

Why Are They Picking on Us?

Although I have yet to conduct an exhaustive research study, my suspicion is that the most quoted line in history is not a treasure such as "Read my lips," "The check is in the mail," or even the time-honored, albeit rarely effective, "Do you come here often?" Instead, I would wager that the most uttered phrase is the charming 401-year-old line from Shakespeare's "Henry IV": "The first thing we do, let's kill all the lawyers."

Of course, we do not have only the misquoted Bard to thank for perpetuating the often-negative public perception of lawyers and the legal profession. Sir Thomas More conceived Utopia as a place where there specifically were no lawyers. Samuel Johnson opined, "I do not care to speak ill of any man behind his back, but I believe the gentleman is an attorney."

This "rich" tradition of giving lawyers a hard time has continued to the present, rising (or sinking) to the point of joining the marital preferences of Murphy Brown as one of the many pseudo-issues of the mystifying 1992 presidential campaign. In his nomination acceptance speech at the Republican Convention in August, President Bush (who, not incidentally, is running against an attorney) strongly criticized the "sharp lawyers" shod in "tasseled loafers" who are "running wild" within the legal system.

The president's broad-brush swipe at the legal profession (and its footwear) was an obvious attempt to capitalize on the public's dislike of lawyers. Indeed, Mr. Bush had to look no further than the state containing the hotel room that serves as his legal residence to find evidence of

that perception.

According to a 1991 report in the *Texas Bar Journal* by Dr. Ross P. Laguzza, half of the 2,100 Texans who were asked what word came to mind when they thought about a lawyer provided less-than-complimentary responses, some of which were too explicit to print.

One Texan certainly counting himself within that half—and eager to print his opinions—is Dallas roofer Alfred Adask, creator of *AntiShyster*, a monthly magazine devoted to flogging the legal profession. Adask, who conceded to me that his unpleasant experience going through a divorce inspired this project, proclaimed that lawyers justly "are held in as much contempt as any profession in the United States and more than most."

Such views are not limited to southern climes. Three thousand miles to the northwest, Anchorage solo practitioner Sandra K. Saville told me about a man who drives around with placards all over his truck bearing such warm messages as "Let's kill all the lawyers" and "The only good lawyer is a dead lawyer," eventually parking in front of the local courthouse, and yelling at lawyers with a loudspeaker as they pass.

This sort of criticism has gone too far. Clearly, when White House Press Secretary Marlin Fitzwater says, "Everyone ought to take every opportunity to blast lawyers" and *Newsweek's* Robert J. Samuelson writes, "I am a lawyer-basher and proud of it," there is a problem.

But what exactly is it about lawyers that these and other people do not like? Having spent dozens of unbillable hours reading (but, of course, not enjoying) lawyer joke books, perusing lawyer-bashing articles, interviewing persons who apparently dislike attor-

neys, and, perhaps most informatively, listening to my secretary talk about me to other people, I have arrived at the conclusion that the complaints boil down to a few common misconceptions.

Probably the most common misconception is that all lawyers are dishonest, providing the purported basis for innumerable jokes involving attorneys' hands and clients' pockets. This belief has been around for centuries: Benjamin Franklin once announced with surprise, "God works wonders now and then; Behold! a lawyer, an honest Man."

Even death cannot insulate a lawyer from such abuse, as the epitaph for attorney Sir John Strange perpetually declares: "Here lies an honest lawyer, and that is Strange." In our day, the torch for this perception is enthusiastically carried by comedian and social commentator Jackie (no relation to Perry) Mason.

In an interview with me, Mason said: "The average person thinks the average lawyer is a crook. In every study ever made of people's opinions of the lowest crooks in America, it's used car salesmen, politicians and lawyers. Sometimes they're in reverse order, or in that order, but they're always in the top three."

"I think they think lawyers are crooks, because most of them really are," Mason said. He generously estimated, "I've met maybe one or two honorable lawyers so far in my whole life" (he did not specify whether this included me).

There is evidence that these perceptions are widely held. In a 1991 national poll, the Gallup Organization asked more than 1,000 adults to rate the honesty and ethical standards of 25 occupations. Four percent of respondents rated lawyers "very high," 18 percent "high," 43 percent "average," 20 percent "low,"

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10 percent "very low," and 5 percent "no opinion." The good news is that the total of 22 percent "very high" and "high" ratings placed lawyers in the middle (13th) of the pack of 25. The bad news is that lawyers received the second highest percentage of "very low" votes, exceeded only by the 13 percent for car salesmen.

Another common perception is that all lawyers, by nature, are difficult to deal with personally. There are some adamant proponents of this view. For example, Nancy Savell, the mother of a New York attorney, reported that, even as a young child, her son complained about virtually everything, insisted on always getting his own way, and refused to go to sleep at a reasonable hour, traits that have continued through adulthood.

