

Opening Statement: Raising the Bar

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The public perception of lawyers certainly has waned. In years past, trial lawyers enjoyed a positive image typified by popular icons like Perry Mason and Atticus Finch. Now, a major beer brewery thinks it can improve profits by running commercials depicting lawyers as rodeo cattle. Another television ad portrays trial lawyers as sharks in a feeding frenzy. Yet another features the once-revered F. Lee Bailey advising sheep about bringing a lawsuit to complain about the success of a line of mattresses. This recurring distortion of lawyers' behavior has contributed to the mistaken impression that zealous advocacy calls for rude, intimidating, aggressive techniques.

The image of lawyers in today's society is extremely important not only because it impacts our relationship with our clients and jurors but also because it erodes the public's willingness to be governed by law. It is in this milieu that I become Chair of the Section of Litigation. And it is with this deteriorating public confidence uppermost in my mind that I have decided to dedicate my year to improving the public's perception of trial lawyers.

In a proactive effort to get to the bottom of often-distorted perceptions, I commissioned a study this year, conducted by the Chicago research firm Leo J. Shapiro & Associates, to examine America's confidence in the courts, the judiciary, and the legal profession. The survey follows up on a comprehensive study the ABA conducted in 1998. At that time, most Americans (80 percent) believed that the American justice system was the best in the world, and nearly as many (73 percent) expressed continued faith in the jury system. Although feelings about courts in general were mixed, 50 percent of those surveyed had great regard for the U.S. Supreme Court. Lawyers, however, did not fare so well: Only 14 percent of persons surveyed reported strong confidence in attorneys.

It has now been three years since those data were collected. Since that time there has been a continuous assault by the media upon American trial lawyers for committing what has been characterized as wrongs against society; securing damages in redress for injuries, causing businesses to alter their conduct to avoid dangers and promote safety, and— worst of all—earning large fees in the process of doing so. In the May 14, 2001, issue of *Forbes*, a cover story on "Killer Lawyers" lists lawyers by their large fees. Another story in the same issue, "Turning Lead into Gold," describes the country's "highest paid lawyers," who earned their spoils from asbestos and tobacco litigation.

One can imagine an America in which all of these things, especially the large fees, would have been applauded rather than censured. That is not so now. These negative perceptions raise a red flag for all trial lawyers, not just "plaintiff's lawyers," because they demonstrate that a most important fact has been ignored or forgotten by Americans: the role that lawyers play in working for the rights of individuals and corporations.

This misunderstanding is illustrated perfectly by an article that appeared in *Time* in July 2000. The headline asked "Are Lawyers Running America?" and continued, "Their lawsuits are setting policy on guns, tobacco and now HMOs. Who elected them?" The answer to that final question lies with the barons of Runnymede and, more recently, with the framers of the Constitution. Both were committed to the principle that individuals have rights—not empty, theoretical, idealistic rights, but real rights that can be enforced and protected.

Trial lawyers, whether they represent private or corporate citizens, are in the business of enforcing and protecting those rights. Newt Gingrich's proclaimed intention to "grind trial lawyers ... into fine dust" was really a threat to grind into dust the rights of all Americans, even ironically, his own.

Time's article continues with a discussion of tobacco litigation that had recently been concluded. The article chastised the lawyers who took on this mammoth industry, pointing out how the lawyers were collecting large fees for their efforts. Yet it was devoid of any criticism of the states that are now financially motivated to soft-pedal further action against the tobacco industry for fear of losing the stream of billions of dollars in payments their lawyers negotiated.

What is manifest from all of this is the unarticulated belief that you can curtail the courts, dispense with juries, and "grind trial lawyers into dust" while still preserving the people's rights. In reality, it is not possible to attack tobacco lawyers, asbestos lawyers, successful corporate and divorce lawyers, entertainment lawyers, and plaintiffs' lawyers, as *Forbes* and so many others attempt to do so, because, in reality, all of those attorneys are merely trial lawyers who are acting as advocates for their clients. All that can be ultimately attacked, all that can be destroyed by the media's onslaught, are the rights of individuals and corporations or the operation of the law itself.

The constant medial assault upon the legal profession must be understood to be a warm-up for future actions that will seek to limit the ability of individuals and corporations to enforce or protect their rights. And there can be no question that the medial blitz of recent years has taken its toll.

The results of the survey conducted this year showed that public confidence in courts, judges, and lawyers has further eroded on all levels. Confidence in the Supreme Court of the United States dropped from 50 percent in 1998 to 36 percent in 2001. Overall confidence in the justice system dropped from 30 percent in 1998 to 24 percent.

Indeed, the only number that rose significantly is the percentage of people who believe that the justice system needs a complete overhaul. What form could that overhaul take except to deny citizens—whether corporations or individuals--their now-existing rights to resolve their differences before a fair tribunal, including a jury of the American people?

In May 1999, the National Conference on Public Trust and Confidence in the Justice System was held in Washington, D.C., with more than 500 leaders from state and federal public, legal, and judicial arenas in attendance. The three top strategies identified to improve the public trust included: (1) public education, (2) continuing legal education of lawyers, and (3) training of judges. I agree that these are the right strategies, and these are precisely the steps that I intend to pursue during my tenure as Chair to achieve the goal of improving the public trust in our profession.

Improving the level of education of the bench and bar was a mantra recited after the ABA conducted a similar study in 1986 and after yet another follow-up study with similar dismal results released in 1994. At that time, bar leaders called for initiatives to improve the declining image of the legal profession, including policing legal advertising, beefing up professional responsibility curricula, and strengthening pro bono activities and community service.

