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# Improving the Image of Lawyers: More Atticus Finch and Less Ally McBeal

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Justice Rita B. Garman

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*Editor's Note: On December 8, 2006, Justice Rita B. Garman of the Illinois Supreme Court addressed the Illinois State Bar Association annual meeting. The following are excerpts from those remarks.*

In the over thirty years that I have spent in the law, I have not only seen the legal profession become more diverse, I have also seen dramatic changes in the way law is practiced and in the law itself. In the main, all of these changes have been good for the profession and for the public we serve. Unfortunately, however, not all of the changes I have observed are positive.

I look back with a certain nostalgia to what some of you might think of as “old school” – when a lawyer’s word was his bond, when a handshake between two honorable men or women was all that was needed to seal a deal, when we did not live by the rule that nothing counted unless it was in writing, signed, and witnessed. I worry that the increasing reliance on technology and specialization have caused lawyers to lose the personal touch that used to characterize our profession. There is a rich heritage in our country of the lawyer as counselor – a knowledgeable person who gives advice and guidance. When we lose that personal relationship with our clients, we run the risk of becoming technicians instead.

*In the Gallup survey of professions, lawyers rank at the bottom – along with car salesmen, HMO managers, insurance salesmen, advertising executives and stockbrokers.*

I, therefore, want to focus my remarks tonight on the topics of professionalism and civility – areas in which I feel that the profession could do better. For most of us, choosing the law as a profession was, first and foremost, the result of a desire to be of service to our fellow man and to protect and preserve our system of laws. We embraced the principle that our constitution creates a government of laws, not of men, and we committed ourselves to lead our professional lives with honor and integrity. Not all of us have lived up to these goals and those who lapse reflect badly not only on themselves, but on our profession as a whole.

Our profession is no longer held in the high regard that it once enjoyed. Year after year, when the Gallup organization

conducts its annual survey of the professions, the American public ranks nursing as the most honest and ethical profession. Also highly rated are other medical professionals such as doctors, pharmacists, dentists and veterinarians. At the bottom of the list are car salesmen, HMO managers, insurance salesmen, advertising executives, stockbrokers, and then lawyers. In a recent survey, only 16% of those surveyed rated the honesty and ethics of lawyers as “high” or “very high.”

I have to ask myself why this is so. I have known hundreds of judges and lawyers over the years and have been proud to be associated with almost all of them. I can count on my fingers the individual lawyers and judges that I would not rate as highly honest and ethical. So why does the American public hold our profession in such low esteem? Why is there such a discrepancy between our lofty goals and the perceived reality? Why the disconnect between the way we see ourselves and the way others see us?

Could it be the ever-popular lawyer jokes or the way we are portrayed in television or in films? I doubt it. Some lawyer jokes may even be amusing. After all, we should not be so thin-skinned that we can’t take some good-natured ribbing. I don’t think that we can blame Jay Leno or David Letterman for our poor rating.

I am not really concerned, however, that the general public forms its opinions of lawyers and judges based on what they see on television or in the movies, because I trust that the public can draw the distinction between fact and fiction. Nevertheless, I am concerned that the American public now sees the average lawyer as being more like Denny Crane on “Boston Legal” and less like the heroic Atticus Finch of “To Kill a Mockingbird.”

Perhaps our image suffers from accounts about lawyers portrayed in the news. A recent report that made all of the major news outlets involved two Florida attorneys who were unable to agree on a location for a discovery deposition. The two had repeatedly sought the court’s assistance to resolve minor disputes and the federal district court judge had had enough of the attorneys’ infantile behavior. He ordered them to engage in one game of rock/paper/scissors – a method of dispute resolution suitable for

six-year-olds – to determine which side got to select the location for a deposition. And, if they could not agree on a location for the rock/paper/scissors contest, he ordered them to play the game on the courthouse steps. That was not a proud moment for our profession.

Regrettably, too, the public has certainly noticed that many of the individuals involved in business and political scandals earned law degrees before becoming executives, politicians, or lobbyists.

While such incidents certainly reflect negatively on the profession, I am convinced that the average non-lawyer does not form his or her opinion of our profession from the news. In my experience, I find that non-lawyers are much more likely to base their opinion of lawyers on personal experience. They may admire the lawyer who handled their divorce or traffic matter, the lawyer who assisted their aged parents with estate planning, or the lawyer who listened to them during an initial consultation and gave them some common sense advice without charge. On the other hand, they may lose trust in lawyers when their lawyer does not communicate with them, delays resolution of their dispute, or fails to clearly explain their legal problem.

*Why is there such a discrepancy between our lofty goals and the perceived reality? Why the disconnect between the way we see ourselves and the way others see us?*

In addition, the profession is burdened with the fact of life that litigation is a zero-sum game. Every losing litigant has the potential to be upset with his lawyer and/or the other lawyer simply because he or she is disappointed with the outcome of the case. If both lawyers have conducted themselves professionally and civilly, the disappointed litigant will likely – in time – come to understand that his loss is not a reflection on the profession.

If, on the other hand, either or both lawyers have behaved unprofessionally or uncivilly, the client – even if he or she was the prevailing party in the case – will form a negative opinion. As a result, I believe that there is a need for all lawyers to recognize a line between zealous advocacy – which is our duty – and boorish, undignified behavior that serves neither the client in the particular case nor the profession as a whole.

Zeal on the part of an attorney is to be admired and encouraged. It seems to me that the zealous attorney pushes himself on behalf of his client. He or she should not use the duty of zealous advocacy as an excuse to push others around.

Judges at both the trial and the appellate level frequently see frivolous motions and other practices that not only waste the court’s time, but also place an unjustifiable burden on opposing counsel, at great cost, delay, and inconvenience to both clients. It is not zealous advocacy to file endless motions to intimidate or wear down the opponent.

I urge all the members of the Illinois bar to renew their vision of themselves and their colleagues. We are problem solvers, not problem magnifiers. One of Illinois’ favorite sons, Adlai Stevenson, once described the legal profession as analogous to a service station or a repair shop. He urged lawyers to approach their clients’ legal claims as problems to be resolved, not as contests to be won at all costs.

Another favorite son of Illinois, Abraham Lincoln, once said: “Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”

I am convinced, after decades of observing litigants and their lawyers, that the idea of lawyer as problem-solver is not antithetical to the idea of lawyer as zealous advocate. Some of the most effective advocates I have ever observed have been gracious in their dealings with opposing counsel and opposing parties as well as the court. They have understood that incivility is not an effective tactic and that it may, in fact, backfire.

We are members of an ancient and honorable profession. We cannot stand idly by and allow the profession to be perceived as dominated by the aggressive and the ruthless, at the expense of fairness and justice. We cannot allow the values of public service, civility, and ethical responsibility to diminish. Instead, each of us – lawyer and judge – must do more than perform competently at our jobs. We must consider the effects of our actions on the courts and on society as a whole. If we do not, we fulfill only half of our professional obligation.

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No profession makes a greater contribution to the protection of our constitution and our system of laws than our own. I urge you to raise your sights higher in the new year – to elevate the tone of your interactions with other lawyers, and to present your clients and the public with an example that reminds them more of Atticus Finch than of Ally McBeal. •