7-1-1976

Professional Responsibility

The Honorable Harold Leventhal

PROFESSIONAL RESPONSIBILITY: KEYNOTE ADDRESS OF THE SECOND ANNUAL BARON DE HIRSCH MEYER LECTURE SERIES*

THE HONORABLE HAROLD LEVENTHAL**

The lawyer's duty to the public is often referred to by the multifarious term "Professional Responsibility." In his address Judge Leventhal scrutinizes this term from a variety of perspectives. The examination includes a discussion of the means of better serving the needs of the legal consumer through a consideration of the duty to provide competent counsel; the acceleration of the appellate process, from notice to decision; an increase in judicial activeness; a reexamination of confidentiality and of the conflict of values between lawyer and client; and the need for lawyers who would represent public interests.

Thank you very much, Dean Mentschikoff, and ladies and gentlemen. My purpose today is to strike a keynote for discussions on the lawyer's role in society. I understand that although this is the second of this series of lectures, I am the first keynoter. When I was sent a program and learned that our symphony had four movements, I, judging from the topics, speculated it was going to have four different keys. I anticipate the series will have concord and discord, harmony and cacophony, in the best traditions of classical and modern music. I suppose there will be resolution on some things, agreement on some things, and on others only an agreement to disagree in the best tradition of international conferences. To this effort, I am conscious that I bring a somewhat limited perspective in terms of talking of roles of lawyers in society.

I am aware that I am still a residue of 30 years of lawyering; 10 within the government, 20 outside the government. I'm also aware that for more than 10 years I have been removed from the cockpit, and I think something may be gained, but a good deal is lost, when your work takes you out of the turbulence of today and tomorrow. Fortunately, the nature of our circuit, and the current of the law today is such that judges are brought in early in certain conflict

---

* Judge Leventhal's remarks have been transcribed from a tape recording of his address. There was no prepared text.

** United States Circuit Judge, United States Court of Appeals for the District of Columbia.

resolution problems, by applications for injunctions, or declarations for relief against injustice and against illegality. So perhaps I have some observations which may be helpful to you in thinking about these problems, or in listening to the others think about these problems.

I propose to set the stage, (you notice I've changed my metaphor now, it's not music it's drama) and I'm now thinking of it as a play with four acts, and I will be the prologue. Later on you will have moderators and they will be a combination of Greek chorus and kibitzer. In my prologue, I intend to identify certain tensions that I glimpse in many discussions of the lawyer's role in society.

Any discussion of the lawyer's role in society should examine both the lawyer and society, and then their relation; that is a tautology but it is a true tautology. Sometimes, that is the beginning of wisdom. The discussion of lawyers and what their responsibilities are and what should be done, very frequently, becomes an elaborate discussion of what I might call "insider" concern. As the arcane of the cult and the guild, they lose some perspective on what the purpose is of having law and lawyers. Instead of having a field of vision that is broad enough to keep the ends of justice in mind at all times, even peripherally, you have a kind of tunnel vision that focuses on the machinery of the administration of justice. Well, I am not here to start off as a philosopher, or, in Karl Llewellyn's memorable phrase, as a jurisprude.

As you will see in the course of your law school development, there seem to be two schools of jurisprudence. The first consists of those who think of adaptations of the social compact, Locke to Rousseau and now to John Rawls. For those who have not been exposed to John Rawls', "Theory of Justice", I commend it to you for bedtime reading; it is the most soporific book I have ever read.

