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Harold A. Smith
Winston, Strawn, Smith & Patterson, Chicago, Illinois

THE ROLE OF THE LAWYER IN A CHANGING WORLD

HAROLD A. SMITH†

We need not spend much time on the premise that there is a changing world. During the past fifty years, social legislation, both by the States and Federal government, vast social changes occasioned by an even faster advance in technology, the development of the United Nations, the atom bomb, transportation faster than the speed of sound, and man-made satellites clearly demonstrate the change. In them all lawyers are found to be active in the very heart of the changes or, if not, to be greatly involved in the consequences of such developments.

What have been some of the principal changes in this period in the practice of the law?

At the turn of the century, almost without exception, the lawyer, quite accurately, was considered by the public to be a member of a profession who would plead cases before a court or jury, draw a will or handle conveyances for his neighbors and friends. While in thousands of communities throughout the United States the practice of the law still involves substantially that, yet with our vast industrial growth and the maze of legislation pouring from the halls of our State legislatures and Congress, a marked change in all areas, but particularly in the larger communities, has come about. Fifty years ago the billion dollar corporation was a thing unheard of. Today such corporations are scattered throughout the country. Their problems extend into so many fields that when a lawyer is retained by one of them to look after its affairs it requires the employment of a score or more of specialists—specialists in the fields of corporate law, labor law, state and Federal taxation, property law, antitrust law, registration of securities, commerce commission problems and many others. The changing world has made the large law office a necessity. Law offices with 50 or 100 skilled specialists in them are found in many places. They are so large and the work is of such volume that some of them are referred to, jokingly but with some truth, as "law factories."

Fifty years ago the requirements for admission to the bar were negligible. In some states citizens had the constitutional right to practice law. In the early 20's a committee of the American Bar Association was appointed to raise the standards of admission to the bar. It urged

† Senior partner in the firm of Winston, Strawn, Smith & Patterson, Chicago, Illinois and Vice-President and General Counsel of the Monon Railroad.

that a minimum of two years' training be had before a young man or woman enter law school. Of course, prior to that time many of the law schools of the country had similar or more stringent requirements, some of the schools even requiring a college degree. But the pressure brought by the American Bar Association unquestionably raised the standards everywhere, so much so that quite generally through the country today young lawyers, before entering upon the study of law, have not only a high school education, but in most cases they have a college degree or at least three years' college preparation. Most of the young men graduating from law schools have gone through a period of service in the armed forces, and if not, they ordinarily get that experience before entering upon the practice of law. In addition to the higher standards for admission to law schools, most of the States have tightened their admission requirements by subjecting applicants to rigid examinations. The net result of this is that by the time a young man or woman has gone through all of this training, and in most cases with a few years of service in the army, navy or air force, a competent, sober young workman enters the practice, of whom the profession may be proud. In the prior century most young lawyers did their reading in a law office and really "practiced" upon their clients, at the start. Now a valuable and talented young man or woman is available for the problems of the profession. It has been stated that 1/10th of the Nation's working force is employed by governments—federal, local and state—and 1/4th of the national income is consumed in the cost of these governments.[1] Since the end of World War II our population has increased by 30 million people. With our enormous and growing population and our avalanche of laws and regulations, the needs of the present and future demand not only fine minds and characters in our legal profession, but well trained ones as well. As Edmund Burke said in his speech on conciliation with the American Colonies, "A great empire and little minds go ill together."

In the last century the young lawyer, in most instances, received little or nothing from his employers when he first hung out his shingle; today there is such a demand for these young people that a salary of $5,000 a year, or more, beginning at once upon their admission to the bar, is not uncommon. Instead of a young lawyer looking for a place to work we find that good law firms of the country, both medium size and large, canvass the law schools before the classes graduate and even bid against one another for the services of the most talented product. This is a change which no one should lament.

1. Rolin Posey, former head of the Department of Political Science, Northwestern University.

One of the significant changes that has come about in the practice of the law has been the organization of substantial legal departments in large corporate organizations throughout the land. Corporations have found it both economical and convenient to have lawyers in their offices who can answer, and work on, the problems arising daily from the maze of legislation which affects business today. These large corporations are substantial competitors for the talents of the young lawyers annually graduating from the law schools. Their competition is keen for the reason that they can offer young lawyers salaries equal to or in excess of those that are paid by the best law firms and, in addition, there are available to them pension plans which cannot be and are not now provided by law firms. With tax rates such as they are, the most successful lawyer has difficulty in accumulating enough of a fortune to take care of himself in old age or in a period of life when his earnings cease. So these pensions are of substantial influence. The desire to actually practice law, however, independent of a corporate employer, still is a weighty factor in the mind of the young graduate.

