

Opening Statement: Confronting Our Critics

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This column marks the midpoint of my tenure as Chair of the Section of Litigation, yet I feel that our work has just begun.

The study that I commissioned on behalf of the Section is complete, and it reveals some very interesting and perplexing notions of the public's perception of lawyers. We will examine this problem in a Town Hall meeting at the Section's Annual Meeting in Boston on April 25, 2002. The topic: Why We Hate Lawyers: Confronting Our Critics.

The study is quite comprehensive. Beginning in early 2001, Leo J. Shapiro and Associates, a national research firm based in Chicago, conducted telephone surveys of nearly 1,000 U.S. households to measure current perceptions of the American justice system and the legal profession. As part of this research, a total of 10 focus groups were held in five markets: Boston, Chicago, Los Angeles, Dallas, and Birmingham. The groups, comprised of between eight and 10 participants, represented the demographic composition of each community. Roughly half of the participants in each market had personally hired a lawyer during the past five years. Despite the diversity of the participants, the responses were consistently disparaging of lawyering as a profession. The research concluded the following:

- Lawyers have a poor reputation in American society. Americans say that lawyers are greedy, manipulative, and corrupt. Words like "snakes" and "sharks" were used by all of the groups in all of the markets tested.
- Americans are uncomfortable with the connections that lawyers have with the judiciary, government, politics, and law enforcement. The study found that 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 manipulate the system but also to shape that very system.
- Americans say that lawyers do a poor job of policing themselves. Bar associations are viewed not as protectors of the public but as clubs to protect lawyers.
- These negative perceptions of lawyers are derived, in part, from highly publicized cases, media coverage, and lawyer advertising. This is not, however, just a media problem. Personal experiences with lawyers also contribute significantly to the negative image of the profession.
- Consumers are particularly frustrated with the fees lawyers charge for their services. They tell stories of lawyers who overcharge, are deceitful or coy about their fees, and won't account for the time they put on a case.
- Consumers also tell stories of lawyers who drag out cases to buttress their fees, misrepresent their qualifications, and exacerbate conflict.
- At the same time, consumers tell very heartwarming stories of lawyers who have helped them navigate the system and get through difficult situations.

These very divergent experiences engender feelings of vulnerability and anxiety in consumers and business people who may need a lawyer. Consumers say that they don't know how to tell a good lawyer from a bad one; therefore, some avoid hiring a lawyer altogether. Those who do hire a lawyer often enter the lawyer-client relationship from a stance of mistrust.

In short, the poor reputation of lawyers in society is not just a matter of professional pride. It directly impacts the relationship that lawyers have with their clients and can even impact the public's willingness to use lawyers to solve their problems. It impacts the public's belief in the way the justice system works.

Clearly, we must work to rebuild the public's trust in lawyering and to renew the respect society once held for its lawyers.

The ABA was founded in 1878 to achieve that very goal: not just to foster the professional interests of lawyers but to advance the cause of justice for all who come into contact with the judicial system. For nearly 125 years, the ABA has been striving through its members to reach the ideals set by our founders. The ABA stands for the belief that people can govern themselves peacefully by consensus rather than by intimidation, fear, and terror by the few. Nowhere was this truth played out more tragically than in the September 11 attack on America by terrorist forces. Although it was a time of much hatred, bitterness, and anger, it was not the time to be caustic, sarcastic, or disloyal. America grieved while embracing its leadership to handle retribution and restitution in the proper way.

A great number of lawyers took to the airwaves to assure the American public that renegade justice is not the appropriate response. The American system of justice has been set up to deal with criminal attacks on American peace and security. What is even more admirable is that a good many lawyers also made a commitment not to rush to judgment and file liability lawsuits on behalf of grieving families. Many agreed to represent victims and their families on a pro bono basis. Voluntary crisis experts staffed by attorneys were set up in major urban areas hit the hardest.

Nonetheless, it is disturbing that many Americans do not view lawyers as a source of civility in this country. It is only through a commitment to civility that lawyers can hope to achieve principled justice. Civility involves respect for individuals as well as for the religious, cultural, and ideological differences of the many. It means attempting to achieve justice and liberty for those who are unable to help themselves.

As a profession, we have shown our commitment to these ideals over the years for unfairly treated women, the disabled, minorities, and the abused. Although we have a long way yet to go to achieve full justice for everyone, America's lawyers have been at the forefront of the movement in making legal advances for those who are unable to do so for themselves. Sometimes they have been small victories for a single individual, but collectively these advances have had a cumulative impact that has benefited many and achieved so much in just the last several decades.

But, oddly enough, that same time frame is coincident with the sagging image of lawyers. It is ironic that the very group of people in society who are working to achieve popular freedoms are those who are being castigated as one of the most unpopular professions.

Popular Bias

Is society's expectation of us too high? Or have lawyers become the victims of an irrational bias that, like all prejudices, has little interest in reality? This may seem a startling suggestion, but victims of prejudice often have difficulty crediting irrational hatred that others have toward them. It is no answer that such hatred is without basis in foundation—that, indeed, is why it is irrational. But the fact remains that if we look at the evidence, as we are trained to do, taken in the context of the situation, that sole conclusion follows.