The other group are the pragmatists, and I suppose their philosophy can be summed up in that memorable phrase of Holmes, "The life of the law is not logic, it is experience." Alexander Bickel had prepared some articles and lectures, which have now been brought out posthumously, in which he pays particular homage to Edmund Burke as someone who works with society as it is, and who sees what kind of adaptations can be made to keep people in fair approximation of living together and accommodating each other. Burke is always derided as a conservative, but if one reads attentively, one finds out he is quite aware of the need for change and the inevitability of change. The discussion is on the direction of change and the

rate of it. As Roscoe Pound has put it, "The law is stable, but it does not stand still." I suppose that if we have any faith in law, faith in our Constitution, faith in our role in preserving them, it is a faith that freedoms, fundamental rights, machinery and procedures for adjustment of rights, however untidy they may become in any particular case or in the short run, operate in the long run to promote fair accommodations among men and stability in society. Sophocles in "The Song of Man" says this: "What is more wonderful than man, who has mastered the art of speech, of mind's swift thought, and of living together in neighborliness?"

The role of lawyers and law is to seek to reduce the conflicts of brutal and savage nature by the use of civilized machinery, and that apparatus can cope with conflicts only if it confronts them. If we ignore them, if we subdue them, we are not really trying to serve the purpose of law. You may have had assigned to you for reading Cardozo's great work, "The Paradoxes of Legal Science," written 50 years ago. It still identifies the great tensions of law: the conflicting pulls of stability and continuity against the pull of change. How are we lawyers organizing ourselves to help bring up and resolve these conflicts, these tensions, in a way that makes society achieve its great goals?

The subject of professional responsibility involves various tensions, some of which I propose to identify. I think the legal profession is a guild that is particularly rife with a sense of tension, contradiction, and ambivalence; both in our own aspirations, the way we criticize ourselves and each other, what other societies expect of us, and what the rest of society perceives that we have to give.

One of the realities of thinking about lawyers is that you can find many expressions of distrust and even hatred of lawyers: a feeling that they are overbearing, argumentative (which of course is true), that they are deceitful in that they are self-motivated and self-concentrating, and that they do not really serve the society, always with conspicuous exceptions. With reference to Bartlett, you will find quotations on this, from the Bible, "Woe on to you lawyers", to Shakespeare, "Let's kill the lawyers", and so on.

I was rather heartened recently on reading a preliminary report of an American Bar Association survey on the legal needs of the public. Solis put the question in a seminal article some years ago: "What do we know about what legal needs are unmet? What do people want lawyers for and are unable to have lawyers for? How

much of a need is there for lawyers? Do people know what their own needs for lawyers are?" The American Bar Association's survey attempts to probe that question. If I discern anything from the preliminary report it is that there are fewer occasions when people really seem to need lawyers than you might have imagined from the literature on the subject. But without getting into that at the moment, I was rather struck by responses which indicate a more favorable view of the legal profession than I had supposed existed in the past in the public at large.

On the proposition "lawyers can be trusted by their clients," 49 percent agree strongly, and 33 percent agree, though less strongly, let us say, slightly. That is a remarkable consensus. Of course, 10 or 12 per cent disagree, but the bulk feel that lawyers can be trusted.

On the proposition "lawyers do not try to understand their clients," 46 percent disagree strongly; again, quite a remarkable statistic. Similarly, there was a strong favorable consensus on propositions like these: lawyers try to understand what the client wants; lawyers try hard to solve their client's problems without going to court. On the question: "Could you get a fair trial if accused of a crime?" 53 percent strongly agree. On the question: "Can lawyers be trusted to keep their clients secrets?" 49 percent strongly agree. There are, however, some negative aspects to this poll. There is a feeling that many legal tasks could be done equally well by non-lawyers, less expensively, and there is much to that point. But I must say that I felt very heartened by this wide perception in the outside world that lawyers are performing a large part of the job of professional responsibility, giving a feeling that there are people here that laymen can trust, professionals who are interested in serving their clients rather than only themselves.

One of the major tensions I see in the law is this ambivalence about whether we are a trade or a profession. Of course, what a profession is, is itself a question which requires some definition. As Shaw put it, "All professions are conspiracies against the laity." There was a time when Alexander Wilcox gave a different twist. He said that professions tend to get ruined by amateurs, though he was dwelling primarily on the two oldest professions.