More and more the large corporations are looking to trained lawyers for leadership as their chief executive officers. One of the first notable examples of this was the election of Judge Elbert Gary as the chief executive officer of United States Steel Corporation early in this century. Since that time it has become a common practice. Even today the chief executive officer of United States Steel Corporation is not only a man trained in the law, but one who actually practiced and came into his present role by his contacts with the company on the Board and as General Counsel. One could not begin to name all the other instances but some are well known to us in the Middle West. For instance, your distinguished alumnus of this Law School, John Barr, is now Chairman of the Board and President of one of the largest mail order houses in the world. His background was entirely that of having come up through the legal department. Clarence Randall, until recently Chairman of the Board of Inland Steel Company, came up as an active practicing lawyer. The current President of The First National Bank of Chicago, the fifth largest bank in the world, came up through their legal department. The newly elected President of the Equitable Life Assurance Company, with assets of some 8 billion dollars, was a member of the Illinois bar and actively practiced until becoming the head of The Peoples Gas, Light & Coke Company of Chicago, after which he was elected to his new responsibilities. These are just a few at random instances of what is going on. One of the principal reasons for this is, no doubt, the fact that the profession today is well trained in many of the workings of government

which have become so complex in the past fifty years. A second factor probably is that even in business the time constantly arises when it is necessary for someone to stand up and speak effectively on behalf of the problems of the company. Being well trained in writing and speaking effectively it is only natural that lawyers should be prominently considered when one of these jobs has to be filled. With all the changes that have taken place, little departure is to be expected from this practice in the field of business in the years ahead.

In the field of labor law new problems and new concepts confront the legal profession. While no one would claim that the substantive and procedural law in labor relations is perfect, yet some of the problems arising from mass concentration of labor and its organizations have been solved to a substantial extent by the Taft Hartley Act. The statute, while roundly condemned by the leaders of organized labor when it was before Congress, has had little effective opposition since it has been put into effect.

Problems, however, still do remain. During the past 75 years legal restrictions against employers and corporations for the protection of the public have been enacted to an amazing degree from one end of the land to the other. On the other hand, organized labor, which has come into its own in recent years and is as important a factor in the political and economic life of the country as the employers, has had few restrictions put upon it. It has been said with considerable accuracy "the great unions possess the power to drive to financial ruin any major industrial company in this country if they choose to do so"; and that "they operate within a protective fence of legal immunities granted to no other organization in America."[2] There are many who feel that the closed shop is something distinctly un-American; that any man who wishes to work for an employer who wishes to hire him ought to have the right to do so. In the years ahead the burden will rest largely with the legal profession to bring about improvements in the handling of disputes between labor and employers and to solve some of the highly controversial issues still pending.

Since the turn of the century there is perhaps no factor that has contributed more to bring about new problems in the practice of law than the enactment of the constitutional amendment permitting, and federal legislation levying, income taxes. These laws, with federal estate taxes and the enactment by various states of inheritance tax laws, income tax laws, sales and use taxes, have added to the problems. The questions

2. Speech of John L. McCaffrey at Palo Alto, Calif., July 22, 1957.

arising under income tax laws on occasion are so intricate and so involved, certainly for the affairs of large corporations and estates, that to handle them expeditiously and effectively requires a man specialized in that field. The consequences of the taxes are such that little if any action can be taken with respect to the business affairs of a corporation, or even the settlement of a lawsuit, without weighing the impact of the tax laws upon what is being done. And the tax laws bring about strange results. For instance, in one of our larger cities the owner of a transportation facility found it would be more advantageous to abandon a segment of a street railway system and take a tax loss of a million dollars than to spend $500,000 to keep the transportation facility in use and in an adequate state of repair. While any competent practitioner can no doubt tackle a tax problem and ferret out the various rulings and problems involved, yet experience has demonstrated that the expert in the field can do it more effectively and in a fraction of the time.

