

Opening Statement: Now More Than Ever

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In this, my final column as chair of the Section of Litigation, it is time to give pause and examine a year that proved to be a most life changing one for us all. I came into office last August with great dreams and hopes of accomplishing much and giving back to a profession that has given me so much, given all of us not just a fulfilling career but also a sense of pride, purpose, and self-esteem.

We had planned a great deal during my years as vice chair and chair elect, and just as we were off and running, the tragic, unspeakable events of September 11 occurred. While a nation stood paralyzed, our nation's lawyers rose to the occasion as leaders in the mired political process that followed. I was proud to be named by ABA President Robert Hirshon to chair the newly formed Task Force on Terrorism and the Law.

Within hours of the event, I was on the telephone with some of our country's congressional leaders and members of the Department of Justice. Within days, I was in the skies, flying almost weekly to meet with those who would decide the future legal course of thousands of those impacted by the loss of loved ones. As all of us gradually tried to get back to our routines, one thing was certain: We as a country will never be the same. Travel is more restrictive. The economy reflects uneasiness in an uncertain future. Holidays somehow seem more somber. And through it all, the country turns to the legal profession for answers to some of the most difficult questions ever posed to a nation, despite the fact that recent studies show lawyers are held in the lowest regard in decades.

Throughout history, Americans have looked to lawyers to solve societal problems. Lawyers always have had a high profile in American society. Since the advent of the electronic age, it is hard to overestimate the amount of coverage that lawyers get in news stories, television programs, movies, and other media. Where there is a significant news story, lawyers usually are involved: from the O.J. Simpson trial to the Enron debacle, from the custody battle over a young Cuban boy to President Clinton's affair with a White House intern, and from spilled coffee at McDonald's to a disputed presidential election. Just about anywhere there is public controversy, lawyers can be found in the middle and on all sides. The issues are significant and the public discussion meaningful and heated. In this context, it is no wonder that Americans are disenchanted about our lawyers.

To understand better the public's perception of lawyers and the basis of those perceptions, I sponsored on behalf of the [Section of Litigation empirical research](#) conducted by Leo J. Shapiro and Associates, a Chicago-based national research firm. The research proceeded in three stages:

First, a consumer survey was conducted in April 2001 with a nationally representative sample of U.S. households. The study replicated some measures taken in a parallel study conducted by the American Bar Association in 1998.

Second, consumer focus groups were held in summer 2001 in five U.S. markets (Birmingham, Boston, Chicago, Dallas, and Los Angeles). Focus group respondents were recruited to represent the demographic composition of their communities. Roughly half of the participants in each market had hired a lawyer in the past five years. The focus groups explored, in depth, public perceptions of lawyers and other occupations and professions; impressions of different types of lawyers; lawyers in the media and popular press; law as a career; and personal experiences with lawyers.

Lastly, an in-depth, comprehensive consumer survey was conducted in January 2002 with a nationally representative sample of U.S. households. In addition to replicating the April 2001 consumer survey, this study gauged the potential demand for personal legal services, consumer

avoidance of lawyers, and consumer satisfaction with different aspects of working with lawyers. In addition, the survey measured consumer perceptions of the legal profession's response to the events of September 11.

Together, these three inquiries give us an in-depth look at the American public's positive and negative perceptions of lawyers, its fascination with and aversion to the profession, and the bases of those perceptions. The results suggest some alternative strategies that lawyers, law firms, and bar associations can undertake to improve their reputation in American society.

What the study revealed is that the negative perceptions of lawyers run deep and wide. To quote from the study's findings:

Part of this is inherent to the adversarial process and to the difficult situations that lead people to hire a lawyer. Part of this, no doubt, also is due to the controversy inherent in high-profile cases, the way that lawyers are portrayed in the media, and the manner in which lawyers advertise. But, personal experiences with lawyers often substantiate the public's belief that lawyers are greedy, manipulative, and corrupt. While some sectors of the bar are more tainted than others, no area of the profession is untouched by this perception.