Roscoe Pound, in a more serious vein, provided another definition: "Historically, there are three ideas involved in a profession: organization, learning, and a spirit of service. They are essential. The remaining idea, that of gaining a livelihood is incidental." Well, I am not sure that puts it right. I think gaining a livelihood is on

equal footing with the others. But the others are there, not only gaining a livelihood, but offering service, having a sense of self-esteem, of the worth and contribution of the service. Further, I think there is always a mixture of motives bringing people into a profession. The large number and the high quality of people coming into the law or coming into the law schools is some indication that we do have a profession that has that large element in its make-up. But we also are a trade in many respects and I think it was not reassuring, but rather stimulating, that the Supreme Court recently decided that the minimum bar fee schedules for title examinations were a conspiracy in restraint of trade and a violation of the anti-trust laws.

We are a trade that has thus far been organized according to rules that prevent advertising. While practicing law, I was a member of our bar association's "ethics committee," and found myself involved in consideration of such questions as whether lawyers who were also accountants could put both professions on the door; what they could put in announcements; how much they could put in their announcements concerning their recent government connections, and so forth. The traditional approaches resisted, it seems to me, extending the knowledge of what services are available. The Consumer's Union through some public interest lawyers has brought a law suit in Virginia to set aside or at least modify considerably that Canon of Ethics. That suit is now in abeyance while the American Bar Association conducts hearings to reconsider the question. Of course there will be abuses in advertising. Self-vaunting and misleading advertising will, no doubt, be very hard to monitor. But the question arises, whether we don't really help fulfill our role, at least in some of the things that are done, by laying it on the line and reassuring people that there are modest charges for modest tasks. Lawyers can be consulted with set schedules and offerings known in advance, without feeling you have to rob the bank to see them.

The Supreme Court has used the Constitution to strike down some old shibboleths of legal ethics about practicing on behalf of groups, as opposed to the old tradition that a lawyer is someone who is approached in the first instance by his client. The Supreme Court has held for example, that unions have a constitutional right to hire a lawyer to render services to their members. It is quite remarkable to think that this relationship was put in the form of a fundamental constitutional right. But when you get down to reading that opinion in its details, the question is whether the state might want to pre-

vent this type of situation in order to stop baseless litigation. Overriding that state interest was the interest of the union members in having an efficient way of getting quality legal services at a reasonable cost.

I turn to the duty to guarantee competent counsel. Chief Justice Burger has been much concerned these past few years about the low qualifications and capabilities of lawyers who appear in court, stressing professionalism, stability of courtroom procedure, and conduct in the courtroom. The Chief Judge of my court, Judge Bazelon, has given some talks on this general subject and has used colorful phrases charging that some of the lawyers who provide assistance are "walking violations of the sixth amendment."

A proposal arose in the second circuit, which the so-called Clary Committee put forward, that is essentially a requirement of course exposure. You cannot be a trial lawyer unless you have taken certain courses. The theory is that lawyers must study evidence the same way that doctors must study anatomy. The courses that have been prescribed are all courses I think everybody should have, such as criminal law, criminal procedure, civil procedure, evidence, and professional responsibility. There is absolutely nothing wrong with that. I think it is important that these things be under the belt of everyone who is going to be a lawyer, because even though you do not envision yourself as being a litigator, I do not think you can be a good lawyer in anything that you do unless you have some sense of what is involved in the possibility of litigation. You cannot be a good negotiator unless you understand the risks and possibilities of litigation. I do not think you can be a good draftsman unless you can think in those terms. All the counseling that goes on in a law office, it seems to me, would require some knowledge of what the end of the game would look like.

What concerns me about these courses however, is that here they are giving them to the people who are first coming on board as trial court lawyers and the older lawyers are being grandfathered in. It seems to me, if they are going to do that, they should take the approach that the Minnesota court has taken, all lawyers go to school and take courses, a kind of practicing legal institute. The Minnesota bar was furious, although for the time being this is apparently subdued, perhaps because the requirements are not stringent. In any event, it seems to me that sometimes the young lawyers coming on are more competent than the old war horses and

if we are going to have courses, we ought to have them on a broader scale.