One of the most fertile fields for litigation and one of the most difficult for the legal advisors of the numerous large corporations in the past half century has resulted from the enactment of the Sherman Act and related antitrust laws. The provisions of these laws are general and vague. The Clayton Act, and the amendment of it by the Robinson-Patman Act, embody a philosophy of "soft competition" while the Sherman Act embodies a "hard competition" philosophy. The role of the lawyer today advising a corporation is to pilot a safe course between the two. Since the enactment of these statutes literally thousands of cases have been tried. This whole area of law has developed to such an extent that we find it to be another field for specialists. These cases are of such magnitude that it frequently takes months and, in some notable cases, almost a year of a trial court's time to dispose of a case involving these statutes. It is difficult to conceive that there will be a termination or substantial lessening of this litigation in the near future.

Federal and state regulation of transportation by rail, water, truck and air is a development almost within the life span of our older lawyers. The legal problems arising out of disputes as to freight and passenger rates and the division of the proceeds between interstate carriers and questions arising with respect to new lines, or attempts to abandon old ones, present some of our most difficult and complex litigation and involve vast sums of money. The regulation of intrastate transportation by states is similar to that undertaken by the federal government. The technicalities in this field are such that specialists have developed who are much needed to effectively and economically handle this type of litigation. These regulations are no doubt here to stay and that field of

law will obviously continue to be an active one for our profession in the years ahead.

Since the turn of the century another development of immeasurable consequences has come about in the formation and development of bar associations. Prior to 1900 the lawyers as an organized body did very little to improve the administration of justice. In a speech by Dean Pound, made, I believe, in the year 1906, entitled "The Causes of Dissatisfaction with the Administration of Justice" he enlarged upon the selfish and thoughtless attitude of lawyers as a whole in so far as the public interest was concerned. In commenting on that speech John Henry Wigmore stated in an article in the Journal of the American Judicature Society:[3]

> "The profession was a complacent, self-satisfied, genial fellowship of individual lawyers—unalive to the shortcomings of our justice, unthinking of the urgent demands of the impending future, unconscious of their potential opportunities, unaware of their collective duty and destiny."

Whether there was any causal relationship between the comments of Pound and the subsequent awakening of the bar may be a debatable question, but certainly the fact remains that since the beginning of this century lawyers' associations have sprung up throughout the land and have become a vibrant and vital force in our city, state and national affairs. Legislatures and executives more and more look to them for advice and support on questions in special fields. These associations are also an important factor when their influence is thrown against legislation deemed against the public interest. It is well known among the bar, but not so by the lay public, that these associations have committees functioning constantly in all fields of the law. The Chicago Bar Association, of which I can speak with some personal acquaintance, has approximately sixty committees constantly studying various fields of the law and these committees each legislative year propose legislation to improve the administration of justice. In many states of the Union, committees of bar associations have worked for years, and in most instances they have succeeded, in doing away with the old common law writs and technicalities in an effort to provide modern and sensible pleading without the pitfalls so well known in the past which had little or nothing to do with the merits of the case. Bar associations, both state and national, have been active in the selection of judges. Their weight for or against

3. 20 JOURNAL OF THE AMERICAN JUDICATURE SOCIETY 176 (1937).

a candidate in many states has been enough to turn the tide of votes. The influence of the American Bar Association is such now that very few, if any, candidates are appointed to the Federal Bench without having the approval of, or at least without having been screened by, the committee on judges of that organization.

A notable development urged upon Congress and the Supreme Court by the organized bar was the adoption of the Federal Rules of Civil Procedure. Prior to their adoption, as a result of the Federal Conformity Act, the procedure of each State was the procedure of the Federal Court in that district. The result was that a lawer of one State seldom could advise a client with confidence on procedural questions in any Federal Court save only in his home State. These new Federal Rules are models of simplicity. They are uniform in Federal Courts throughout the land and afford a simple and direct method of getting the issues of a case in writing. In those few States still struggling with involved procedural questions they supply an excellent model for modernization.

