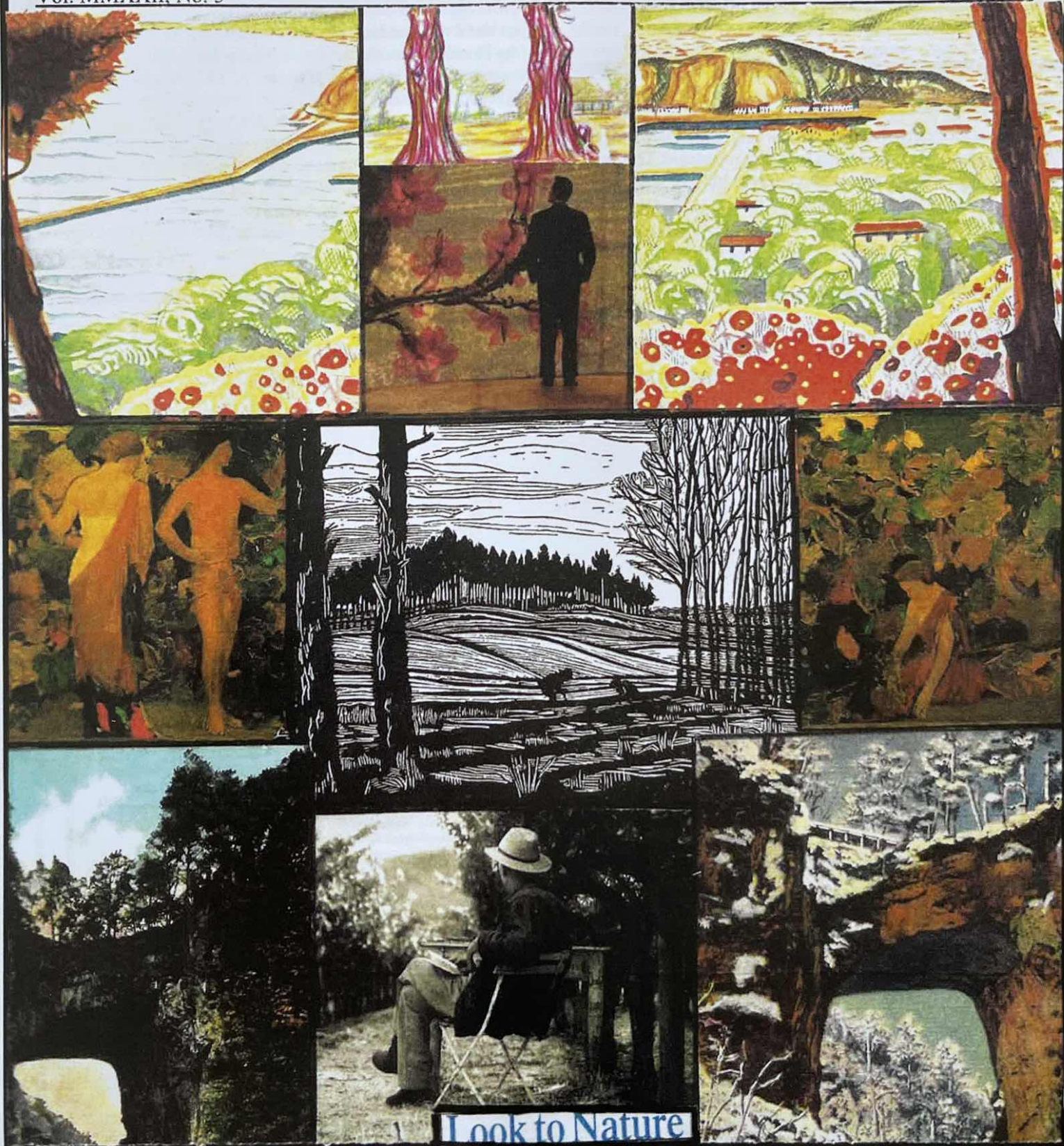


# *American Board of Criminal Lawyers*

## THE ROUNDTABLE

Vol. MMXXII, No. 5

May 2022





## Congratulations to Art Weiss

It is with great pleasure that I advise the Fellowship that our own Art Weiss has just been elected president of the Criminal Defense Attorneys of Michigan, Michigan's NACDL affiliate, and one of the premier criminal defense organizations in the United States. The organization is so well-regarded that the Michigan Court Rules specifically provide that CDAM may file an amicus brief in any case before the Court, without seeking leave to do so. The president of CDAM has significant input on all criminal law issues in the state. Congratulations, Mr. President!