The study also revealed that Americans are uncomfortable with the purported connections that lawyers have with politics, the judiciary, government, big business, and law enforcement. These connections imbue lawyers with a certain degree of power in society. Americans believe that the central place of lawyers in society enables them not only to play the system but also to shape that very system. In addition, Americans believe that lawyers do a poor job of policing themselves. Bar associations are viewed not as protectors of the public or the public interest but as clubs to protect lawyers. When it comes to hiring a lawyer, consumers say that it is often unclear exactly what the lawyer will do for them and how much the lawyer will charge.

At the same time, consumers also have many positive things to say about the lawyers they know and the lawyers they have hired. They tell stories of lawyers who apply considerable knowledge and skill to help clients navigate difficult periods. To some extent, negative perceptions of lawyers moderate as consumers consider the constraints under which lawyers operate.

Law is a service-oriented profession, but the public complains that it is difficult to purchase our services and to distinguish the good from the bad. In order to reduce this anxiety, lawyers need, first and foremost, to improve their relationships with their clients. Consumers and businesspeople are as concerned about the process of working with a lawyer as they are with the eventual outcome of their cases.

Good communication is at the heart of a solid relationship with clients and their perception of what we do. Indeed, the single most common complaint about lawyers as evidenced by the research is poor communication and follow-up. Bar associations can promote the profession by sponsoring community-based public seminars and continuing education programs, setting high professional standards, aggressively enforcing those standards, and actively promoting the good deeds lawyers already do but for which they remain relatively unknown.

What was particularly disconcerting was that the public's negative perception dissuades many even from hiring a lawyer in a time of need. As the study concluded:

For the consumer, there is little middle ground in hiring a lawyer. While many lawyers do a good job of explaining their services and fees to their clients, many lawyers do not. The reward for hiring a good lawyer is great, but, on the other hand, so is the potential downside of hiring a bad lawyer. And, whether the lawyer is good or bad, the financial costs are uncertain and often greater than the average consumer can bear. This uncertainty generates feelings of vulnerability and anxiety in consumers and creates a real potential for tension in the lawyer-client relationship and for the avoidance of lawyers altogether. While more than seven in 10 households have had a potential need for a lawyer in the past year, less than half of those who might need a lawyer will actually hire one. The irony is that, at the same time that so many consumers' legal needs go

unmet, many members of the growing legal profession are struggling to secure clients. Heartening, however, was the slight improvement in the reputation of the profession in the wake of September 11. Lawyers went from a low 14 percent approval rating in the 1998 ABA study, which had remained unchanged in the April 2001 survey, to a 19 percent approval rating in January of this year. The U.S. Supreme Court, Congress, the judiciary overall, and even the media also experienced a gain in consumer confidence in the wake of the events of that tragic day, according to the study. Still, the overall assessment of the profession remains negative. Now more than ever, the time has come for lawyers to be proactive in stepping up and fulfilling the expectations of the public.

It is clear that the legal landscape is changing. We debated and discussed these critical issues in a program on terrorism and the law at the Section's Annual Meeting in Boston April 25. We discussed how the airline bailout legislation and other antiterrorism laws and national security measures that we know will be forthcoming are reshaping our civil liberties, our litigation rights, and indeed our very culture in the wake of the attacks. But Americans' interests cannot be fully protected from the certain flaws, oversights, and corrections without the input of the legal profession, acting at its best. The public deserves no less.

It is the duty of the legal profession to contribute to the legislative process to ensure that steadied and tempered reason filter through the negative atmosphere and political posturing in which legislation is being passed and executive measures are being carried out. It is the call of the profession to ensure that the rights established by our founding fathers remain intact.

It is commendable that lawyers across the land have advocated litigation restraint in advising families to wait and see what the government formulates as alternative remedial measures to help put our nation back together. America's lawyers acted quickly in doing what they do best—advising the helpless of their rights. Americans, however, deserve more from lawyers than a moratorium on lawsuits at this critical time in our nation's history.