We are on a new tack now in our circuit—the "DeCoster" rule. It used to be that you could make a claim in a criminal trial of ineffective assistance of counsel only if you could show a really horrendous result had been reached. They used to say the trial had to be a farce or a mockery in order to get constitutional relief. In one of my early opinions, I subdued that by saying it did not have to be a farce and it was enough if there was gross incompetence which blotted out the essence of a substantial defense. However, it has been carried now still further so that we actually look at whether the appointed lawyer has prepared a case. Naturally, the court cannot track the details of what he has done, or review tactics. But some questions can be asked. Did he consult with the client? You would be surprised how many lawyers do that very skimpily, if at all. Did he interview witnesses? Did he avail himself of services that are available, investigative services and the like? It is only a beginning, but at least we are sensitive to the tension inherent in reviewing incompetence claims. Although we try to avoid second-guessing lawyers, which I think would be very destructive, we are at least permitting some kind of a view to what they have done to make sure there has been minimum competency. In that regard, we do not have to work on constitutional grounds necessarily because we will take the case on appeal, when we have a broader review to avoid injustice even if there are no constitutional violations. We will send it back to the trial court to conduct evidentiary hearings on what was done if something is called to our attention.

Another tension which our court must resolve concerns the appointment of appellate counsel. Some people say we should always use the trial lawyer as the appellate lawyer, because it is efficient; you get the records certified faster; you know sooner what questions arise in the case; you do not have to have a transcript; it is faster, cheaper, and more efficient; all of which are true. On the other hand, a very experienced friend of mine says. "I always feel better when they appoint someone else for the appeal when I have tried the case. If I have missed something, I would like someone else to take a second look at it, and never mind that it takes a little bit longer to get into it. At least you have that double gate to go through."

There are always complaints that the appellate process is too slow. A large part of the appellate court delay is the time consumed

before the case is argued. I was looking over our statistics recently. Our circuit has a very poor record in terms of the median time of disposing appeals. It is sometimes 11 months from the time the appeal is filed until its disposition. But the median time from the date of argument to the date of decision is less than 2 months. It is the problem of certifying the record, the lawyers getting familiar with the case, the briefs and so forth, before the case is set down, which causes the delay.

Additional tensions are created by our adversary system of justice. In this system the assumption is that the truth will best be obtained if the two sides are completely self-oriented and give their own versions of the truth for the decision of the tribunal. In this model, the judge has a passive role until the very end. All the action is on the part of the lawyers. This leads to problems. We are getting away from the pure adversary model in many respects that do not involve the lawyers necessarily, or do so only impliedly. One of them, for example, is the right of the judge to call witnesses or to put questions to a witness, beyond those that are put by the lawyer. We had discussion in one of the Watergate cases, the Liddy case, in which Judge Sirica himself asked questions upon completion of examination of a witness. Sloan testified he gave $200,000 to Liddy and did not really know for what purpose the money was to be spent because he was acting on the instructions of others. That was the testimony as given. Judge Sirica called him for further examination outside the presence of the jury, and asked him a number of questions, concerning just how the money was delivered, the laundering of checks, the Mexican bank, the Miami bank, and so forth. The point is that Judge Sirica did a lot of questioning on his own. Later a question arose on that questioning because he permitted the transcript to be read before the jury. We had some problems about what Judge Sirica had done. Fortunately, we did not have to worry about them too much, because what Liddy's lawyer was saying was that he had a right to make sure there were no further questions put to this witness, who was very damaging to Liddy. The settled rule is that the judge has *some* right to put questions himself, and to call witnesses. This gets away from the adversary model. The adversary model is thus not a complete model, but it is a large part of our assumption.