- Bill Swor

## Friedberg reports Richman Win

The Minneapolis Star Tribune this morning reveals that Fellow **Robert Richman** has won another federal criminal case. This time he got a Federal Judge who spent her entire life as a prosecutor to find that an unlawful search could not be saved by "good faith". Robert has won north of thirty federal cases and, I believe, twenty five by jury acquittal. Holy Shit... - Joe Friedberg

## Murder One Acquittal Won by Mallory Hughes

John Berry report, 4/27/2022:

Huge congrats to our newest member, **Mallory Hughes**. Today she achieved a Not Guilty Verdict following a 6-day, 1st-Degree Murder trial. The Government introduced evidence of the shooting itself! After 2 days of deliberations, the jury came back just before lunch today with a unanimous Not Guilty verdict.

## Beroset reports Berry retirement

I just had a very good conversation with **Jerry Berry**. As many of the Florida Fellows know Jerry has been diagnosed with brain cancer and has closed his practice. In spite of the serious diagnosis, Jerry has a very positive attitude and is working through a difficult time in his life. He is enjoying his many friends, family and grandchildren. Jerry served as President of FACDL in 2001-2002. I came to know Jerry through our work at FACDL. He is truly a wonderful person, family man and lawyer. Jerry said it was ok for me to let the ABCL Fellows know he is doing well and appreciates your support. My prayers are with him.

- Barry Beroset

# Atlanta's 'Legal Legends' Share Highs, Lows of Courtroom Battles

by Kathryn Hayes Tucker

Longtime law partners and criminal defense attorneys Ed Garland and Don Samuel of Garland, Samuel & Loeb shared war stories, laughs and some surprises with the Atlanta Bar Association for a remote continuing legal education event titled "Legends of the Bar."

Celebrity divorce lawyer and legal commentator Randy Kessler of Kessler & Solomoniuk conceived the idea and led the two with questions to start their talking in what he planned as a Larry King-style interview. It worked.

They revisited the best and worst of their combined 100 years practicing law, and the work behind the scenes of their courtroom dramas that the 600 or so watching might not have heard before.

Their clients have included star athletes, entertainers, evangelists and entrepreneurs. Samuel was counsel in the last three of the murder trials of Jim Williams, the antique dealer in Savannah whose story was told in the best-selling book, "Midnight in the Garden of Good and Evil." Williams was tried four times for murder before being acquitted in the last trial.

Though they both graduated from the University of Georgia School of Law—Garland in 1964 and Samuel in 1980—the two came to their work from different paths.

Garland joined his father Reuben Garland's law practice in 1964, becoming the sixth-generation lawyer in his family.

"I grew up with my dad as a hero," Garland said. "I grew up on Peachtree Road. And as a boy, I remember Saturday morning. There'd be cars parked in front of the house. Inside the house, when I would come down, there would be families who had come to hire my dad to defend someone in their family who had killed somebody on Friday night."

He said his dad would "take the tough cases" that maybe no one else wanted.

"I would hear the phone call. I saw the admiration," Garland said. "I never thought about anything else... but being able to stand up and fight for somebody."

Samuel joined Garland's firm in 1982, with "no intention of being a criminal defense lawyer," he said. "I joined the firm



Longtime law partners and criminal defense attorneys Ed Garland, left, and Don Samuel, right, of Garland, Samuel & Loeb have a combined 100 years of practicing law.

because what I wanted to do was practice labor law. Ed hired me because he wanted someone to represent the labor unions. He figured if he represented the labor unions, he had all these captured clients when they committed crimes."

That soon changed. "Three months after I joined the firm, a woman shot and killed her husband down in Griffin. He was a lawyer. Ed called me up about 10 o'clock at night and said, 'Go down to Griffin. Go to the jail. Don't come back until the case is ready for trial,'" Samuel recalled.

"I went to Griffin. First time I've ever been to a jail. First time I admit that I was in a jail. I met with the client. I thought it was pretty interesting and a pretty defensible case, too," he said. "But the next morning, the DA walked into the jail," Samuel said. "He was about as mean a prosecutor I've ever met, then or since. He walked in. He could tell how green I was. He said, 'We're gonna take your client for an arraignment this morning. I said, 'Well, that's just fine.'"

"It was about 8:30 by then. I called the office and reached a lawyer who was working there," Samuel recalled. "I said, 'I've got a problem. I don't know what an arraignment is.' That was my first crim-

inal case. I've had nothing but criminal practice since."

The end of that case is a reminder that, even though these two have won some high-profile acquittals, they don't happen that often—even for legends. "My client was convicted," Samuel said. He added Garland joined him at the trial. "We lost that one together."

Kessler asked them to recall their best memories and biggest disappointments.

