Nova Law Review

Volume 6, *Issue* 1 1981 *Article* 5

Bringing It All Back Home: Toward a Closer Rapport Between Lawyer and Layperson

Michael L. Richmond*

*

Bringing It All Back Home: Toward a Closer Rapport Between Lawyer and Layperson

Michael L. Richmond

Abstract

The public has never harbored any great love for the legal profession, yet it has openly avowed deep respect for and deference to the law itself

KEYWORDS: rapport, home, layperson

Commentary

Bringing It All Back Home: Toward a Closer Rapport Between Lawyer and Layperson

Michael L. Richmond*

> "Everyone strives to reach the Law," says the man, "so how does it happen that for all these many years no one but myself has ever begged for admittance?"[1]

The public has never harbored any great love for the legal profession, yet it has openly avowed deep respect for and deference to the law itself.[2] For some reason, the public fails to translate its admiration for the law into an esteem for attorneys. Recently, manifestations of this public discomfort with the profession have exhibited themselves in mov-

* Assistant Professor of Law, Nova University Law Center, Fort Lauderdale, Florida. A.B., Hamilton College; J.D., Duke University; M.S.L.S., University of North Carolina. The author wishes to thank Professor Gail Levin Richmond of the Nova faculty and Ms. Diamond Litty for their attention to the manuscript.

1. F. KAFKA, *Before the Law,* in THE COMPLETE STORIES 4 (Schocken Books 1971).

2. One can hardly deny the truth of this dichotomy. A simple glance through the pages of BARTLETT'S FAMILIAR QUOTATIONS (13th ed. 1955) will serve to demonstrate both the contempt felt for lawyers and the esteem for the law. *See* Kupferberg, *An Insulting Look at Lawyers Through the Ages,* JURIS DOCTOR, Oct./Nov. 1978, at 62 for a compendium of literary attacks on attorneys from Luke's "Woe unto ye also, ye lawyers!" to Will Rogers' "Lawyers make a living out of trying to figure out what other lawyers have written." *See also* Richmond, Book Review (A. HIGGINBOTHAM, IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS, THE COLONIAL PERIOD), 3 NOVA L.J. 339 (1979). A remarkably thorough survey conducted in 1960 concluded that, as compared to other professions, the general reputation of lawyers (as a group in the community) was virtually at the bottom, even though as individuals attorneys were highly regarded. MISSOURI BAR PRENTICE-HALL SURVEY: A MOTIVATIONAL STUDY OF PUBLIC ATTITUDES AND LAW OFFICE MANAGEMENT 41 (1963) [hereinafter cited as MISSOURI BAR SURVEY].

ies, television shows, and highly popular literature. This attitude toward lawyers, rather than improving over the years, remains just as poor today as ever.

One recent film, *And Justice for All*, perhaps exemplifies the problem as well as any. As the film opens, the attorney-hero finds himself imprisoned for contempt of court. Since he came to this unfortunate state of affairs by insulting a judge during an overzealous representation of his client, the film from its very outset requests the viewer to accept that the only "good" attorney has no respect for the system itself. Assuming we can fairly judge from this showing, the public still conceives of laywers as negative figures, put on earth to hinder rather than effectuate the course of justice.

Nor should we lightly dismiss the impact of nonscholarly works, since a great demand exists for popular works about the law. *And Justice for All* was a highly popular production, as were *The Paper Chase* and its film version.[3] However, these films do not portray the lawyer as those in the profession would wish. Attorneys appear as petty, bickering individuals with narrow minds and low morals. The attorney-hero must fight the other members of the profession, or at least demonstrate disgust and dismay at their antics. The entertainment industry, at least, views attorneys as fit objects for criticism and ridicule, but for little else.[4]

While fiction about lawyers fares well at the bookseller's, nonfiction also receives considerable public attention. Despite fairly widespread criticism in legal literature, *The Brethren* made a good deal of

3. J. OSBORNE, THE PAPER CHASE (1971). The television version did not fare as well. However, despite its relatively weak showing (it was aired in direct time conflict with two highly popular comedies), it still had an average viewing audience of 8.5 million households every week and was warmly received by television critics. Houseman, *Kingsfield's Folly: The Death of The Paper Chase,* STUDENT LAW., Jan. 1980, at 36. Even with *The Paper Chase,* which presented a sympathetic view of one law student's efforts to gain a legal education, the public received a negative view of attorneys. The blocking characters placed in the path of the student — his professors, his fellow classmates — continued to demonstrate all of the negative stereotypes which have plagued the profession in popular depictions. Osborne's 1977 work, *The Associates,* also sold well as a novel but met a sadder fate as a television comedy series.

