

Perspectives

Why Don't They Like Us?

by Randall Roth,
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PUBLIC CONFIDENCE IS FADING

Lawyers don't respect the truth. They "spin" or even lie as necessary to further their clients' interests. They don't want justice ... they want to win ... and if they think they can get away with it, they'll do just about anything to do so.

Lawyers don't care about the public ... all they care about is themselves ... and money.

The legal system is mysterious and lawyers like it that way. A non-lawyer doesn't have a chance going up against a lawyer ... and most of us can't afford our own lawyer.

The bar association is nothing but a "club" whose members watch out for each other rather than the public. People with a complaint about a lawyer have nowhere to go except to another lawyer. That's not much of an option.

According to national polls, more and more people think this way. In 1973, 24% of those surveyed expressed great confidence in lawyers. In 1978, 18% ... in 1988, 14% ... in 1992, 11% ... and in 1993, only 8%.

Newer and more specific polls indicate that three-fifths of the public think we lawyers are greedy; two-thirds believe that we are no longer "seekers of justice;" only one-fifth think of us as "honest and ethical;" and one-fourth believe that we "manipulate the legal system without regard to right and wrong."

Typical reactions among lawyers range from denial ("these polls are flawed" and "the public just doesn't understand our legal system") ... to irritation ("hey, show me another profession or group of citizens who contribute more to the betterment of society") ... to passive acceptance ("the public is wrong, but it's always going to feel that way"). Some of us even take the criticism personally ("Unfair! I'm a good person ... I care about the public ... I'm not greedy").

In this month's *Perspectives* column, Randy Roth addresses just one aspect of these complex phenomena. In future columns, he'll consider others.

Most of us are proud to be lawyers and try our best to conduct ourselves like true professionals. For example, through bodies such as the HSBA, Office of Disciplinary Counsel and Client Security Fund, we strive to regulate ourselves responsibly and to protect the public's interests. We set high standards for ourselves and accept accountability for our actions.

You'd think all of this would endear us to people. But that doesn't seem to be happening. Polls indicate that the public has *less* confidence in us with each passing year. In fact, a substantial segment harbors strong negative feelings about us. Part of the explanation, I believe, is contrasting perceptions of the same reality.

For example, we proudly declare that over 80% of the complaints made

to Hawaii's Office of Disciplinary Counsel are either dismissed or not even docketed. To us, this suggests that the perceived problem of unethical lawyers is vastly overblown.

But to an increasingly cynical public, this statistic simply "proves" that the deck is stacked -- that we lawyers find ways to go easy on fellow lawyers.

Our decision not to provide any information to the public about these complaints -- even the ones that

result in letters of caution -- makes great sense to us. After all, we don't want to put a cloud over professional reputations. But to the public, this further reflects a bias in favor of the interests of lawyers.

Even when we openly do something that obviously puts their interests

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ahead of our own, the glass that appears half full to us, looks half empty to them. For example, we feel good about giving the public a place to go when a lawyer may have acted unethically (Office of Disciplinary Counsel) or dishonestly (Client Security Fund). But people who think they've been harmed because of a lawyer's incompetence or negligence don't understand why neither of those forums will even try to make them whole.

We point with pride to the HSBA's attorney-client dispute resolution program that provides volunteer mediators and arbitrators. But the public notes that when lawyers refuse to participate in the process, aggrieved parties are left with just one option -- litigation. To them, the thought of hiring a new lawyer to sue the old lawyer is downright depressing.

Malpractice insurance carriers estimate that between 30% and 50% of practicing lawyers in most states have no coverage -- none at all. We don't know what the percentage is in Hawaii. On the other hand, Oregon has for 20 years required that all practicing lawyers carry at least a minimum amount of insurance. Though initially controversial, 94% of that bar expressed support for this requirement when asked about it three years ago.

Many lawyers, myself included, don't like the idea of mandatory insurance. But the public wonders why it is that a person in Hawaii has to have insurance to drive a car, notarize a document, broker a real estate deal, or conduct a host of other activities -- but not to practice law.

The South Dakota bar noticed a few years ago that 95% of the lawyers who ended up in front of the disciplinary board lacked malpractice insurance. This led to a debate over mandatory insurance. What they eventually implemented, however, is a rule that lawyers who don't carry minimum cov-



erage must disclose that fact on their letterhead and in all advertisements (in black print, at least as big as the lawyer's name). Almost overnight, most uninsured lawyers bought insurance and the rest found that they had to cut their fees to compete for clients.

In an earlier column, I expressed skepticism about the efficacy of mandatory CLE, but people must wonder why Hawaii is just about the only state without a continuing education requirement. Actually, Hawaii *has* mandatory continuing education -- but only for others (e.g., certified public accountants, physicians, realtors, and chiropractors) -- not for lawyers.

People who hear about that might wonder, "what is being done in Hawaii to protect the public from incompetent lawyers?"

Our answer sounds impressive. We've got peer reviews and law office audits, a problem lawyer program, mentor program, attorney-client relations program, minor misconduct program, attorneys & judges assistance program, practice management seminars, ethics and malpractice hotlines and web sites, bench/bar committee, and more.

The reality, however, is that virtually every one of these excellent programs is under used. For whatever reason, we simply don't get many referrals from

lawyers, judges, or bodies such as ODC.

People also question our concern about the unauthorized practice of law. Some think we are more motivated by a self-interested desire to protect our turf than a genuine commitment to protect them. The public is especially skeptical of efforts to prevent trained and certified para-professionals from independently doing things that they seem to do quite well.

The public also has doubts about the judiciary. For whatever reason, people seem to think that politics plays more of a role than it should in a merit-selection system. They wonder why we lawyers don't publicly tell them which judges are particularly good at their job, and which ones aren't. Some think our reason for not doing this is based in self-interest -- that we're afraid of ticking off the people who decide our cases.

Of course, much more could be said about that and everything else stated above, but it all will have to wait. Already I've greatly exceeded the usual word count.

But before closing, I must acknowledge something that you undoubtedly have been thinking all along: the public is never going to love lawyers -- even if we were to address every one of the concerns mentioned above. The nature of an adversarial system, the money we make, and other factors ensure that lawyers always will be "image challenged." That's just a given.

So why should we even care about the public's interests, much less put them ahead of our own?

The answer, I believe, is that we are professionals who enjoy a special status under the law. It is both the right thing to do and in our own best interests that we never stop trying to earn the public's confidence.

What we already are doing to protect, enlighten, and inspire is reason to be proud, but not complacent.

The glass is half empty. Just ask the public.