"The best memories are not guilty verdicts," Samuel said. "Putting those aside—there are just thousands, as we know," he said with a laugh, recalling a high point beyond courtroom victories. "When Ed founded the 1,000 Lawyers for Justice back in early 1990s."

Samuel recalled a "chaotic situation" in Fulton County courts at the time brought on by a shortage of criminal defense attorneys. Lawyers were being asked to represent people they'd just met, with no more than five minutes' preparation.

Samuel recalled Garland saying, "We're gonna find 1,000 lawyers in the city of Atlanta and Fulton County and have every one of them volunteer to take one case," Samuel added. "We all kind of laughed."

But it happened, Samuel said, "within a couple of months."

"All the big firm partners were excited to join in this project. We had 1,000 lawyers. Each took one case," he said. "Amazingly enough, the judges enjoyed it. They enjoyed having a King & Spalding lawyer come down there and spend a couple hundred hours," Samuel said. "They were fabulous lawyers. I still to this day see lawyers who say, 'Don, thank you for the 1,000 Lawyers for Justice time.'"

Garland recalled the start of the idea. "That kind of grew out of some experiences I had," he said. "I sat in a courtroom one day in Fulton County. Garland watched a judge appointing attorneys to cases."

"The appointed lawyer went over. I saw him talk to the client. Then five minutes later, he pled him guilty to a life sentence with no more preparation than that," Garland said.

"When we did this, the result was that all these lawyers took it very seriously," he added. "They got a great training course. They started going in the courtroom raising legal issues, demanding trials. And were excited to try a case. That changed the system."

The upshot was the advent of the public defender system for Atlanta and the entire state. "The governor got involved. The Supreme Court got involved. After that, then we had the funding of the public defender system," Garland said.

He added later, "I want to say today that some of the lawyers we most admire are the public defenders."

They both said criminal defense offers the solution to the problem of how to gain trial experience for new lawyers.

"The criminal field needs so much help. It's a place where you can get courtroom experience. No matter how hard you study, there's no substitute for standing up there and actually trying cases," Garland said. "Those trial skills can be transferred to anything."

The Zoom session was recorded and is available on the Atlanta Bar website for purchase.

Kathryn Hayes Tucker covers legal news for the Daily Report, an ALM affiliate of the Daily Business Review. Contact her at ktucker@alm.com.

## **Jury Acquits Ex-Boeing Pilot In 737 Max Trial**

By **Katie Buehler**

Fort Worth, Texas (March 23, 2022, 5:43 PM EDT) -- A Texas federal jury on Wednesday found **The Boeing Co.**'s former chief technical pilot not guilty of misleading safety regulators and airlines about the level of training required for pilots of the 737 Max.

After about an hour and half of deliberation, a Fort Worth, Texas, jury acquitted Mark A. Forkner of four counts of wire fraud. Forkner bowed his head and began to cry as the jury verdict was read. After the jury was excused from the courtroom, he hugged everyone on his legal team.

In a statement to the press, Jeff Kearney of Kearney Law Firm applauded the jury for being courageous enough to deliver a not guilty verdict to his client. His co-counsel, **David Gerger** of **Gerger Hennessy & McFarlane LLP**, said he was grateful the jury "saw through" the government's case.

Forkner had been accused of misleading the **Federal Aviation Administration** on the level of training pilots would need before flying the 737 Max, the model of plane involved in two crashes in 2018 and 2019 that killed more than 300 people. Accident investigators and other official review panels have since determined that the plane's Maneuvering Characteristics Augmentation System, or MCAS, was vulnerable to faulty sensor readings that would inadvertently trigger the system and push the plane into a nosedive.

The roughly two-day criminal fraud trial saw the government frequently rely on chat messages and emails Forkner sent to colleagues at Boeing to show he was knowingly lying to the FAA about the level of training pilots would need. But Kearney argued during closing arguments that those messages — allegedly taken out of context — weren't enough to convict his client of wire fraud.

"They need to bring you cold, hard facts," Kearney said. "Not innuendos, not suppositions, not interpretations of chat messages."

Prosecutors argued Forkner learned in November 2017 that MCAS, which was designed to activate only in limited situations such as high-speed wind-up turns, was instead activating at lower speeds typically used by commercial aircraft. But he decided to hide that information from the FAA, the government claims, to keep the required pilot training level low.

Forkner's communications with colleagues and the FAA show he knew how important a low level of training was to Boeing and that he wanted to secure that level to become a "hero" at the company, the government claims.

Prosecutors highlighted chat messages in which Forkner said, "So I basically lied to the regulators (unknowingly)." They also pointed to his demeaning characterization of the FAA officials, whom at one point he likened to "dogs watching TV" due to their inexperience.