4. *See* Cohen, *Has the Media Ruined the Image of Lawyers?,* NOVA PERSPECTIVE, Fall 1980, at 9. *But see* MISSOURI BAR SURVEY, *supra* note 2, at 191.

money for its authors and publisher.[5] Virtually every major figure involved in the Watergate affair has published a book, some analyzing the situation from a close legal perspective.[6]

Quite simply, the public wants to learn more about the legal profession — the way attorneys conduct themselves, the way the law is fashioned, the way justice proceeds. Unfortunately, what they learn has not come in packaging designed to display the profession at its best. In 1977, only 27% of those surveyed in the Gallup poll rated the honesty and ethical standards of attorneys as being high or very high. In contrast, 62% of those surveyed gave such a rating to the clergy and 52% to physicians.[7] In terms of public confidence in the profession, a Harris poll taken the same year showed only 16% of those surveyed had a great deal of confidence in law firms — a drop from 24% in 1973.[8]

> These public opinions are danger signals. Lawyers need to exert more leadership in community affairs, and lawyers who are involved in community affairs should be identified as lawyers. Finally, the organized Bar must assume an active role in making more clear to the public the nature and necessity of a lawyer's services, and the manner in which he charges for his services.[9]

If the profession does not heed this advice, we will continue to see even the best intentioned plans of the bar received by the public in an unsavory and negative manner.[10]

In Kafka's parable, which provided the introductory quotation, a

---

5. B. WOODWARD & S. ARMSTRONG, THE BRETHREN: INSIDE THE SUPREME COURT (1979). *Cf. Sharp Blows at the High Bench,* TIME, Mar. 10, 1980, at 48: "Tell-it-all books on the Supreme Court may yet become a new publishing genre."

6. *E.g.,* L. JAWORSKI, THE RIGHT AND THE POWER: THE PROSECUTION OF WATERGATE (1976); J. SIRICA, TO SET THE RECORD STRAIGHT (1979).

7. *View from the Other Side of the Bar: the Public Looks at Lawyers,* PUB. OPINION, July/Aug. 1978, at 37-38. A 1981 Gallup poll shows the rating for attorneys has slipped to 25% of those surveyed. Miami Herald, Sept. 20, 1981, § A, at 20, col. 2.

8. *View from the Other Side of the Bar, supra* note 7, at 36-37.

9. Thomason, *What the Public Thinks of Lawyers,* 46 N.Y.S. B.J. 151, 157 (1974).

10. Consider the headline of an article in a national newsmagazine, discussing the plans of the profession to improve itself through continued education: "Message for Bungling Lawyers — 'Shape Up!' " U.S. NEWS & WORLD REPORT, Aug. 27, 1979, at 57.

man from the country seeks admission to the law. The doorkeeper confronting him makes him comfortable and takes his bribes, but nonetheless refuses him admission. At the moment the man dies, the doorkeeper tells him that the door was fashioned for him and him alone, and will now be shut.[11]

This parable best summarizes the perceived relationship between lawyer and layperson. The layperson believes he or she has the absolute right to understand the law. Barring the way stands the lawyer who, despite all pleading, deliberately obsecures all knowledge of the law. Instead of appearing as a facilitator, the lawyer seems to be a blocking figure. In such a relationship, the layperson cannot help but resent the attorney. We thus differ from physicians, who have superior knowledge in a field about which the layperson has no reason to know. Lawyers have superior knowledge in a field which so pervades daily life that the layperson feels the need to intimately understand it.

We serve ourselves poorly when we contribute, actively or passively, to perpetuate the layperson's relative ignorance of the law. Instead, we should assist the nonlawyer to comprehend the problems which the attorney encounters on a daily basis. Only in this manner can we achieve the proper balance between the professional and the layperson — a relation in which the client comprehends the basic ground rules and looks to the lawyer as a professional who, rather than interpreting the rules, performs the highly skilled duties required by a complex legal system.

The very language a lawyer uses contributes to this client dissatisfaction.

> Another thing wrong with many of us lawyers is that we conduct our professional affairs in an impenetrable idiom, akin to the physician with his cryptic diagnoses and his inscrutable prescriptions, written in chicken-tracks. The truth is that the doctor's cryptography is a lesson in lucidity when compared with the lawyer's written and oral hieroglyphics.[12]

---

11. F. KAFKA, *supra* note 1. Kafka's distressing vision of the citizen, placed innocently and unknowingly before an inscrutable legal mechanism, finds it fullest development in THE TRIAL (1937), published in German as DER PROZESS (1925).

12. Waltz, *The Unpopularity of Lawyers in America,* 25 CLEV. ST. L. REV. 143, 147 (1976). *See generally* Richmond, *supra* note 2.

Beyond any question, the public feels even more alienated from the law when it cannot understand the very language in which we attempt to communicate its concepts.