Incidentally, the adversary model also is departed from on the appellate level. One day, just about 2 years ago, I was sitting in my chambers when a law clerk came in and said "There is an emer-

gency." "What is the emergency?", I queried. He said that Judge Sirica had just put John Lawrence, who was the manager of the Washington Bureau of the Los Angeles Times, in the cell block because he refused to produce a tape recording which the newspaper had in its possession. The tape recorded an interview that a reporter, Jack Nelson, had with Alfred Baldwin, a former FBI agent who worked for McCord at the Republican National Committee. The morning after I signed the release I said to myself, I do not understand this situation becoming a great constitutional case involving great issues — freedom of the press, freedom not to reveal sources, unconstitutional intrusion into the press. Here is a man who is going to give testimony. When he gives testimony, he could certainly be impeached if he said anything different. The defendant would be entitled to any interview that he gave for public newspaper release. It is perfectly obvious the defense is going to be entitled to that. So why would he object to this? Well, my law clerk said I was silly, "Obviously there's a reason why they would object." To which I replied, "I do not think there's a real case." I had the courage of my convictions, and was rash enough to overrule my law clerk. When the question of the newspaper's right to claim privilege came up for argument I said to Mr. Biltman, who was arguing the case for the defense, wanting access to the records: "Did you ask Mr. Baldwin whether he had any objection to release of these tapes?" (There is only an assertion if the source wants confidentiality.) He said that he had not. He had just asked the newspaper because they had the tapes. Well the next morning, I read in the newspaper that following my question at conference, both Mr. Biltman for the defense, and Mr. Silbert for the prosecution put in calls to Mr. Baldwin's counsel. Sure enough, it turned out there was no objection to the release of the tapes except for a small segment of a personal nature, which could be stricken. So you see, by being an activist, and not letting the issues get settled by the lawyers, but rather defining them for myself, I had in effect departed from the adversary model at the appellate level.

In this adversary system, we have the assumption that on each side, in each case, the client has the complete fidelity and undivided allegiance of his lawyer. But there are some qualifications that are being urged on that issue. The ABA's Code of Professional Responsibility and Disciplinary Rules state that the lawyer may reveal a confidential communication in order to prevent a fraud on the tribunal. This, in plain English, means perjury by the client. This

issue is posed in a book Dean Freedman of Hofstra has released this year, which carries forward discussions which have been going on for some years. Suppose the defendant tells the lawyer in advance of trial what the facts are. Later he tells the lawyer that he proposes to take the stand and give quite a different account. What is the duty of the lawyer? On the one hand, there is a fraud, perjury of course. However, if the lawyer violates the confidence, will people have any faith in their lawyers from here on out? Now, the American Bar Association has put out some standards in which they say it is unprofessional conduct for a lawyer to lend aid to perjury, or the use of perjured testimony. I think there may be more reason to let a defendant give his story because he is on trial than to let a witness, who is not on trial, give a perjured account. It presents different questions. Although the Bar Association receded from its first stand, it takes the position that if this happens, the counsel can do only one thing. He can put his client on the stand, have him identified, and then say: "Do you have a statement that you care to make?" Then the defendant tells his own story. The theory of this program is that the lawyer will not be lending his aid to this perjury by eliciting the facts in narrative form, or by making sure that nothing gets omitted. Dean Freedman raises the question that does trouble me. Does not this really tell everybody, tell the judge, who certainly knows about it, and tell juries who can come to know about it? Does it not really tell them what happened in the lawyer's office because he is treating the defendant differently from the way all other questioning at the trial has been conducted, and that difference communicates the signal that what the defendant is now saying, differs from what the defendant said in the lawyer's office? This seems to me to be a very serious problem, this divergence of pulls. You do not want perjury in the court room and you do not want to breach the confidential communications. It is what Freedman calls, the "trilemma" that faces defense lawyers, because: (a) they have a duty to learn all the facts; (b) they have a duty to keep it confidential; and (c) they have a duty to prevent perjury, which naturally present inconsistencies.

