants.

Now, this does not mean that the attorney can lie, or use trickery, or do anything dishonest. There is a tremendous difference; and you will find that out as you go along.

Q. Nobody answered the question why we have jury trials in negligence cases in this country when they do not have them in England.

Mr. Drinker: The answer is that the people who make the laws think that ours is a good method. When you stop to think about it, there are a lot of good arguments on both sides.

We do not have time for all these questions, so I will pick out some of them. How much time should a lawyer devote to legal aid, that is, charity work, and does the layman usually know what is being done by the bar along these lines?

Mr. Sokolsky: No, he does not. As a matter of fact, yours is the worst publicized profession in the country. You never tell anything good about yourselves. The legal aid society does a tremendous amount of work—certainly in every big city and certainly in New York City—and the public hardly knows about it. The free services that lawyers give to charitable organizations and hospitals and all that sort of thing are practically unknown to the public. Doctors have been able to convince people that the reason they have to charge so much is because they spend all the rest of their time giving free services, but the lawyers have not succeeded in making the public conscious of this in their profession.

Mr. Drinker: I have been on the community chest, soliciting doctors, and they insist that they cannot afford to contribute in cash because they have to give so much free time. There is one aspect of this thing, however, that has not been fully brought out. The doctors, I believe, do a splendid job; their charity work is wonderful, and they
give a great deal of charity time. But as far as the hospital is concerned, they could not get to first base if they did not have the hospital. First, they need the hospital in order to keep up with the experimentation and technical advance that goes on there to keep up with the profession; and, second, they have to work in the hospital in order to get their own patients into it.

Now, the charity work of the lawyer does not furnish him any experience that amounts to anything. The cases are perfectly stupid; they are not interesting; he does not receive any experience; he does not earn any glory; he merely does it out of the goodness of his heart. The lawyer may not do so much as the doctor, but he deserves more credit for what he does do.

Mr. Sokolsky: You need a public relations council.

Mr. Drinker: We have one now in Pennsylvania, a very good one. They have a very good one down here too.

Here is another question: Do laymen approve of a lawyer's charging a fee for considering a matter and then concluding that he can do nothing helpful? If not, why? If so, why?

Mr. Pleus: They probably do not. They do not approve of his charging a fee for considering the matter, and then saying, "You have no case; I cannot do anything for you." I believe that the reason for this attitude is that what the client gets from the lawyer in such instances is purely intangible. He gets the lawyer's time, and the lawyer's advice. He acts upon that advice, but he has not had a stethoscope put to his chest, and he has not had a prescription in the form of a paper that he can take down to a drugstore and have filled by paying three times what it is worth.

In addition to this, the layman does not like to hear that kind of news. He is like the patient who does not want to go to a doctor because he is fearful that the doctor will find some terrible disease. He is disgusted not only because the lawyer says that there is nothing that can be done for him but also because he has not been given anything tangible to show for the fee charged. Yet we must remember that a lawyer's time and advice are his sole stock in trade. There is no reason why a lawyer should not be entitled to charge for the service that he sells to the public, as he does for other things that consume his time.

Mr. Drinker: This is an interesting question. I am going to ask Mr. Butz to answer it: Do laymen regard lawyers engaged in defending persons accused of crime as crooks, generally speaking? Are the men
who defend criminals considered crooked?

Mr. Butz: I am afraid that an honest answer would be yes. I do not know how far you want to go into that.

Mr. Drinker: We are discussing what the public believes.

Mr. Sokolsky: They sometimes know, do they not?

Mr. Butz: Suppose we let the Bishop go along with that.

Bishop West: The thing I wanted to get at is that the members of the public tend to identify a man with the cause that he espouses. If it is a great cause, then they identify with it the person who is pushing that great cause. If he is defending a criminal, then they tend to identify with the criminal the man who is defending him. It is easy for the public to identify a criminal lawyer, because he is always dealing with hoodlums.

Q. Are we to follow from that reasoning that a preacher is always identified with sin?

Bishop West: Yes.

Mr. Sokolsky: Bishop, I think there are other factors. I think that the criminal lawyer is usually considered as part of a syndicate; otherwise he would not be included among those who share the profits of the syndicate. Now, whether that is a fair judgment, I do not know. I should say that a criminal has a right to be defended and that many of the lawyers who defend criminals are decent men. I knew Max Steuer during a good part of his life, and I would say that on the whole he was a decent and upright man; and he was the principal criminal lawyer in New York City for a long time. But that was at a time when crime was an individual activity. Today crime is never individual. I am talking about large-scale crime. It is managed by syndicates; it is operated by syndicates; and the lawyers are part of them.