The public may be said to view law as a system of rules by which society governs itself — a sort of complex conglomeration of regulations permitting one to live as a social animal. Accordingly, the average citizen must of necessity reach the ultimate depths of frustration when the rules themselves are incomprehensible. When attorneys, by their language, reinforce the public image that the law is indeed an impregnable fortress whose entrance is barred by reams of obfuscating verbiage, that frustration leads the public to lash back at those who created the blockage.

Again, virtually everything attorneys do, particularly on a subconscious level, seems calculated to alienate the public from the law. This problem permeates the entire system. "Trial judges . . . retreat to the sanctity of their chambers where they can perform without embarrassment, off the record. Those paneled walls provide a shelter for the timid, the artless, the indecisive, who routinely take even the simplest matters under advisement, rather than risk a clumsy ruling."[13] This ivory tower portrayal is compounded by the Chief Justice of the United States who routinely shuns television reporters, to the point of refusing to appear at a conference should cameras dare to be present. Yet in direct contrast to this "high citadel" image,[14] "[m]ore than ever before, the layman feels the influence of the law on his life."[15] We must work to improve our image with the public by improving the public's access to the law itself. Attorneys must improve their communicative skills.[16]

---

13. Stafford, *Our Tottering Legal System,* 43 TEX. B.J. 207, 212 (1980).

14. Consider the recent argument for change in the hoariest bastion of legal education, Harvard Law School. J. SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL (1978).

15. Mersky, Berring & Richmond, *Acquisition & Selection of Primary & Secondary Legal Material for Social Science Collections,* 1 BEHAVIORAL & SOC. SCI. LIBRARIAN 127, 127 (1979).

16. "We lawyers cannot write plain English. We use eight words to say what could be said in two. We use old, arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose." Wydick, *Plain Language for Lawyers,* 66 CALIF. L. REV. 727 (1978). Professor Wydick's article and later book provide the attorney with a superb guide for improving English prose. If members of the profession would simply use the aids available to

Judges must be more open in their dealings with the public.[17] We must publicly acknowledge our shortcomings, and actively work to correct them.[18] At the same time, we must affirmatively bend our efforts to improving our image overall.

---

them, the general level of writing among lawyers would rise dramatically.

17. Stafford, *supra* note 13, at 212.

18. The area of legal malpractice deserves far greater treatment than is possible within the confines of this commentary. It deserves mention because there can be no greater way of breaching public faith with a profession than to have the profession include among its members those who can practice in an unethical or shoddy manner with little or no fear of censure by their peers. In this area in particular, however, great strides have been made in the last decade.

After initial prodding by Ralph Nader in the early 1970's, the legal profession began to examine its role in society and its own ethical superstructure. *See* Nader, *The Role of the Lawyer Today,* MICH. ST. B.J., Nov. 1970, at 17. Continuing beyond Nader's preliminary considerations, Monroe Freedman raised the profession's awareness of the serious problems with its ethical standards in his highly controversial LAWYERS' ETHICS IN AN ADVERSARY SYSTEM (1975). Whatever view an attorney took of Freedman's depiction of an attorney, as one who acts ethically only when actively defending the rights of a client against all comers, that attorney was certain to be discussing the matter — perhaps for the first time in his or her entire career. Today, formulations and reformulations of codes of ethics abound.

More to our purpose is the current dialogue on improving the quality of the profession while at the same time policing malfeasants. Most comforting is that the dialogue takes place not only in the journals of law schools (*see, e.g.,* Wolkin, *On Improving the Quality of Lawyering,* 50 ST. JOHN'S L. REV. 523 (1976)), but in the journals of state bar associations as well. *E.g.,* England, *In Defense of Regulation by the Supreme Court,* 54 FLA. B.J. 254 (1980); Gaines, *Legal Malpractice,* 40 ALA. LAW. 477 (1979); Gordon, *Incompetent Lawyers? A Trial Judge's Perspective,* KY. BENCH & B., Jan. 1979, at 8. Axiomatically, we must first clean our house before we can expect to open it to company. This should not come with the negative feeling of airing dirty linen; rather, our housecleaning chores will demonstrate to the public that we no longer wish to hide with traditional aloofness — that we now conduct ourselves in an open and active association with our clients.

Similarly heartening is the concept of peer review which has recently gained in popularity, seen not in a punitive light but rather as a necessary support to strengthening the skills of practitioners. "It is aimed at helping lawyers improve the quality of their performance and services. It is punitive only in cases of extreme incompetence that cannot or will not be corrected." Smith, *Peer Review: Its Time Has Come,* 66 A.B.A.J. 451, 454 (1980).

