



Lawyers' Role Reflects Best and Worst of Society

By Michael J. Cacace

W “What is the difference between a dead skunk and a dead lawyer in the middle of the road? There are skid marks in front of the skunk.”

So goes the opening volley in a little book entitled *Skid Marks: Common Jokes About Lawyers*. The balance of the book is no more flattering to the legal community. That a publisher may have devoted a book entirely to harpooning the legal profession is no surprise. Observers of public opinion have told us for years that lawyers are generally held in low regard.

Yet, at the same time, the same public is making more and more use of legal services than ever before. There were about 220,000 lawyers in the United States in 1950 and now the number of lawyers has been estimated at close to one million. That growing demand for legal services signals a

growing dependency on—even if not affection for—lawyers.

It is a love-hate relationship that lends itself to the notion that “you can’t live with them but you can’t live without them.” However, the irony of Americans turning more often to the lawyers they love to hate underscores the unusual role attorneys play in society today. It is a role that is reflective of the world in which we live—a role that is on the one hand needed and wanted, but on the other hand, disliked and criticized. Perhaps that dichotomy results because it is a role that mirrors both the best and the worst in today’s world.

There are three factors that serve to foster the continuation of that role for the legal profession. First, lawyers—both in the private and public sectors—function to advance the interests of their clients.

Second, the private practice of law operates, by necessity, more like a business. Finally, despite idealistic notions to the contrary, the art of lawyering is practiced by mere mortals. A closer analysis of these three factors may shed some light on the role played by attorneys—and the underlying reasons for the general reaction to that role.

Advancing the Interests of Clients

The business of lawyering is to serve a client as technician, as counselor, and/or as advocate. After all, the lawyer serves simply as an instrumentality to advance the interests of a client. As technician and counselor, the attorney serves as a guide

through the tangled web of rules, regulations, ordinances, statutes, and court precedents that society has deemed necessary to protect its collective self. As advocate, the barrister argues one side of a dispute in a system built upon the proposition that if all positions are presented aggressively and artfully, the truth and correct answer will eventually emerge.

However, the system, though the best so far devised, is not perfect; justice is not always done. Yet, as the world grows more complicated, as new problems, ideas, and technology emerge, the role of the lawyer will become even more prominent. As society seeks to protect itself with new laws, the demand for legal talent will continue to grow. So then, to the extent that lawyers play a prominent role in the system, when a client uses the system to advance interests that the large community deems inappropriate, the lawyer is often the lightning rod for the collective animus that results.

Therefore, when the criminal is set free on a “technicality,” when the rules are used (or abused) to take advantage of a “loop-hole,” when the system produces a result deemed “unfair,” the cynical—or wise, depending on your point of view—observer blames the lawyers. No wonder there were no skid marks in front of the lawyer.

Yet, the lawyers are also the instrumentalities people turn to when their rights need protection or have been violated or threatened, and the results more often than not serve the greater public good. Whether it is the rights of a free press, a wrongly convicted prisoner, a business abused by excessive government, or the homeless, attorneys have championed their causes. Hence, to the extent that society has a beef with lawyers, it probably means it has a beef with itself—for lawyers merely do the bidding of their clients in a system that, while attempting to protect the masses, sometimes rewards the few and the undeserving.

Treating Lawyering as a Business

The second factor in this analysis recognizes that the business of lawyering is, after all, a business. Marketing has fast become a required line item in every lawyer’s or law firm’s budget. Rapidly changing technology is also impacting the way law is prac-

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ticed. Research is now done over the Internet. Thousands of exhibits for trial can be catalogued in a laptop. Documents can be altered and generated in a few second’s notice. All the new technology has added a capital expenditure burden to the practice that had never been experienced. The days of simply paying the rent, compensating the support staff, and stocking a library are over. Now most lawyers must address the rising cost of maintaining state of the art capital equipment and marketing.

In any event, the practice of law is now, more than ever, a business that requires the same business acumen of any other business. Those lawyers and law firms, competent attorneys though they may be, that lack the business and administrative skills required in these times will have difficulty staying afloat.

Exhibiting Human Frailties

In the final analysis, however, the law is practiced by human beings, subject to the same pressures, problems, and emotions of non-lawyers. Make no mistake about it,

lawyers should be, and for the most part are, held to a high standard both in terms of competence and ethics. There are many good and competent lawyers; there are a few—as with any profession—who are not. Some will succumb to human frailties; some will practice their art with skills inferior to their adversaries. Those instances are likely to get the most attention. The organized bar is and should continue implementing better ways to protect the public from abuses by lawyers.

Hence, it is many factors that join forces to create the image and reality of the lawyer. It is an image and role that is changing—but remains the same. It is a role that reflects what the larger community is about—where its concerns are, how it prioritizes its values. It is a business and an art; it is an art practiced by human beings. Because of those three factors, the image of lawyers is not likely to change anytime soon. Small wonder then that the publisher of *Skid Marks* is now soliciting new jokes for *Son of Skid Marks*. **CL**

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