

Opening Statement: The Impact of Popular Culture on the Perception of Lawyers

by Robert A. Clifford
Chair, Section of Litigation

The public perception of lawyers has always been out of our hands. Since Shakespeare, indeed as early as the 14th century medieval literary work *Piers Ploughman* about a poor man's quest for spiritual truth, those who shape public opinion have portrayed lawyers as shady characters at best. Even a tombstone in the western part of England reads, "God works wonders now and then—here lies a lawyer, an honest man."

I suppose that, as lawyers, especially trial lawyers, we should be flattered that ours is a sufficiently fascinating profession to excite popular interests. There is, for example, no widespread perception about, say, lens grinders. But it remains true that popular beliefs are largely the product of fiction, whether written or graphic, and fiction is, in reality, a poor place to form a perception about anything important because it is never better than the minds of those who write it. Ergo, the fictional world of lawyers bears as little relationship to the truth as does the fictional world of doctors, politicians, and all other callings that make up the stock characters of what has undoubtedly become one of our largest industries: entertainment.

So what is our public persona, and why is it so bad? Let us consider some recent examples. Tom Cruise dons an expensive suit and has an affair, and suddenly it is standard fare for his law partners to kill someone who knows too much. Danny DeVito and Matt Damon solicit business from injured victims lying bandaged in hospital rooms, unable to contact a relative. And Paul Newman is a falling-down drunk, hoodwinking clients into thinking his halfhearted and inept representation is sufficient. And soon we will be treated to another Scott Turow best-seller-made-into-movie-hit, *Personal Injuries*, in production this year. I am sure the glamorized movie version will bear little resemblance to the personal injury attorneys I know, yet the public will walk away from theaters convinced the fictionalized account is very real. After all, it stars Dustin Hoffman. On the small screen, Ally McBeal seems to set the standard for the way a lawyer should be.

These different stereotypes, in their different ways, show a real misunderstanding of who we are, what we do, and why we do it. The reason that the stereotype is so false is that the reality about lawyers is something the society does not really wish to know.

Lawyer bashing is as old as lawyers themselves. We have specialized skills and knowledge, but ours are different from, say, a physician's. A doctor's knowledge is used only to benefit persons who are ill. There are no opposing doctors trying to make you sick while your own doctor is trying to make you well because the most fundamental goals in administering care are not adversarial; there are not two sides to the question. Although outcomes may differ, everyone is trying to read from the same page: to heal the sick patient.

Lawyers, however, and particularly litigators, exist exactly because there are controversies, disagreements, and ad-verse interests that, for the good of society, must be resolved in some orderly way. The public has always wanted to be a part of this moral process and therefore has long had a fascination with the way disputes are resolved. Since colonial times in this country, punishment and executions have been carried out in the open. Hangings occurred in the public square, with the condemned person often making a remorseful statement from the gallows. The theatrical attraction of this dramatic enforcement of the law most recently reared its head in the highly publicized execution of Timothy McVeigh, who killed 168 people in the Oklahoma federal building bombing. Commentators and spectators alike expressed disappointment in McVeigh's silence in the end, forced to find meaning in his expressions or glances. They turned to McVeigh's lawyers for comments, trying to pry confidential communications from the people charged with holding those conversations private.

It appears people at large resent lawyers for having this superior knowledge, for it is often mistaken for power. Lawyers see the public's needs, its desires, its strengths, and, yes, its vulnerabilities. And for that, certain sectors of the public become resentful, conjuring thoughts that perhaps some sinister conspiracy is afoot.

Utopian planners almost invariably envision societies in which there will be no lawyers at all because there will be no disputes that cannot be resolved over lunch or a beer. Americans do not want to recognize that lawyers are necessary for the orderly function of society. Yet ours is a society that is quick to answer and slow to compromise.

From road rage to disappointed voters, from equal education opportunities to free speech, we are a people who insist on our rights, and rightfully so. The enforcement of these rights, however, often relies upon judges' commanding sheriffs' marshals and other officers of the peace. It is the successful litigant who has the right to have this armed contingent support her opinion about what is right. This is necessary because, in the absence of the organized judicial use of arms, one invariably gets a disorganized private use of arms.