But we must still keep in mind that the discussion constitutes only a matrix within which action must occur. As yet, the system has not yet developed to the point where results will be apparent. The profession must yet demonstrate its willingness and ability

> The entire legal community is subjected to censure because, by and large, only its most reprehensible members are continuously visible to the general public. . . . The public rarely sees the legal profession's most competent and more scrupulously ethical practitioners. They are too busy doing what they ought to be doing, and doing it very well, to receive much media exposure.[19]

This should not require a major public relations campaign, with all the hoopla and flag waving attendant upon a Madison Avenue production. While individual bar associations already maintain public relations offices,[20] what must happen should come from the efforts of virtually every individual connected with the legal profession. Complacency should not guide us; rather, we must affirmatively take steps to correct a seriously negative image in the minds of the public.[21]

One place we might start house-cleaning is in the area of unauthorized practice of law. One recent article[22] presents a hypothetical discussion among a lawyer, a legislator, and a layperson. The dialogue demonstrates lucidly how our present efforts to keep even the simplest chores hidden behind the mask of professionalism tend to alienate and confuse the public. More than this, by retaining even the most elementary tasks within the exclusive domain of the professional, we diminish

---

to seize upon these fine beginnings and put into practice a truly effective system for improving the skills of its members.

19. Waltz, *supra* note 12, at 145.

20. *Cf.* M. BLOOM, THE TROUBLE WITH LAWYERS 329 (1968).

21. It has been suggested that attorneys do quite well at blowing their own horns. "A peculiar and quite noticeable feature . . . is the profession's propensity for self-praise. . . . Contemporary public opinion about the legal profession is such that such image-building does not seem necessary. In public opinion polls covering several scores of occupations, lawyers appear consistently close to the top . . . ." O. MARU, RESEARCH ON THE LEGAL PROFESSION: A REVIEW OF WORK DONE 45 n.114 (1972). Unfortunately, Mr. Maru's conclusion rests on an invalid premise: public confidence in the attorney today is approaching the bottom of the scale. *Cf.* authorities cited at note 2 *supra*; Thomforde, *Public Opinion of the Legal Profession: A Necessary Response by the Bar and the Law School,* 41 TENN. L. REV. 503 (1974). Even at the time Mr. Maru put his pen to ink, lawyers were viewed as considerably less than saintly. M. BLOOM, *supra* note 20, is replete with examples which belie Maru's conclusion. Thus, the need for an affirmative response by the organized bar clearly exists.

22. Hunter & Klonoff, *A Dialogue on the Unauthorized Practice of Law,* 25 VILL. L. REV. 6 (1979).

the public's perceived need for a professional to handle all legal affairs. In other words, we deprofessionalize our image when we maintain that only professionals can handle rudimentary matters. Thus, it is not at all strange that Mr. Layman, in the above-noted discussion concludes: "In light of the discussion we've just had, I'm even more convinced than before that the lay adjuster and my son should be allowed to handle my legal problems. . . . I just can't see why nonlawyers should be barred from law practice . . . ."[23]

More significant, perhaps, than the theoretical musings of a law review article, is the experience of the Arizona Bar in attempting to foreclose realtors from drafting simple preliminary documents. In *State Bar of Arizona v. Arizona Land Title & Trust Co.*,[24] the unauthorized practice committee of the Arizona Bar Association sought a declaratory judgment to prevent a prevalent practice among the realtors of the state. Realtors drafted various legal documents relating to the sale of real property in which they neither held nor proposed to acquire an interest, and charged for the service. The Supreme Court of Arizona held that this constituted the unauthorized practice of law and, on rehearing, made it pointedly clear that this also applied to the drafting of a preliminary purchase agreement.[25]

Rather than accept this decision, the realtors took their case to the public. In a move destined to produce a bitterly contested campaign, they attempted to amend the Arizona Constitution to permit realtors to prepare all instruments incident to a sale in which they represented one of the parties. Beyond doubt, the public knew well the issues represented by the amendment.

> Every traditional campaign technique was employed on both sides: The Bar rallying under the call of red, white and blue placards, warning "Save the Constitution", and the realtors united under the banner "Protect Your Pocketbook". Methods employed by both sides included public relations firms, bumper stickers, telephone calls, pamphlets, [etc.]. Leading newspapers took editorial stands

23. *Id.* at 21-22.

24. 90 Ariz. 76, 366 P.2d 1 (1961).

25. State Bar of Ariz. v. Arizona Land Title & Trust Co., 91 Ariz. 293, 371 P.2d 1020 (1962).

(frequently against the Bar).[26]

The public passed the amendment by a margin of almost four to one.[27]

The public had its say, and quite forcefully too. As commentators later noted,[28] the entire issue put a new perspective on the public's feelings toward the legal profession. The public's image of the attorney remained seriously deficient; but more importantly, traditional methods used by the profession to achieve interaction with the public had failed.[29] Undoubtedly, the citizens of Arizona felt that a profession had no right to stamp the imprimatur of "professional" on matters which called simply for filling out some uncomplicated forms.