This practice of a lawyer not telling the jury of his own personal belief led to a conviction in a famous case. Judge Walter Hoffman, District Judge in Virginia, now head of the Federal Judicial Center, had a case in which it came out through the prosecution witnesses that the defendant had murdered a fellow prisoner. That was clear, but it came out through the prosecution witnesses, that the defen-

dant had done so because he was provoked to repel unnatural sex advances. This would have been at the very least provocation reducing the seriousness of the crime, and possibly might have led to an acquital. The defense lawyer, however, knew from statements made to him by the defendant, that these alleged sexual advances were not a fact, and so he did not ask any questions, he did not propose any instructions, and he did not make any summation to the jury, because he felt it would be unconscionable for him to do so. Judge Hoffman ruled in that case that he was carrying his own personal conscience too far, that he had in effect denied a fair trial to the defendant, by denying him representation, and the judge set aside the conviction. Well, you see these are hard issues.

I may say they took a poll in the District of Columbia and they asked lawyers what they do in this situation, or what they would do, I guess, with the defendant who was going to relate a different story. 90 percent of the people responding said they would put him on the stand and ask questions. That practice in fact was different from what the American Bar Association's standards require.

One of the abiding tensions in the practice of law arises from the conflict between the lawyer's sense of his own values, and the client's sense of values in the case. Some years ago, Ralph Nader arranged a confrontation by some law students in the office of Lloyd Cutler, one of our distinguished lawyers in Washington, to say that Cutler's undertaking for General Motors a settlement of an antitrust suit in California which charged conspiracy in suppressing anti-pollution devices, was a betrayal of the public interest. They further suggested that the lawyer's own sense of values and of serving the public interest should have led Cutler to refuse to settle the case. I may say, that was before Nader settled his own case against GM. Now, Cutler challenged them. What right did they have, what right would the lawyer have to put his own values above other values, the values of settlement, the values of appeal to the Justice Department and to the Court? Is it a matter of arrogance to be doing this? On the other hand, everybody has to live with himself. Everybody has to decide his purpose in practicing law. What is he here for? What does he want to do with his skills? And how is he to make these adjustments?

In our system, we don't have the taxi-rank system of the British bar. As you may know, British Barristers are not permitted to refuse a brief that is tendered to them by a solicitor, assuming that the cash is on hand. They work on the taxi, common carrier principle.

Everybody has a right, and the next taxi up has to carry the passenger. We do not have that. We permit lawyers to refuse cases, to refuse clients, and to withdraw from clients, assuming there is no unfairness involved. And we work on the assumption, that when a lawyer does take on a client or a case, he has to really do the best he can, giving all of his professional skill to the interest valued by that client. This does not mean that he does not have other things to present to the client. I feel that the lawyer who does not give his non-legal judgments to the client is not really serving him well. The client is entitled to the total judgment of his lawyer on legal issues, and on interrelated social or ethical policy issues. If I may adapt a phrase, it is the kind of role that the chancellor has as the conscience of the king. Naturally, the king will decide what is to be done, but at least the chancellor gets the conscience points brought before the king.

In today's society, the lawyer serves a very useful role in bringing to the client's attention what the rest of society is thinking, a sort of larger perspective. That is a very useful thing, and I feel that clients are often persuaded by their lawyers away from their first inclination, and that a great deal of what goes on at the bar, really a great deal of the law, is what the lawyers tell their clients. Their frank discussions often include non-legal, social implications. At the end of the road, most lawyers, an overwhelming majority of lawyers, would feel that once the matters have been presented, it is the client's value judgment that should control and that the lawyer just exercises professional responsibility. This is in the adversary model. It assumes that there will be another side presented, so that you will have the two adversaries conflicting.