Now, the bar associations tolerate this. For instance, everybody knows who operates for Frank Costello. If I needed to do business with him I would know where to go, and every working newspaperman in New York would know where to go — just to make an appointment to see him. The bar associations make no move about such matters.

The same thing is true when the public thinks of communist cases, in which the lawyers disturb the courts, in which communist lawyers are using the Fifth Amendment in matters that do not and cannot possibly involve it. You ask a man, "What is your name?" He tells you the name. "What is your address? How old are you?" He pleads the Fifth Amendment on that — on the advice of a lawyer. There you have the responsibility of the bar associations.
There was one case at Fort Monmouth in which a man replied to every question, except when his name was asked, with the one word "Fifth." He did not even say "I plead the Fifth Amendment"; all he said was "Fifth, fifth, fifth, fifth," all the way through. Next to him sat his lawyer, who let him do it and encouraged him to do it. Now, in matters of this sort the public gets a terrible impression of a profession which, as you have all said, is an honorable profession and has long been with us. I think the bar associations ought to raise Cain about this.

Mr. Drinker: There is no doubt that the bar should stop this kind of thing; there is no doubt that there are a lot of criminal lawyers that are as crooked as their clients. There is no doubt that the bar knows who they are and what things they are doing, and yet it does not stop the practice. We should be ashamed of ourselves for this. On the other hand, there are some splendid criminal lawyers in this country. The man who has just been elected chancellor of the Bar Association of Philadelphia is the leading criminal lawyer in Philadelphia—he is the finest fellow you ever saw in your life. But at the same time I know two or three criminal lawyers who are absolutely not. I remember one of them. I was talking to him about 63 individuals accused of a particular crime. He had defended them, and he said that every one was released. But he later said, "You know, it is a funny thing about them: every one was guilty."

Q. Mr. Drinker, do you think it better that a good member of the bar not accept criminal cases, or do you think it better for him to accept them? Would clients go to him if he did accept them?

Mr. Drinker: I think it would be better for the criminals if he did, but I do not think it would be better for the lawyer. The reason that so many lawyers do not take more criminal cases is that if they took only a few they would not be able to handle any of them properly. And yet, if they took enough criminal cases to be really good at the job, then they would starve to death, at least by comparison with what they could do outside the criminal field. I fail to see why a man should be a criminal lawyer when he can make five times as much and have far more pleasure by practicing civil law. For me it would be a frightful bore to take criminal cases, and I do not see why I should have to do that if I do not want to. That is why more lawyers do not take criminal cases. It would be unfair to the client for me to take a criminal case; I would not be fit to handle it. I would not know the rules. And yet, if I took enough of them to learn the rules, then I
could not practice the kind of law that I have been practicing for fifty years, which I enjoy so much. I do not see why I should do that—any more than learn to play the cello.

Q. This afternoon you were concerned because in Philadelphia you had trouble getting representatives for the alleged communists; but tonight I seem to find you and Mr. Sokolsky censuring these attorneys for defending them along those lines.

Mr. Drinker: No, I never said that.

Mr. Sokolsky: Lawyers who misrepresent their clients get their clients into trouble. I am not talking about good lawyers who represent communists, any more than I am talking about good lawyers who represent gangsters or good lawyers who might represent you or me. I am talking about the Communist Party lawyer, who deliberately gets his client into trouble for party propaganda. That practice is not a fair application of the law.

Q. Who is to determine what is fair?

Mr. Sokolsky: The ethics of the bar and a decent regard for the morals of the nation.

Mr. Allison (to the questioner): From what you said about Philadelphia, I see that you did not get the right idea.

Mr. Drinker: In Philadelphia the eleven communists could not get anybody to represent them for a while, but finally Mr. McBride, who had been undergoing an operation, got well. He agreed to take the case; the chancellor of the Bar Association would not see the Philadelphia Bar in a position in which these people did not have adequate representation. He canvassed some fifteen law offices—about two thirds of them big offices—and we joined together and each volunteered assistants. Our office furnished one of our associates to assist Mr. McBride, without compensation. We wanted it understood that nobody would be left by the Philadelphia Bar without adequate representation. These lawyers are representing those people now. Incidentally, after we made this move the fellow travelers raised $60,000 to defend these people. So Mr. McBride has now employed a couple of regular assistants, and they will be paid. But they were not going to be paid in the beginning.

I think that with this we had better adjourn; I think it has been a tremendously interesting meeting.