But all of this is lost without public education and a sustained effort by individual lawyers and the profession as a whole to work for the public good. That may come in the form of pro bono work, volunteer efforts in bar associations, setting and example of civility in the courtroom, working for juvenile justice, mentoring, and comprehensive continuing legal education programs. Our efforts to inform and assure the public must also include outreach programs on all levels - in schools and in society, primarily through the press - to reach as many people as possible and tell them how lawyers and judges work to protect their rights and how the profession works tirelessly for justice. We must make a concerted effort to reach the eyes and ears of the American public if we hope to revitalize and restore confidence in what the public considered a most noble profession just decades ago. Without this commitment, the very legitimacy of our justice system is at risk.

We, as an association and as individual lawyers, owe it to our nation as well as to the profession to advocate the system of justice that our forefathers fought so hard to achieve. Perhaps it is not surprising that laypeople do not understand the importance of that system in maintaining their individual rights. Maybe they have not considered the concerns of the framers of the Constitution. Maybe they have never

heard of the Magna Carta. Part of our job, our public duty if you will, is to vocalize the fact that for nearly a thousand years, disputed issues have been resolved by juries, which have been considered the best and foremost safeguard in protecting freedom and the civil rights of individuals and corporations alike.

It must be remembered that professionalism exists today in a milieu filled with conflicts: fierce competition, time constraints, client pressures, unwieldy rules, a winning-at-all-costs attitude, the superiority of the bottom line, and a profit-generating marketplace. Although these trappings do not lessen professional responsibilities, recognizing the realities of the nature of our work can provide an explanation for some for a departure from ideal behavior.

The public often forgets that the work lawyers are called upon to perform is adversarial in nature. In litigation, half of the clients naturally are going to lose. In domestic relations cases, almost everyone leaves the courthouse dissatisfied. No type of reform will remedy the criticism that naturally arises from losing litigated disputes unless we educate the public about the nature of what we do. We need to get back to the basics of learning how to communicate better, not only with our clients and with each other but with the public in general.

One of the ways to accomplish this simple yet daunting task is for lawyers to work with the press. As intimidating and powerful as the press can be, lawyers must be willing to stand up and be open about all that we do if we are to change the public's perception of who we are.

Despite the disturbing signals that the public image of lawyers is waning, we may take heart in the fact that the recent survey showed that a whopping 73 percent of those who have hired a lawyer say they are satisfied with their *own* lawyer's work. This remains essentially unchanged from 1998, when 75 percent of people surveyed gave the same response. This demonstrates that the trial lawyers of America are in fact standing up for the individual and corporate citizens they represent, and their clients know it, whatever the public at large may think. We have been on the right side of the issues for decades--protecting abused spouses and children, limiting tobacco companies' advertising to minors, protecting corporations in patent litigation, working to help the elderly and disabled, forcing gun companies to install trigger locks, fighting for the civil rights of minorities, and on and on. In fact, where would our democracy be today without trial lawyers guiding the efforts of both parties in the hotly disputed presidential election?

Dean Roscoe Pound's definition of a "profession" is probably the one most frequently cited. He stated that a profession is "a group ... pursuing a learned art ... in the spirit of a public service." What distinguishes a profession, he stated, is that it requires a superior intellectual ability and a commitment to services that are vital to society. Whether lawyers, doctors, accountants, or teachers, professionals are declaring a commitment to shared ideals on behalf of a greater good. In fact, it was for the very purpose of upholding the honor of our profession, as well as raising its standards, that the ABA itself was founded 123 years ago.

At the ABA's Annual Meeting in San Francisco just a few years ago, Justice Anthony M. Kennedy said in a speech that "the law mirrors America," and "the legal profession is a mirror of the nation's heritage, its present condition, and its destiny."

We need to stress to our fellow citizens that they should form their opinions about the value of their inalienable rights from history, not from the media (the only profession, incidentally, with a lower credibility rating than lawyers). Now that we have identified the problem, we must commit to getting to the root of it with action. We must discharge media "swat" teams who can fan out and inform the press when critical and complicated issues impact the public. We must write articles for public dissemination in an effort to set the record straight that litigators act as trial lawyers working for the public good, not mercenaries seeking selfish returns. We must sponsor programs that raise the bar of professional responsibility.

I intend to host a Town Hall Meeting during my tenure where we will gather lawyers, judges, and academics who will examine this issue of the public's perception of lawyers. My goal from this latest study is not to ponder its results and then stick it in a drawer but to develop and implement a multifaceted,

workable plan that we as individual practitioners and as a group can implement to improve the sagging perception of what we do.

In the final analysis, we must face the erosion of the public trust head-on and make a firm commitment to rebuild it, brick by brick. It will take every individual's recommitment to a sense of social obligation to begin to restore what is being perceived as "lost" or "in decline." We must work to rekindle the spirit of professionalism in all of us. Our clients, the public, deserve nothing less. It is then, as trial lawyers, that we will demonstrate how we are working for justice. And it is then that we will experience a renewed sense of satisfaction in all that we do.

I look forward to a most exciting year as Chair, and I invite you to join us in celebrating "Trial Lawyers: Working for Justice," the 2001-02 theme of the Section of Litigation at its 2002 annual Meeting in Boston. It is there that we will look back at what made us great, and we will look ahead to an even better future.

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