Has the profession taken the hint? Decidedly not. Several years after the State Bar of Arizona decisions, the professional literature still bemoaned the state of affairs.

> Encroachments coupled with the great number of prospective lawyers now in training create a situation in which it might not be economically feasible to practice law. It is respectfully submitted that in order to survive economically, many law trained personnel will either have to work for the government or for large corporations. As a result the general public and the profession of law will suffer.[30]

Six years later, those predictions of economic disaster have failed to come true.

What we must do is relax our definition of the practice of law. Simple matters, particularly those which nonprofessionals well versed in the subject matter can easily handle, should indeed be ceded to those nonlawyers. It seems absurd to have an attorney of thirty years' experience handle a simple real estate closing, when a novice realtor acting in

---

26. Marks, *The Lawyers & the Realtors: Arizona's Experience,* 49 A.B.A.J. 139, 141 (1963).

27. *Id.* at 141 n.11.

28. *Id. See also* M. BLOOM, *supra* note 20, at 110 *et seq.*

29. *Id.*

30. Miller, *What Others Think: Where Has the Practice of Law Gone?,* 48 FLA. B.J. 445 (1974), *reprinted in* 39 UNAUTHORIZED PRAC. NEWS 40, 41 (1974). *See also* Resh, *Unfounded Attacks on Unauthorized Practice,* 40 UNAUTHORIZED PRAC. NEWS 272 (1977).

accord with general instructions from house counsel could handle it quite competently. In permitting — in welcoming — this result, the profession can forcefully demonstrate to the public that it no longer wants the role of pickpocket. The public will instead see a profession which charges professional fees for professional work.

More and more, the public seeks alternatives to legal representation in matters which might traditionally call for an attorney. In Minnesota, complaints against the press are taken before the Minnesota News Council, where a panel composed equally of press and public hands down advisory opinions published across the state.[31] There exist "do-it-yourself kits" for divorce, probate, incorporating businesses, and numerous other matters. Small claims courts and direct personal representation before consumer-oriented state agencies have rapidly gained in popularity.[32] Even the profession itself tacitly concedes that many matters can readily be handled by a nonlawyer with the proper training.

> The use of legal assistants has proved beneficial to the attorney and the client, in terms of economic advantages and the ability to provide more and varied legal services to a greater number of clients. The question for most firms is no longer whether or not to hire paralegals, but rather how can the firm best use them.[33]

There even exists a law school (albeit unaccredited), *sans* dean, *sans* faculty, run entirely by one administrator and a group of highly motivated students destined for careers in public interest law.[34] The profession, rather than ignoring or deprecating these efforts, should take an active role in assuring they function smoothly and properly. This would guarantee the public adequate protection of its rights while requiring

---

31. Peterson, *Minnesota News Council: Solving Disputes Without Courts,* 66 A.B.A.J. 970 (1980).

32. *The Logical Extension of the Do-It-Yourself Syndrome or "Qui Facit Per Alium Facit Per Se",* 37 UNAUTHORIZED PRAC. NEWS 111 (1973). *See also* Nader, *The Legal Profession: A Time for Self-Analysis,* 13 AKRON L. REV. 1 (1979).

33. Guman & Ferguson, *The Changing Role of Paralegals,* 40 UNAUTHORIZED PRAC. NEWS 280, 289 (1977).

34. Manna, *The Other Half Goes to Law School,* STUDENT LAW., Apr. 1980, at 18. *See also* Heflen, *Preserving Professional Values in the Legal Services Marketplace of the Eighties,* 41 ALA. LAW. 157 (1980).

that the attorney exercise only indirect supervision. The lawyer seeking to improve the public's attitude toward the profession should instruct nonprofessionals desiring to do this basic work or should verify the accuracy of simple forms, thus ensuring the public receives competent service at a reasonable price.

Just as attorneys should not prevent laypersons from performing simple functions in a legal setting, they should actively assist the public in obtaining counsel when truly needed. "A main present challenge to the bar is to make absolutely sure that, out of the present partnership between private and public support, there emerges a system under which no poor person shall want for counsel."[35] Undeniably, the profession has long espoused this goal, and the American Bar Association has certainly taken an active role in championing its realization. In 1977, its Special Committee on Public Interest Practice put forth a forceful report designed to stimulate discussion on the matter.[36] Using as its touchstone the Code of Professional Responsibility,[37] the Special Committee proceeded on the basic assumption that "the professional responsibility to contribute public interest legal service is inherently an obligation to contribute one's time — one's abilities."[38] Now the emphasis has shifted again. Regrettably, the most recent proposed revision of the ABA Model Code of Professional Responsibility no longer demands the donation of "unpaid public interest legal service" by each member of the profession.[39] Nevertheless the concern demonstrated by

35. W. N. SEYMOUR, THE OBLIGATIONS OF THE LAWYER TO HIS PROFESSION 26 (1968) (25th Annual Benjamin Cardozo Lecture before the Association of the Bar of the City of New York, March 19, 1980).