## **Chartier charts another hit**

I'm tooting our own horn!

We had a case that no one thought we would win—and we did!

Not guilty on 6 counts of criminal sexual conduct in the first degree. The allegations were from 20 years ago and involved a female guidance counselor and a middle school teenager. There were over 30 "love letters" and a bunch of inculpatory statements during an almost 3-hour interrogation.

The win is even sweeter because the prosecutors were huge JERKS and the judge was another prosecutor in the room who told me at a status conference that our client should plead.

This is the trial that was the reason I missed Las Vegas. On to the next trial in just a couple of weeks! - **Mary Chartier**

## **For Jon Paul A+B = "W"**

C

B & C get into an argument in a bar. B tells A of the argument. A goes into the bar and clocks C. A & B leave. A & B become more angry, got a knife, went back into the bar and C was stabbed multiple times until he was care flighted from the scene. After 1 hour deliberation, the jury found both A & B not guilty of all charges ( felonious assault and aggravated assault). No offers; Jon Paul's client did not testify; simply amazing! - **John H. Rion**

## **A "W" for the W's**

Dear Friends

My son Herman and I just got an acquittal in a run of the mill weapon assault in Virginia City, Montana. I wasn't there for the verdict but I think that I provided support for the idea that you can pick a winning jury without knowing much about the facts, not that we recommend it.

I was thinking about some of the responses to Mike's query last week regarding sowing the seeds of mistrial. During jury selection I meant to use the SunWolf thing about empowering jurors to police the other jurors but this is a new judge and there's a chance that I might want to get along with him.

My son used the one about taking a pill out of a tainted bottle of Tylenol, during opening. I told the jury that in a recent trial we asked whether the potential jurors would believe a cop over a lay person and one guy said, "no, but I'd believe a cop over a lawyer"! I'm surprised that I hadn't heard that one but it is a good ice breaker with the jury. Take care. - **Chuck Watson**

## **Biden taps Bridget Brink to be U.S. Ambassador to Ukraine**

Let it be known that President Biden has stated that he is nominating Bridget Brink, daughter of Fellow **John Brink**, as our next ambassador to Ukraine. Congratulations John, I think.

- **Joe Friedberg**



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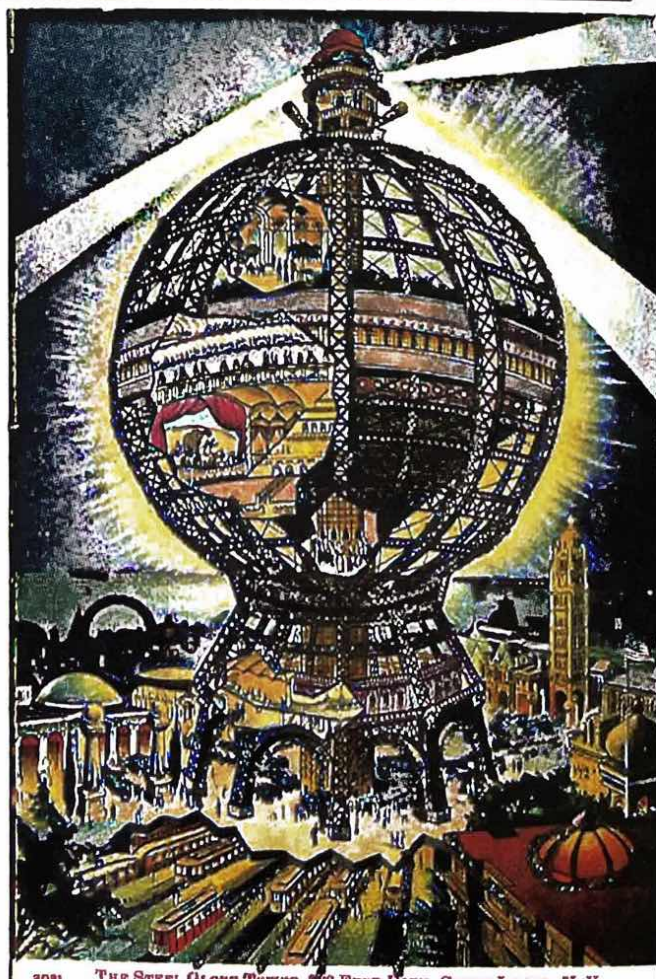
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### Future Meetings

~~March 18-20, 2022: Las Vegas, NV - Four Seasons~~

July 15-17, 2022: Traverse City, MI - Delamar

October 7-10, 2022: Detroit, MI - Cadillac Hotel



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# THE LEGEND'S TALE

by Stephen R. LaCheen, Esq.