One of the most important objectives in the administration of justice is to see that every person in need of legal advice has a lawyer. In many parts of the country the ordinary layman does not know where to go for legal advice except by a hit or miss process of reading signs on the windows or from gossip in the community. But in many of our larger cities things are so organized now that no one need be without competent legal advice. For instance, in the city of Chicago the United Charities maintains a legal aid department with a staff of competent lawyers who will handle any legal problem submitted to them if it can be first demonstrated that the person submitting the problem is without financial means to hire a lawyer. The lawyers maintained by the Legal Aid Bureau are competent and dependable. They are maintained through charitable contributions from lawyers in their local community. The budget for this Legal Department alone is some $30,000 or $40,000 annually. In New York in 1956, approximately 28,000 criminal cases were handled by the Legal Aid staff of that city's criminal courts. To provide for an in-between class, some Bar Associations maintain a Lawyer Reference Bureau. If one does have funds, though limited, to pay for legal advice and does not know where to go, by calling at the office of the association a secretary will submit a list of lawyers skilled in the field needed, where a conference can be had for a few dollars to determine whether the person needs legal advice. If so, arrangements can be made on a reasonable basis for representation. Approximately 10,000 persons each year avail themselves of this service in Chicago. This plan

has been put into effect in several states and is actively supported by the American Bar Association. This is a change that has come about in recent years and a practice that should be followed and enlarged upon in all the states.

The medical profession is at least matching the lawyers in this respect. Much can be learned from them with respect to our obligation to the public. It is common knowledge that experts in the field of medicine and surgery spend many hours each week in public clinics or teaching where they frequently work without charge; and it usually is the fact that the more talented the medical man the more likely you are to find him engaged in this type of work.

Real progress has been made with respect to procedure in most of our states, yet in many we have a hopeless patchwork of judicial structure, developed piecemeal, with the increase of population. In many areas there are to be found separate court systems of equal jurisdiction, with separate clerks, with no administrative control whatever. Some states, notably New Jersey, have demonstrated how to put the courts on an efficiency basis. It is up to the lawyers in the states retaining such patchwork systems to see that a change is brought about. Even now in most states where that condition exists the organized bar is constantly urging the legislatures to adopt remedial legislation.

As part of the problem of improving our judicial structure nothing is more important than the method of selecting judges. While the mass of our people would reluctantly give up their right to select judges themselves, certainly in the large metropolitan areas of the country the selection of judges by the elective process is most undesirable. Many of the areas elect 40 or 50 judges or more at a time, which means that there are generally twice that many on the ballot. In most of these large areas few of the candidates for judge are known at all by the electors. Most of the lawyers know little or nothing about the candidates for office as they are put on the ticket by the political machines. It frequently happens that the political bosses work out what is called a "coalition ticket." By this method each political party agrees that it will have a given number of judges to be elected to the bench. Both parties then nominate the candidates agreed upon so that when the voter goes to the polls to "vote" (if you may call it that) he finds the same candidates on both political tickets. That is a great deal like "voting" in Russia.

While the selection of judges in these large metropolitan areas may seem to be a far removed problem from the smaller communities of the country yet it is not infrequent that the property or the liberties of the people of the smaller communities through circumstances beyond their

control are determined by courts in the larger areas. Many well informed people believe that the best judges result from the appointive process which is followed in our federal courts, or by a modified appointive process followed in some of the states such as New Jersey and Missouri where a judge runs on his record after first having been either elected or appointed to the bench.

Putting the courts on a more businesslike basis and improving the method of the selection of judges is an important problem for the years ahead.

The handling of personal injury cases in our growing population, in many respects, has been so abused as to bring discredit to the profession. The improper solicitation of these cases has brought about the term "ambulance chaser" which has a tendency to attach to the entire profession. The use of a few medical men who make a career of testifying—for a fee— for either side, and the permitted practice in many instances of allowing cases to be tried in states far removed from the scene of the accident, and the place where most if not all of the witnesses reside—these and other improper tactics and actions make these cases a chief source of merited uncomplimentary remarks about the profession as a whole. Procedures have been suggested to eliminate controversial medical questions but few have been adopted. The professional medical witness who will testify on either side of a personal injury case adds little or nothing to the achievement of substantial justice. The medical profession as a whole deplore their practice. An independent neutral medical commission available to the courts would be of much more help. It would speed up the trial of these cases and lessen the cost to the parties involved.