36. ABA SPECIAL COMMITTEE ON PUBLIC INTEREST PRACTICE, IMPLEMENTING THE LAWYER'S PUBLIC INTEREST PRACTICE OBLIGATION (1977).

37. ABA CODE OF PROFESSIONAL RESPONSIBILITY, Canon 2 and EC 2-25 (1978).

38. ABA SPECIAL COMMITTEE ON PUBLIC INTEREST PRACTICE, *supra* note 36, at 6.

39. *Compare* ABA PROPOSED MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Rule 8.1 (1980) *with* ABA PROPOSED FINAL DRAFT MODEL RULES OF PROFESSIONAL CONDUCT, Rule 6.1 (1981). *See generally* Gilbert, *The Bar's Position on Proposed Model Rules,* 54 FLA. B.J. 752 (1980). The profession should also attempt to improve the level of its services in general, and the methodology by which the services get to the public. *See* Christensen, *Toward Improved Legal Service Delivery: A Look at Four Mechanisms,* 1979 AM. B. FOUND. RES. J. 277 (1979).

the profession[40] must be given life; each attorney should actively donate much needed services to those financially unable to obtain them. Further, we should take steps to make certain the public knows of our efforts in this regard.

The effort, however, should not rest merely with the practicing bar. All branches of the profession must join in educating the public about the business of the lawyer, in the law itself, and in the complex mechanics of the process as a whole. The judiciary must also take a hand in the active supervision of the profession. One commentator suggests that courts, acting perfectly within their rights to pass on the competence of attorneys who practice before them, must exercise what he believes is "a duty to the public to deny unqualified applicants admission [to their bars]."[41] The judges, he feels, have shirked this duty.

Beyond this, we must also acknowledge that the judiciary itself has been the target of deserved criticism. "Judges, their black robes once symbolic coats of armor shielding them from the barbs of public criticism, are drawing increasing fire both for their decisions and for the way in which they conduct their business."[42] Due perhaps to the physical isolation in which the judiciary functions and the poor relations between bench and press, the public views judges with the same jaundiced eye with which it regards attorneys.[43] "It is being said that judges, too bound by the strictures that go with the job to respond in kind to criticism, need mechanisms that would enable others to take up arms in their behalf."[44] In short, the judiciary must take pains to make itself more available to the public — to improve its relations with the press, to participate in and promote public discussions of the job of the judiciary, and to educate the public in the role the bench and bar play in society as a whole.

---

40. *See, e.g.,* Palmer & Aaronson, *Placing Pro Bono Publico in the National Legal Services Strategy,* 66 A.B.A.J. 851 (1980).

41. Toll, *A Modest Suggestion for Chief Justice Burger,* 66 A.B.A.J. 816 (1980).

42. Winter, *Black Robes No Longer Shield Judges from Public Criticism,* 66 A.B.A.J. 433 (1980).

43. *Id.* The profession itself has also placed the judiciary under fire of late. *See, e.g.,* Carrington, *Ceremony & Realism: Demise of Appellate Procedure,* 66 A.B.A.J. 860 (1980).

44. *Id.*

Education of the public should go far beyond simple speeches, newspaper columns, and occasional television and radio information shows. Fortunately the bar is willing to participate in wider areas. For example, the American Bar Association strongly favors an effort to bring legal education into primary and secondary schools.[45] This program should receive great local support. "[E]lementary and secondary students must be provided with an operative understanding of how our system of law and legal institutions function."[46] This would seem the ideal opportunity for legal educators to aid in the process. Rather than relying on the time and skills of practitioners (who would, perhaps, be better used representing indigents), professional educators and law students should shoulder the burden of developing and implementing an effective program in the schools. Thus, still another branch of the profession can make a positive contribution to the overall effort.[47]

One commentator suggests that the duty of the law schools goes far deeper than this. "[L]egal education generally fails to consider the combined and often uncoordinated efforts of the several components of the legal process to resolve particular social problems."[48] Thus, law schools should accept the duty of teaching students the law, not as abstract theory, but rather as a unified method of resolving disputes in society. The law should appear as a tool of social utility rather than a means to personal gratification. Lawyers trained to accept this view will go into practice with an outlook more conducive to better relations with the public. "Generation after generation of students graduate from law school without having been required to evaluate critically the moral factors in decision-making. Even worse, they often graduate believing erroneously that morality has no place in the workings of the

45. ABA SPECIAL COMMITTEE ON YOUTH EDUCATION FOR CITIZENSHIP, HELP! WHAT TO DO, WHERE TO GO (1973), *cited in* Roche, *The Three R's are Not Enough: The Need for Law-Related Education in South Dakota,* 22 S.D.L. REV. 41, 51 n.39 (1977).