This is also the perception of Howard Manoff, a luxury automobile salesman in Las Vegas (who no doubt would like to keep his profession out of the cellar in the next Gallup survey). Manoff advised me that, based on his dealings with lawyers, "the only thing lower than a car salesman is an attorney." Lawyers "always, always" give people a hard time, he said.

"Attorneys are generally very difficult to deal with because they feel that everybody owes them," Manoff said. "They feel they're being taken advantage of, no matter what they're paying for anything. There's no reason they can't sit down and

negotiate a deal which can be a fair deal so that everybody comes out winning."

Attorneys recognize some truth in this perception. "The lawyers that the public probably sees are the trial lawyers. They're the most visible lawyers—and they are arrogant," said New York State Supreme Court Justice David B. Saxe.

"They're actors; they're performers. Performers are full of themselves and are arrogant," he opined. "They are people who are ultimately not the most sensitive of individuals. They have huge egos. And those are the kinds of people upon which the public bases its perception."

Anchorage's Saville agreed that attorneys' work traits—the belief "that we have to do everything ourselves and that we know what's best" for other people who "should take our advice and be happy to get it"—are likely to spill over into our personal lives, to the detriment of relationships built on concepts often foreign to legal practice, such as patience, cooperation and appreciation of someone else's abilities.

Seeking further insight on this point from an expert in the field of interpersonal relations, I placed a call to "Field's Exclusive Dating Service," located in the heart of midtown Manhattan (which I just happened to find in the telephone directory).

The woman who answered said that she was not aware of any particular problems placing lawyers in relationships, suggesting that "doctors, I think, would be harder than lawyers because of their hours." She also reported that only "maybe once" in the firm's 70-year history had a client ever expressed a specific desire not to be paired with an attorney. Indeed, she implied that having the personality of a lawyer—helpful in making partner—would not hurt in finding a partner: "You make money, what do they care?"

Some critics of lawyers allege that attorneys always put their own interests above those of their clients. As Jean Kerr wrote in *Time* magazine in 1961, "A lawyer is never entirely comfortable with a friendly divorce, anymore than a good mortician wants to finish his job and then have the patient sit up on the table."

Others complain that lawyers do not want client matters to be resolved. "What's wrong with lawyers is that they have an economic interest in cultivating and prolonging conflict," *Newsweek's* Samuelson wrote. "This means they are funda-

mentally at odds with the purposes of the legal system."

And many people believe that lawyers drag out cases to increase fees. In a *Business Week/Harris* Poll published in April, 47 percent of 400 senior executives at major corporations felt that "outside corporate lawyers who drag out cases to jack up their hourly fees" were a "major reason" for the high cost of litigation.

Some people also criticize lawyers because attorneys, on occasion, represent persons whom, or entities which, the public does not like. As the aptly named lawyer Sloan Bashinsky explained in his 1986 book, "Kill All the Lawyers?": "The lawyer whose client or cause is unpopular is not going to be well liked, no matter how capably or ethically he performs. 'How can you defend a guilty person' is the most common question asked of trial lawyers."

But even Samuel Johnson long ago conceded that "A lawyer has no business with the justice or injustice of the cause which he undertakes. ... The justice or injustice of the cause is to be decided by the judge."

Still another popular misconception about lawyers is that there are just too many of us—a view vehemently espoused by Vice President Dan Quayle, who, with his spouse, constitute a two-lawyer household. You'd think that someone who heads an organization championing "competitiveness" would applaud, rather than condemn, a profession whose members exude that personality characteristic.

Songwriter Tom Paxton, in the title track from his 1985 album "One Million Lawyers and Other Disasters," referred to "the terrible scourge still to come," that "in ten years we're gonna have one million lawyers/How much can the poor nation stand?" Despite Paxton's fear of "Lawyers around every bend in the road/Lawyers in every tree/Lawyers in restaurants, lawyers in clubs/Lawyers behind every door/Behind windows and potted plants, shade trees and shrubs/Lawyers on pogo sticks, lawyers in politics," the reality is that increased need increases the number of lawyers.

As Stuart Kahan and attorney Robert M. Cavallo wrote in "Do I Really Need a Lawyer?" there exists "scarcely an area of American life in which social, political, and economic developments are not increasing the demand for lawyers." New York State Court of Appeals Judge Vito J. Titone underscored the importance of having sufficient numbers of attorneys, reporting in the *New York Law*

Journal that when the Soviet Union collapsed, it had only about 50,000 lawyers (including prosecutors and judges), as compared to the 770,000 lawyers in the United States. Judge Titone noted that "this severe shortage of lawyers is now impairing the ability of the Russian people and the affiliated republics to build a new system based on democracy, free enterprise and individual rights."