Above all, I feel lawyers, as a cornerstone of a democratic society, must remain the hope of the downtrodden, those who can ill afford the spiraling costs and expenses associated with bringing a lawsuit when they have been wrongfully injured, those who do not know where to turn in troubled times. Our country has a rich history of a profession fighting for truth and justice. We must try without failure to continue the work of these respected jurists, from John Adams to Thurgood Marshall, who have fought tough battles on behalf of individual rights, personal liberties, and the independence of the American justice system.

As attorneys, we approach problems differently than the general population, and we differ in the way we make decisions. What is important to attorneys—our goals, values, and ideals—goes into the public's definition of professionalism.

Surely all of us are motivated in the course of each day by a commitment to a greater public good. Even in working for individual clients, we feel we are working for what is right, we are trying to right a wrong, to mentor those who need direction and guidance, to set an example for those less fortunate. Sometimes, however, lawyers get carried away with their purpose and adopt a win-at-all-costs attitude. This has led some of our colleagues to engage in discourteous conduct. Increased competition and pressure to win leads some to put a greater emphasis on materialism (although many lawyers, if they were to be frank, would admit they entered the profession because of the promise of a better life). But we would probably find the greatest professional satisfaction was derived from those cases where lawyers fought for what was good. It is through hard work, dedication, and taking the high road that remuneration follows.

In 1986, the ABA Commission on Professionalism concluded that "the public views lawyers, at best, as being of uneven character and quality." Perhaps it is as much lawyers' increasing dissatisfaction with themselves, the roles they are expected to play, and the professional demands made upon them that have led to the downward spiral of the public's perception in recent decades.

Surely lawyers can turn to the Model Rules of Professional Conduct that the ABA adopted in 1983. Too often, however, lawyers are finding themselves in areas of conflict not addressed by the rules, where the tempests seem to fall into gray areas involving great complexity. The canons set minimum standards and, oftentimes, depend upon a lawyer's good faith.

And that is what lawyering and the public's perception of lawyers really is all about: trust. Just as heightened airport and high-rise security across the country speaks to the lack of trust in ourselves, so, too, the public's widespread disdain—yes, disdain—for lawyers actually speaks to a lack of trust in the profession to operate as a profession. We are facing a public crisis of confidence. Americans simply do not trust lawyers. They do not trust lawyers to follow the rules. They do not trust lawyers to charge their clients what is fair. They simply do not trust lawyers to do what is right.

We live in a world based on trust. Every day we are forced to trust strangers. We trust the school bus driver to get our children to school, the airline pilot to get us safely to our destinations, the hospital staff to administer the proper medication, the police officer to enforce the law, the other motorists not to drink and drive. Sometimes, though, we are let down. Lawyers are among those who can jeopardize trust, whether by not fully communicating the frailties of a case to the client or not being upfront about a fee. In any event, the lawyer becomes just another in a long line of those who do not follow through on a promise, and, with that betrayal of trust, however small, the entire profession suffers a bit.

Certainly lawyers are advocates for their clients, but, first and foremost, they are counselors. Maybe more than in any other profession, people turn to lawyers for their advice, their logic in seeing through a problem and perceiving issues, and their decision-making ability after examining all the options and likely consequences. Although consumers describe lawyers as greedy, manipulative, and corrupt, they also say that lawyers are educated, intelligent, knowledgeable, hard working, aggressive, outgoing, well spoken, and confident. These are traits they admire and even would like to emulate. It is on these virtues that those in need of legal services rely. On the basis of these strengths, each of us must formulate a plan to do our jobs better. We discussed and debated that very issue in the second part of the Town Hall Meeting April 25 in Faneuil Hall during the Annual Meeting.

Public confidence in our profession is critical in doing our jobs right. We must live up to that great responsibility, and how we handle it is what distinguishes us as true professionals. Lawyers must earn the right to be trusted once again.

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