46. Roche, *supra* note 45, at 43.

47. Some schools have made significant contributions in this area. The student-run program at North Carolina Central University School of Law can serve as an excellent model for schools wishing to become involved in heightening the respect for and awareness of the legal profession among high school students.

48. Thomforde, *supra* note 21, at 525.

legal process."[49] In the main, legal education must accept its responsibility for the lack of public confidence in the profession. It, too, must take an active role in solving the problem.

Individual law professors can assist by bolstering a sadly deficient body of literature which discusses the law at a level which a layperson can readily understand. Academic and public libraries increasingly find demand for legal material, yet must face the dilemma of too little accurate material which their patrons can use without professional guidance. A recent article,[50] written for librarians seeking to acquire material for social science collections, could cite only two dictionaries[51] and one series of monographs[52] written by lawyers yet designed specifically for the lay audience. In contrast, a superb contribution designed for the nonlawyer has recently appeared, which attempts

> to make available as concisely as possible information about some of the principal legal institutions, courts, judges and jurists, systems of law, branches of law, legal ideas and concepts, important doctrines and principles of law, and other legal matters which not only a reader of legal literature but readers in other disciplines and indeed any person whose work or reading in any way touches on legal matters may come across.[53]

Unfortunately, as *The Oxford Companion to Law* was designed specifically to cover British law, it contains relatively few references to the law of the United States.[54] The American public deserves a work such

---

49. *Id.* at 530. *But see* Taylor, *Juris Pastor: A Return to the Counselor-at-Law,* 31 MERCER L. REV. 545 (1980).

50. Mersky, Berring & Richmond, *supra* note 15.

51. S. GIFIS, LAW DICTIONARY (1975); D. ORAN, LAW DICTIONARY FOR NON-LAWYERS (1975).

52. The LEGAL ALMANAC SERIES, published by Oceana Press, Dobbs Ferry, N.Y.

53. D. WALKER, *Preface* to THE OXFORD COMPANION TO LAW at v (1980).

54. Those which appear, however, are brief and accurate, frequently revealing a fascinating glimpse of the British view of our practice. Cardozo, for example, is described as "one of the very greatest American judges, probably second only to Holmes in making the judicial process creative yet evolutionary." *Id.* at 186. The coverage of the United States, however, is spotty. While Cardozo and other Justices of the United States Supreme Court appear, such leading state jurists as Roger Traynor and legal scholars as William Prosser do not. While there is a discussion of *Brown v. Board of*

as this, which attempts to describe in one or two paragraphs the essence of legal concepts with which they might wish to become familiar. Rather than writing exclusively for academic and bar publications, law professors should contribute their writing skills to works designed for the public at large. Law schools can assist this effort with grants and permission for such works to qualify their authors for tenure and promotion.

For some time, law librarians have wrestled with the problem of supplying adequate reference services to their patrons. As indicated earlier, these problems have begun to appear in non-law libraries as well.[55] Succinctly stated, problems arise when the librarian with legal training attempts to assist the patron who, although not an attorney, seeks to use legal materials. The first dilemma confronting the reference librarian, and the one with the widest ramifications, is the danger of giving too much advice, thus running afoul of restrictions against the unauthorized practice of law.[56] Here, law librarians must tread the straight and narrow, keeping within the confines of a narrow precept: "[I]f no conclusion as to legal validity is made or no legal opinion is offered, but only a statement as to the findings on a particular matter by a nonlawyer, there is no unauthorized practice involved."[57] In practice, this can create not only problems with the organized bar, but a breach of the code of ethics of law librarians as well.[58]

The librarian has "the responsibility to make the resources and services of the library known to its potential users; he must 'seek above all else to be an effective instrument for the dissemination of legal information.' "[59] Thus, more than perhaps any other branch of the profession, the law librarian tries to familiarize the public (at least on an

---

Education, a similar treatment of *Miranda v. Arizona* is lacking. In assessing the value of such a work, the American practitioner can readily see how much it reveals about the practice of law in England.

55. *See* text accompanying note 51 *supra.*

56. Although no cases have been decided directly relating to law librarians, the fear still exists. Schanck, *Unauthorized Practice of Law and the Legal Reference Librarian,* 72 L. LIB. J. 47, 57 (1979).