First, and sadly, it is undeniable that, as a matter of national character, we are given to prejudice. No sooner is one victimized group rehabilitated in the American mind than another seems to take its place in the public consciousness. I will not dwell upon lawyer jokes that exhibit such hatred and contempt that, I dare say, made about any racial, ethnic, or religious group, they would immediately stir a public outcry. It does speak, though, to the depth and scope of the public disdain for lawyers, but who they are really pointing the finger at is trial lawyers. In reality, many lawyers do not go into court but work in offices; they do not collect unearned fees but are paid salaries; they do not always represent clients in the traditional sense of the word. As the survey shows, Americans have no quarrel with or even a sense of the existence of such lawyers.

Rather, the popular bias is directed against those who go into court on behalf of clients and in consideration of fees; in other words, the trial attorney. And this means us. We are what Americans think of when they think of lawyers, and we are the people they have in mind when they make jokes about lawyers being crushed under cars or found at the bottom of the ocean.

More important than derogatory humor, though, are the unfounded generalizations that support this bias. The survey we conducted, quite contrary to our expectations, shows a deeply entrenched and generally shared mythology that is without any meaningful basis in fact.

Pivotal to this view is that attorneys have no independent ethical controls and associations like the ABA are merely rubber stamps to cover up unethical conduct. In reality, the ethics commissions of the various states are conscientious and often involve non-lawyer members. As for the ABA, it is continually working to refine professional standards and advance ethics considerations into new areas of technology and practice.

The vast majority of members of the trial and appellate bars diligently apply an enormous number of ethics considerations about which their clients have not the slightest suspicion or knowledge. Rather, as the survey demonstrates, it is generally believed that lawyers' only concerns are manipulating the system, padding and inflating bills, delaying proceedings, and fixing cases. In reality, these things are very much the exception, regarded as reprehensible, never condoned, and, in fact, sanctioned whenever they are discovered. But taking the exception and generalizing it into the rule is exactly what bias and prejudice are all about.

The Need for Law

Let's face it: Although Americans are largely law abiding, they are not always law respecting and at the extreme are often law avoiding. They do not regard the law as a necessary institution without which any civilization—much less a complex, technological civilization—is possible. They do not understand that their personal freedoms are entirely dependent upon the rule of law, and therefore they do not suspect that lawyers and judges are all that stand between them and arbitrary government and injustice on the one hand and chaos on the other. They do not understand the simple fact that lawyers are merely those who have gone through a great deal of work and training in order to serve the institutions of law and the ends of justice by representing these same people's interests before the courts of this land.

Americans do not understand that legal rules are not mere technicalities, and that our economy and culture rest squarely on the shoulders of legal precedent, without which it would be impossible to have the certainty that allows for either contract or investment. Americans do not understand the need for law, and therefore they misapprehend their need for lawyers.

We, as an association and as a profession, have been too inattentive to and forgiving of this irrational prejudice, which now is more critical than ever. Legislation is being continually proposed that seeks to curtail the actual rights of our citizens based upon their willingness to vote their biases. It is time to stand up and demythologize lawyers and their work. There used to be a subject taught in our schools called "Civics." It suggested, among other things, that the founders of our country had reasons for doing what they did and that the institutions they created are responsible not only for the freedoms we enjoy today but, to a large measure, for the prosperity. Instead, we have come to call our profession a "business" and our clients "consumers." This is a grave mistake because such terms tend to trivialize the responsibilities that are really involved in everything we do.

Through the Town Hall gathering at the next Annual Meeting, we will address the eroding public confidence in lawyers and the justice system. Hopefully, too, we will try to recommend realistic solutions to the apparently escalating dilemma. We need to address the public's access to justice, the funding of the justice system, and improvements in making the law more comprehensible, as well as the tough issues regarding improving lawyer-client relationships, undignified advertising, and demeaning the ethics of others in the practice of law. We must address how individual

attorneys, law firms, and bar associations at all levels can become more honorable in the public's eye.

It is the honorable lawyer who must help society make the connection between law and morality. The honorable lawyer is the one who possesses wisdom, courage, and compassion to work for what is right and good. It is the honorable lawyer who must stand up and be willing to trudge that road less taken even if it means standing up for what may be the less popular position but the right thing to do. The honorable lawyer does not settle or compromise a case just to end litigation, to earn a fee, or to cease underwriting it as a financial burden. It is the honorable lawyer who tries to connect the legal system to the social network and see to it that members of society contribute to the common ground.

An example of an honorable lawyer is John Adams, who defended the Revolutionary soldiers accused of murder in the Boston Massacre. The Section of Litigation will reenact the massacre and a civil wrongful death case trial, the first of its kind in history, at the Annual Meeting in Boston, April 25, 2002. Adams's defense of the soldiers at a criminal trial was unpopular at the time and put him at great personal and professional risk.

All through history, when things go wrong, people often turn to lawyers to make things right. But somewhere between the altruistic goals of law school and the actual practice of law, many lawyers lose sight of this tremendous social responsibility. They find that the search for truth involves being unemotional, needlessly aggressive, and discourteous when zealously arguing a position. To them it means critical thinking, a sharp tongue, and out-manipulation of one's opponent, all under the guise of being within the bounds of the law.

We must instead use our profession to empower the weak, to instill truth in the skeptics, to help the downtrodden feel autonomous. It can be accomplished through the legal system and through the honorable lawyer.

In the final analysis, it seems that before we can rebuild and improve the justice system in working to achieve the ideals envisioned by our country's founders, we must first regain the respect and trust of the American people. It is through public confidence in our legal system and in all of us as lawyers that the American people derive their confidence in the workings of a democracy. Now, more than ever, we cannot afford to let down the American people.

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