Personal injury cases alone comprise probably 75% of all litigation in the courts of the land. While the bulk of them arise from accidents on the highways and streets and in buildings of our cities, they also comprise proceedings arising under the Federal Employers Liability Act applicable to railroads. Injuries sustained by non-railroad workmen in the employ of their masters have been almost entirely eliminated from the courts during the past fifty years and are now handled exclusively and satisfactorily under Workmen's Compensation statutes. These are speedily and effectively disposed of. By amendments to the Federal Employers Liability Act and by interpretations of the United States Supreme Court that statute now is little more than a compensation act. The injured plaintiff, theoretically, still must persuade the jury that the railroad was negligent, but, with rare exceptions, he has no trouble on this score. These cases are frequently litigated at great length and are

a contributing factor for needless congestion in the courts. There is no valid reason why injuries to railroad employees should be handled differently than injuries to other classes of employees. The amount of liability should be set up by an Act of Congress and a simplified procedure for settlement of disputed matters provided for as is the case in all other workmen's compensation statutes. The courts would be properly freed thereby of a heavy load in their calendars which are now so much overloaded.

Personal injury cases and those under the Federal Employers Liability Act are handled usually on a contingent fee basis of from 25% to 33 1/3% or even higher in some instances. Reported decisions will demonstrate that the lush reward in fees which sometimes result in the ordinary negligence case and which *usually* result in Federal Employer Liability cases is a real inducement to the solicitation of the cases. There are many lawyers, of course, who handle these cases with the utmost propriety; but it is a field where there is great abuse. This abuse is of such scope that the President of the American Bar Association in his annual address at the meeting in New York City on July 15, 1957, commented on it at length.

In many of our large cities the congestion in the courts almost constitutes a denial of justice to the people seeking relief. In the state courts in a city such as Chicago a case cannot be reached in its ordinary course short of four or five years from the time it is filed. The importation of personal injury cases from the smaller communities outside of the county, and from neighboring states, by lawyers shopping for what they deem to be a favorable forum, has contributed substantially to this condition. In no field is this abuse more common than in cases under the Federal Employers Liability Act. As a result, the courts in the larger cities are loaded beyond all reason with cases that should not be tried there. The communities where the accidents occurred have ample facilities and courts and competent lawyers to provide prompt trials. The lawyers in the smaller communities are deprived of a practice which legitimately belongs to them and which in a large per cent of the cases is taken away from them by improper solicitation. A complete and simple answer to the problem of transporting cases about the country is by the application of the doctrine of *forum non conveniens*. Under this doctrine courts possess inherent power to send a case back to the area where it ought to be tried, or even to dismiss it if it is improperly imported from another state.[4] The transfer of cases in the Federal Courts is

4. Whitney v. Madden, 400 Ill. 185, 79 N.E.2d 593 (1948).

specifically provided for by Sec. 1404 of the Federal Judicial Code. Political considerations, no doubt, prevent many elected state judges in the larger metropolitan areas from using the common sense and courage that ought to be theirs.

The elimination of disreputable medical contests, stopping the transportation of cases around the country, providing for the equitable assessment of costs as they do in England against a litigant who loses his case, enforcing, strictly, the rules with reference to solicitation would all do much to clean up the profession and ease congestion in our courts.

One of the most significant functions of the organized bar which has largely come about since the turn of the century has been the assumption by the bar in most states, largely at the expense of the lawyers themselves, of the disciplining of the profession and the establishment of ethical standards for lawyers and judges. Despite the higher standards required for admission to the bar and exhaustive work of committees on character and fitness, men are constantly being admitted to the bar who should never be approved. The disciplining of the bar is an endless problem for the lawyers and the courts and, no doubt, will be with the profession in all of the foreseeable future. While the burden of doing the policing rests with the lawyers, in the last analysis the actual enforcement of standards of good conduct is in the hands of the courts.

The courts themselves in some instances have not been helpful in efforts to raise the standards of ethical conduct. The mild treatment by censure in two recent cases in the Supreme Court of Illinois[5] are typical, a result lamented by the President of the American Bar Association in his recent address in New York. As Justice Brennan, then of the Supreme Court of New Jersey, put it, discipline "is imposed in order that the public shall have continued confidence that the profession will purge itself of lawyers unable or unwilling to measure up to the high standards of honor and moral decency by which we govern our professional conduct."[6]

From national crime figures compiled by the FBI, it is estimated that last year there were 2,563,150 crimes committed in the United States, the highest total in history, and an increase of 13.3 per cent over 1955. During 1956, 12,620 people were slain, 20,300 women raped, and 96,430 persons wounded or maimed by deadly weapons or acid. Robberies, burglaries, auto thefts and other larcenies resulted in losses totaling 440 million dollars. According to the most recent crime statistics published

5. In re Heirich, 10 Ill.2d 357, 140 N.E.2d 825 (1956); In re Cohn, 10 Ill.2d 186, 139 N.E.2d 301 (1956).

6. In re Frankel, 20 N.J. 588, 120 A.2d 603 (1956).

by the FBI, "Crime has increased almost four times as fast as population since 1950."