57. *Id.* at 58. *See also* Mills, *Reference Service vs. Legal Advice: Is It Possible to Draw the Line?,* 72 L. LIB. J. 179, 186 (1979).

58. Schanck, *supra* note 56, at 58. *See also* Begg, *The Reference Librarian & the Pro Se Patron,* 69 L. LIB. J. 26, 31 (1976).

59. Begg, *supra* note 58, at 30 (citations omitted).

individual basis) with the law. Yet the librarian has been hampered. First, the ethical and legal problems caused by the risk of unauthorized practice restrain the librarian. Second, the time and resources needed to adequately inform the patron with no legal knowledge prove so great that they may severely cripple a facility intended to support a profession, thus jeopardizing the primary mission of the law library.[60] Third, when the librarian has expended all of this time and effort, the increased knowledge extends to only one person.

Without intending to minimize the very real problems the law librarian faces in this regard, this branch of the profession can still do much more to improve the public's opinion. Most significantly, law librarians must not view the dissemination of information about the law as providing legal services to the public. Rather, they should acknowledge that assisting the general public is indeed their role.[61] However, this assistance should not come on an individual basis. Law libraries can sponsor seminars, if not for the general public then for those librarians who serve the general public, discussing the general rudiments of legal research.[62] They can maintain community bulletin boards, sponsor public awareness programs, lectures and film societies, and generally assist by offering their facilities for community-related activities. Finally, in conjunction with local bar associations, law libraries can serve as clearinghouses for those seeking to retain attorneys or for those indigents in need of legal assistance.

Conclusion

This commentary proceeds on the basic assumption that lawyers share a general concern for the welfare of their clients and for the public as a whole. It also accepts that lawyers as a whole follow basic ethi-

60. *Id.*

61. The issue of the law library and the practice of law ultimately raises the question of what the role of the law library should be in the provision of legal services. . . . Law librarians who wish to do more to assist in providing legal services to the public can effectively do so by working indirectly, lecturing and teaching at graduate library schools when asked and assisting public libraries by providing instruction in legal bibliography and the selection of legal materials.

Id.

62. *See* Mills, *supra* note 57, at 193.

cal precepts, and make every effort to deal fairly and honestly with those people with whom they deal. Nonetheless, we must realize that the legal profession, never the public's darling, has fallen into even greater disfavor since Watergate.[63] The problem now threatens to expand beyond bounds with which we can deal. To solve it, the profession must immediately embark upon a major effort to improve the attitude of the public toward the bar by instructing the public in the basics of our legal system, in the need for skilled professionals to handle the complexities of their legal problems, and in the qualifications and ethics which are required of an attorney.

This conclusion is by no means novel. Some twenty years ago, the Missouri Bar, in conjunction with Prentice-Hall, ran a thorough survey which concluded that the bar must turn its attention toward improving public relations through education.[64] The intervening years have seen few serious attempts at meeting these objectives. Today, particularly in the lingering light of Watergate, we find the crisis of public disfavor at a peak. We must turn public opinion around. Otherwise, when a new

---

63. The severity of the problem has provoked comment in leading British law journals as well. *See, e.g.*, Ayer, *Do Lawyers Do More Harm than Good?*, 129 NEW L.J. 1040 (1979); Cohen, *Unpopularity and Criticism of Lawyers*, 123 SOLICITORS' J. 499 (1979); *The Legal Profession and the Public*, 6 ANGLO-AM. L. REV. 1 (1977).

64. While the education of the public through the client-attorney relationship is deemed to be of number one importance, it is nevertheless necessary that many other means of public education be employed. (1) Development and distribution of pamphlets. (2) The development and promotion of well organized Speakers Bureaus by local bar associations in every part of the state. (3) The development and promotion of Public Forums on legal subjects to be conducted by local bar associations. (4) Continuing efforts to educate the public through use of informational media such as radio, television and newspapers. (5) Closer cooperation with educational institutions so that the citizens of tommorrow will be correctly informed concerning the role of the legal profession and its importance to our American System of Government. (6) Continuing efforts through every means, including those listed above, to develop in the public a greater appreciation for the rights and freedoms guaranteed by the Constitution and protected by our courts.

MISSOURI BAR SURVEY, *supra* note 2, at 51. However, it should be noted that the survey continued to stress that "A deluge of publicity . . . will be worthless so long as the lawyer himself, in his contact with the client, fails to lay the groundwork for a better public image of the profession." *Id.* at 52.

John Cade arises, the public may indeed heed the advice of his rebellious followers: "The first thing we do, let's kill all the lawyers."[65]

65. W. SHAKESPEARE, HENRY VI, PART II, Act IV, Scene II, Line 83 (1600).