Lawyers may be disliked in our society simply because our very presence stands as an obstacle to the pleasures of private justice. It is more probable, however, that we are disliked because our presence represents the possibility of compulsion, and people do not like to be compelled to do anything. A lawyer's knowledge is something that may be used against some people's interests as well as for them.

Other factors play an important part in forming this distorted public perception of lawyers and the justice system. The law is complicated. To know it takes native intelligence and years of study. Many Americans are distrustful of any problems that cannot be resolved within a half-hour television drama or sitcom. What makes lawyers particularly suspect, too, is that we profit from our ability to resolve these differences.

Keep in mind that part of the public's disillusionment also stems from the blurring of news and entertainment. Lawyers often are being portrayed in movies, novels, advertising campaigns, and television shows as greedy, vicious, or just plain foolish. The American public is wrestling with deciphering the difference between fact and this fiction. It is popular to hate lawyers, even to despise them, and certainly to poke fun at them. Sometimes this is achieved under the guise of entertainment, but as the public's perception of what is news and what constitutes entertainment becomes even fuzzier, fiction and fact also become more blurred. What is the difference between the U.S. Attorney General and Joe Pesci in *My Cousin Vinny*? Does the U.S. Supreme Court really operate much differently from Judge Judy? To a great many of the American viewing public, not really.

As pieces of fiction, these works may be brilliant. But if they become part of the landscape of Americans' source of truth on the profession, it is time to become very concerned. We must be concerned because these skewed notions impact potential litigants and jurors. Concerned because it may affect those who choose to enter the profession. Concerned because it leads to a greater cynicism of legal professionals in our country and around the globe. Concerned to the point where we must try to do something about it as it affects the future of the legal profession and the justice system. As the media giants become concentrated in fewer and fewer hands, the people directing pop culture are becoming more select. That means now, more than ever before, lawyers must take up the cudgels in attempting to mold how they are being perceived.

Each one of us must attempt to do our part. For instance, a year ago the Robert A. Clifford Tort Law and Social Policy Symposium examined this very issue. Section of Litigation Council member and DePaul University College of Law professor Stephan Landsman chaired this two-day forum, the first of its kind in the country, to examine the impact of popular culture on the profession, the justice system, and, ultimately, the public's perception of them. Gathering the

greatest minds in the country to debate and discuss this subject, the participants recognized that mass media, which often defines popular culture, has become a central disseminator of beliefs about the justice system and lawyers themselves.

As a follow-up, I commissioned a four-phase study of consumers and lawyers to examine this issue during my year as Chair. The final results will be revealed at a Town Hall meeting at the Section of Litigation's Annual Meeting in Boston in April 2002. I hope to have it televised so that it will reach a greater number of eyes and ears. The initial results of the focus groups indicate that consumers view lawyers as a "necessary evil." Although the public acknowledges the need for lawyers when in trouble, the people surveyed expressed distrust in having to turn to an attorney. Their negative views, however, stem in particular from highly publicized cases and from disparaging advertising. Most people resented that O.J. Simpson, in their minds, got off on a legal technicality or through legal maneuvering. Others expressed that their distrust stems from an inability to discern a good lawyer from a bad one, so they lump all attorneys into a single group, all driven by a profit motive. Yet it was interesting that many in the initial focus groups confirmed that lawyering was still a desirable career for their children. Perhaps that is an expression more of the trust of our justice system as a whole, and one that we all must continue to embrace.

If this country's legal system is to survive and indeed thrive, we must embrace Alexis de Tocqueville's notion that the jury system must be honored and, in fact, revered. Americans should not be formulating their opinions necessarily and solely on what novelists and entertainment producers have to say, nor on Jerry Springer's or Joan Rivers's standards.

Regardless of the public's personal opinions about lawyers, Americans should derive their understanding of the legal process from being a part of a participatory democracy. Certainly everyone cannot be lawyers or judges, but no one should groan when a jury duty notice appears in the mailbox. People should be clamoring for the opportunity to see firsthand how the legal system works. Invariably, I find that jurors walk away from the experience satisfied, empowered, and much better educated.