The administration of our criminal law, in some respects, is in dire need of improvement. There has been almost a complete breakdown of law enforcement in so far as the punishment of gangsters for criminal offenses is concerned. It is a rare thing when the perpetrators of a gangster murder are apprehended and punished. On one occasion, in broad daylight within a block of State and Madison Streets in Chicago, one of the busiest intersections in the world, a gangster murder was committed; not a single witness could be produced and, of course, the criminals were never apprehended. Similar occurrences have taken place in many of our large cities. We have reached the ridiculous stage where virtually the only method by which we can bring gangsters to justice is by prosecuting them for violation of income tax laws. The Al Capone case is an example.

Much of the ineffectiveness in the handling of these cases results from the handicap of prosecutors in the presentation of evidence. Some state courts, and even the United States Supreme Court, have indulged in a marked trend *extending* the rules excluding evidence obtained by confession and without search warrants. These rulings repeatedly turn known criminals and communists back into the street to plunder our citizens and to wage war upon our government and institutions. These exclusionary rules which create such frustration in the work of prosecutors today were vigorously denounced by John Henry Wigmore who stated that they were based on "misguided sentimentality."[7] The soundness of Wigmore's position has been amply demonstrated, yet the trend is to increase the technical application of the rules. That trend is amply illustrated by the recent decision in *Work v. United States*[8] where the Court of Appeals for the District of Columbia held it an improper search and seizure for officers, without a warrant, to search a garbage can outside the house in question where they found the narcotics at issue. The public garbage collectors could appropriate the entire contents at will, but the police officers were barred from investigation. It would be a good thing for the country if some of the courts of the land would read Wigmore's extended comments with care.

7. 8 WIGMORE, EVIDENCE § 2184 (3d ed. 1940).
8. 243 F.2d 660 (D.C. Cir. 1957).

In a review of certain of these cases in the United States Supreme Court in an article in the Northwestern University Law Review[9] the author, Virgil Peterson, made the following comment:

> ". . . it is stated that the meaning of 'unreasonable searches' mentioned in the fourth amendment 'in some degree must change with changing social, economic and legal conditions.' This judicial pronouncement was made over three decades ago. Since that time there have been great social and economic changes. Transportation facilities have improved by leaps and bounds. The developments in electronics and related fields have been phenomenal. The criminal has kept abreast of the time and the problems of law enforcement have increased accordingly. Yet, throughout this period the courts have placed narrower and narrower restrictions on the officer's activities. Through totally unrealistic and theoretical judicial definitions as to what constitutes a reasonable search we have handcuffed the law enforcement officer instead of the criminal."

In many of our states, counties and cities we have a network of overlapping police agencies that add beyond measure to the inefficiency and confusion in the investigation and prosecution of crimes. A vast improvement in law enforcement could readily be expected if we were to have in each State a law enforcement agency as competent and free of politics as is our Federal Bureau of Investigation. If there ever was a challenge to the legal profession and to the courts, certainly one lies in the administration of criminal justice.

Some of the most important problems with which our nation has ever been confronted are now pressing for decision. How far and to what extent should we subject our National interests to an international authority; and, assuming we should give all-out support to an international organization such as the United Nations, what can be done to improve its effectiveness? What are we to do with the "welfare state?" Does it deprive us of some of our priceless liberties and, if so, is it worth the trade? Trained as they are in the law, lawyers can be expected to play important, if not leading roles, in these fields and on these issues.

From the very formation of our colonial government and the adoption of our Federal Constitution, lawyers, individually, have been the most conspicuous of civic leaders. Since that period lawyers have been the predominant class in the legislatures of our States and the halls of

9. Peterson, *Restrictions In The Law of Search and Seizure* 52 Nw. U.L. Rev. 46 (1957).

Congress; and they have been the predominant group from which have come the governors of the States and even the presidents of the United States. I believe research will demonstrate that 23 of the first 33 presidents of the United States practiced law. With government becoming more complex and lawyers becoming better trained, it is only natural that their role in public and civic affairs in the future will be just as significant, if not more so, than in the past.