Philadelphia has had more than its share of legendary lawyers. From as far back as colonial times and the original "Philadelphia Lawyer," Andrew Hamilton, through every generation since, the Philadelphia Bar has produced great lawyers. In celebration of its 200th anniversary, the Bar Association published a magazine in which, sprinkled among dozens of articles about its history, were photographs and short "bios" of some 200 Legends of the Bar.

During my own early years at the bar, to which I was admitted in 1958, I had the good fortune to see in action some of the legendary stars of the criminal defense bar, including Lemuel Schofield, John Patrick Walsh, Garfield Levy and Cecil B. Moore. They were indeed the stuff of legend.

And, then, there was The Legend, a lawyer talked about by anyone who had ever seen him in action, celebrated in numerous apocryphal courtroom tales, but seldom — and by me, never seen in action. The stories about him were legion, and they were made all the more intriguing by the seeming gap between the perception and reality; and one was never sure which version was which.

No description of him ever omitted words like "untidy," "unkempt," and "eccentric." He was described as being heavy-set, bespectacled, generally unshaven, with his shirt straining to remain buttoned over his belly and chomping on a cigar. He practiced alone out of a dingy, cluttered office in the 1300 block of Spruce Street, which, according to legend, was as historically untidy as he.

On the other hand, every description of him also celebrated his genius in the courtroom and his brilliance as a legal strategist, who had actually argued and won a case in the U.S. Supreme Court. To top it off, he was always spoken

of as being gruff, crass, fresh, quick-witted and possessed of a Philadelphia accent which more often than not sounded like it belonged on the waterfront than in a courtroom. He was a character straight out of a Damon Runyon story.

The Legend was named Jacob Kossman, and during his long career, he represented many celebrated clients, including Teamsters Union President Jimmy Hoffa; Albert Anastasia, former head of "Murder, Inc.," mob figures Frank Palermo, Frank Costello and Antonio Corallo; and Angelo Bruno, the Philadelphia mob boss slain in front of his home after dining with Mr. Kossman.

Jake died on a Sunday in March 1989, at Fox Chase Cancer Center. He was 79. Jake's obituary quoted Jeff Miller who, with Carmen Nasuti, both former federal prosecutors, shared offices with Jake in his later years: "He was the last of a legend, the last of the Damon Runyon lawyers in Philadelphia. He was a genius and he was eccentric. He was a master."

The classic Jake Kossman story, which everyone seemed to know, told of how, when trying a serious criminal case, in a wrinkled, ill-fitting, mismatched pants and jacket, wearing a tie that only made it half-way to his belt, Jake knelt down before the jury while making his closing argument, apologized for his appearance and gruff manner, and asked the jury, rhetorically, whether the defendant would have hired someone like him if he were guilty. And, as legend had it, the jury agreed and acquitted his client.

On the day when I heard the anecdote I am about to relate, Jake was holding court and conducting an informal seminar for his office mates, Carmen and Jeff, one of his clients, an older gentleman he called "Ange," and a visitor (me).

*Had an interesting experience. Interesting, and unfortunately one that is becoming increasingly more common. Let me tell you about it. Maybe you can tell me how you would've handled it. Guy comes in yesterday afternoon to discuss hiring me. Interesting little guy, a little full of himself, with an interesting little problem without any obvious complications. Something I thought he could resolve himself with a couple of phone calls with the advice I was going to give him.*

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*Stephen R. LaCheen is a partner in a three-attorney firm in Philadelphia, specializing in criminal defense. He serves on the executive committee of the American Board of Criminal Lawyers and is a past Editor of The Philadelphia Lawyer, the quarterly publication of the Philadelphia Bar Association.*

*Mr. LaCheen has been in private practice since 1958. He served as Solicitor's Clerk in London during the summer of 1974, and on the London faculty of American University's Institute on Crime in 1975 and 1987. In addition, Mr. LaCheen was a National Endowment for Humanities Fellow at Yale University in 1978. He is the author of approximately 100 law-related articles and short stories.*

*The litigation that he has personally handled during the last 25 years, both trial and appellate, has been almost entirely criminal, in federal courts, with the accent on economic ("white-collar") crimes. He has acted as special counsel to several corporations that were the subject of grand jury investigations, as well as individual subjects and targets of such investigations. He has acted as consultant to several major law firms for pre-trial and trial preparation. Mr. LaCheen was lead counsel in overturning convictions in two cases before the U.S. Supreme Court, Ratzlaf v. U.S. and Shirk v. U.S., both in 1994.*