Obviously there is great public misunderstanding about lawyers. Sometimes the criticism comes from clients, venting their frustration about being sued. Sam W. Cruse Jr., of Houston's Cruse, Scott, Henderson & Allen remarked that "defendants in civil litigation do not understand why they should have to pay someone to defend them in a lawsuit they did not choose to become involved in, and that should never have been filed in the first place." The reality that someone usually has to lose in a lawsuit creates an increasing population of persons with a less-than-positive exposure to the system and, often, to those who work within it.

Lawyers may just be the "Dr. Peppers" of professionals—perhaps as misunderstood as the oft-mentioned Shakespearean quotation used to condemn them. As Sloan Bashinsky observed, "Shakespeare probably meant to pay a compliment to lawyers, not to disparage them. The character who made that statement [Dick the Butcher] was a scoundrel with revolutionary intent. He knew very well that the government could not be overthrown without eliminating all of the lawyers, for, in those days, it was felt that lawyers were the bastion of law and order, the preservers of personal rights."

But how can we correct the unwarranted negative perceptions about lawyers? One answer, according to Justice Saxe, is for us to get people—particularly clients—more involved in the legal process. "I think the legal profession has to continually deal with the public, to tell them what a lawyer does, to try to, in a sense, demystify the profession. Part of the problem, of course, lies in the very language that lawyers use in their art, language that is too often unrecognizable and indecipherable by laypeople." (As New York Gov. Mario Cuomo admitted, "I am a trial lawyer. ... [My wife] Matilda says that at dinner on a good day I sound like an affidavit.")

To help rectify this situation, Justice Saxe, who currently sits in the Matrimonial Part, asks lawyers

to include their clients in conferences with him, so that clients can better understand what is happening. Regardless of the outcome, he said, when clients attend these conferences, "they have a feeling that they are involved in the process, they understand a little more about the process, they understand more about the difficulty their lawyer is having, and I think it's a more palatable solution."

We also need to increase communication with the rest of the public. "Public ignorance of what lawyers actually do and of the value of the role we perform is the breeding ground for the public's negative image of lawyers and their role in the system," Judge Titone warned. "Given the importance of our role, the public should not have to depend on the producers of 'L.A. Law' for an understanding of what it means to be a lawyer practicing his or her craft in the 1990s. For every flamboyant 'Arnie Becker,' there are 10 real practitioners who, through painstaking research and plain hard work, manage to obtain fair settlements for their clients without stretching the limits of professional ethics or personal morality."

Of course, not all of the public shares these negative perceptions about lawyers. Anyone familiar with the long struggle for civil rights in this country is well aware of the vanguard role played by attorneys such as the young Thurgood Marshall. Similarly, tens of thousands of disadvantaged people, who have benefitted from the voluntary efforts of attorneys through organizations such as New York Lawyers for the Public Interest and similar entities nationwide, are well aware of how such efforts have made a difference in their lives.

Moreover, even those quick to criticize lawyers ultimately rely on them. "Lawyers have been described and delineated in an untrustworthy and ne'er-do-well fashion. However, whenever someone has a problem or has what smells like a problem, the first one they turn to is 'the lawyer,'" said Edward S. Reich, president of the Brooklyn Bar Association. "They come to us seeking justice."

"Although a majority of people, if asked, would probably say they don't particularly like lawyers as a group, as individuals, people find us interesting, intelligent, and think our careers are exciting," said Anchorage's Saville. "In other words, some of their best friends are probably lawyers."

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problem with lawyers and how she just didn't like them. I said, 'But mother, I am one' and she said, 'Oh, not you, dear,'" Saville added.

Similarly, my informal discussions with several New York City ambulance drivers failed to elicit a single instance of their being chased feverishly by a person in a three-piece suit carrying a briefcase and a handful of business cards.

I suspect that, 401 years from now, Dick the Butcher's classic line will still be up among the leaders of quotable quotes. But that doesn't mean that our profession cannot change the public's misconceptions about lawyers. And it may be that, in addition to our continued commitment to pro bono representation of the needy, one of the best ways for us to respond to perceptions of lawyers as uncaring, arrogant and self-centered is with a sense of humor.

As former Texas State Bar President Darrell Jordan wrote in 1991, "I believe the issue for lawyers in dealing with anti-lawyer sentiment, humorous or otherwise, is what we choose to think and say about ourselves. Perhaps our only salvation lies in joining the humor to bridge the gap between how the public perceives us and how we want to be perceived. Through it all we should remain able to laugh at ourselves. ..."

Who knows—maybe someday an attorney will be heard saying, "Did you hear the one about the lawyer-basher who ... ?" Maybe. ■