Sadly, however, too many people's exposure to the profession is through television and movies. And those who have had a firsthand experience with the legal process usually do so in an adversarial position as a litigant. Whether it is on the wrong end of a nasty divorce, a tragic injury, or even a tense contractual dispute, most people are exposed to lawyers when they are in trouble or at an emotionally charged time in their lives. Only a few survive with a sense that justice was accomplished.

If lawyers are to uphold the canons of zealously representing their clients, how are we to reconcile this with the public's lack of appreciation of the adjudicative process? Add to that the public's perception of lawyers as seen through the entertainment kaleidoscope, and the task of restoring respect seems almost out of reach.

Some of the problem stems from the profession itself when lawyers take on such cases as a woman who was injured when two unpopped renegade popcorn kernels struck and burned her chest, or an injudicious dog owner who sues a microwave manufacturer over her unique but disastrous way of drying her poodle after a bath. When these lawsuits hit the headlines, people get mad, and sometimes rightfully so. Although often true, these anecdotes do not make up the core of the litigation process. Marc Galanter, a noted scholar who participated in the Clifford Symposium, called for an "antidote to anecdote." Does one use social science, or would it prove to be wiser to fight fire with fire and utilize popular culture to change the persistent notion of a litigious society? I say the latter is more effective because that is where more and more people are turning for their information.

Lawyers must be proactive in reaching out to the press and public to answer questions in high-profile cases. We must go into the schools not just on Law Day but also volunteer in classrooms, particularly in urban areas, to explain how the legal process operates, in an effort to demystify the

mistaken perception. We must write op ed pieces and letters to the newspapers, request to speak to editorial boards of major publications expressing our views on legal issues that impact so many. For instance, the Firestone tire debacle that has captured headlines may prove to be another thorn in the profession's side, but it speaks of relatively so few. Most Americans, however, will seize upon it as yet another example of the profession as a whole. We have to work to change the notion that unprofessional conduct is widespread or even acceptable by those of us in the trenches.

Do not misunderstand me, however. I accept the fact that there are some unscrupulous lawyers who are damaging the profession's image. These self-indulgent people are motivated strictly by profit, and we ought not be afraid to say that and admit there are some "bad apples," as is true in every line of work. How many times have you watched a late-night television commercial where hucksters ask the bleary-eyed if their recent hip replacement isn't working all that well? Do you know you may have a defective medical device implanted in you? The law firm's telephone number flashes on the screen. Or how about if you gave birth to a brain-damaged baby. Did you realize it may be the result of some negligent doctoring?

These people hurt the profession, and we as individuals should do all we can to discourage that behavior, but we should not work to discourage hard-working men and women who are trying to help others while honestly making a living. Many enter law school with high ideals. There are many who continue to aspire to these goals and, indeed, hold an even greater respect for the law as a profession and as a way we are governed because of their firsthand knowledge and experience in dealing with the law every day.

What is clear, I think, from all of this is that lawyers are negatively perceived because of society's misunderstanding both about the profession as a whole, notwithstanding the few bad apples, and about the justice system within which we operate. If lawyers have been increasingly prominent and increasingly influential, it is because society has become increasingly uncompromising and combative. In a sense, a society gets the lawyers it deserves. This is a truth that we, as lawyers, need to stress whenever the opportunity presents itself. Honest men and women do not wish to be represented by dishonest attorneys. Likewise, dishonest clients have little use for honest representation. Lawyers do not mold society's opinions; it is the media and popular culture that shape the public perception and expectations of lawyers. Each one of us, though, must remain vigilant in seeing that the portrait that is painted is one that truly expresses all that we are trying to accomplish and the real service that lawyers provide to a complex society.

© The American Bar Association. All rights reserved.
Reprinted with Permission.

Litigation

Fall, 2001

Volume 28 Number 1

Chance

Opening Statement: The Impact of Popular Culture on the Perception of Lawyers

by Robert A. Clifford

Chair, Section of Litigation