But will the other side always be presented? A person who has a great interest in putting chemicals on the market may have a very large financial interest, and on the other side there is a diffused interest among the mass of consumers. Now we have government agencies to protect the public interest to some extent, though not always, as some decisions are made in the private sector, without government agency involvement. This whole question of public interest law gives rise to what Brandeis made a great point of in his life — the people's lawyer. We have sort of a modern version of it in Ralph Nader, with some differences in style and capability. Public interest law must be looked at as one of the things that comes out of law school, out of lawyer training.

I look back on my own experience, and I find that some of the

things which I did of a public nature really stay with me much more, as both making my life interesting at the time, and as part of my peak of memories now, than private cases that I won, although I do remember them fondly too. I have blessedly, like most people, a temptation to forget those that I lost. The whole question of what public interest law does, how we can organize to do it, is really one of the great issues of the profession today. A number of law firms have some public interest departments under different names. There are public interest law firms in Washington that have simply done magnificent work in our court. They present cases for Consumer's Union, Wilderness Society, and Natural Resources Defense Council. They bring things up. They bring another perspective to the court that makes it possible to focus on issues with more than the limited perspective that you get without them, thereby making a very important contribution.

We do not know what is going to happen with that whole eruption in the law, because up to now it has been funded by foundations, and that tap is running dry and will be removed. Our court tried to provide a system of attorney's fees in the Wilderness Society case with a reasonably well-reasoned opinion. I did not write it, but I certainly concurred in it, but the Supreme Court found the legislature had not permitted that.

We are in a system where we do not have attorney's fees except with certain exceptions, and now there are legislative efforts to provide them. A recent statute gave the Federal Trade Commission an amount, it is not a great sum, but it is not insubstantial either, to use to pay public interest firms for representing public interest groups that would not otherwise be represented, and for representing those that the commission itself could not necessarily represent. Judge Burger, when he was on our court, wrote an opinion which said that the listening public could be heard in opposition to the extension of a radio and television license. But of course, the listening public does not have a monetary base or incentive to intervene unless some way is found for providing that stimulus.

There are proposals for the bar to make funds available. Even though in our individual cases we must be committed to our clients, as a bar, we should have an obligation to support these public interest presentations. But, other people say, "No, if I am a member of the bar, as I must be in some states, I don't want my money possibly being used for causes I do not believe in." This is the other side of that argument. The bar is reexamining itself, reexamining some of

its ethics rules, and I hope will continue to reexamine them so that what was originally set down for a litigation context is not necessarily applied to another, or what was originally set down for a profit context is not applied to another. For example, you normally cannot solicit clients, but in Washington there was a public interest law firm, The Stern Fund, which was permitted to advertise for people who were interested in adoptions. They were advancing the idea of interracial adoptions which were much frowned upon by people handling adoptions in the government, and they wanted to crack that attitude. Taking into account that it was a non-profit organization, they were permitted to advertise for clients, in effect, which is against the main rule of ethics. So there are little cracks in what the bar is doing to resist some of these temptations. I do not know how soon it will come to the idea of supporting them, much less supporting them with cash, but at least that is one of the questions that has to be faced if we are asking ourselves: "Is the bar as a whole doing what it should do to present the full public interest and the full ends of justice for accommodation in society?" And I suppose I will end on that note. I had a number of other things that occurred to me, but my time and garrulousness have absorbed the material that I can usefully present to you at this time. Some of the hard questions today, are: What is the bar going to do as a whole? What directions can it take as a whole to favor and further the idea of what will be presented before Congress, before committees, before government agencies, before the courts, and in stockholders' meetings that will present the many facets of the public interests? In our pluralist society we rely on our faith that we will make right decisions, or if we do not make them the first time around we will make them eventually. But that depends upon whether the various interests that make up our society have a voice—that voice hopefully, will be in large part supplied by lawyers, but it can not be done on a gratuity basis, because that will be, in the long run, ineffective. Some way has to be found to make it effective. As I say, that is one of the great problems, one of the great issues facing the bar.