



Defending Lawyers

A question I hear often from members is, "Can't the State Bar do something about the image of lawyers?" The short answer is that the core resource in the battle against negative lawyer stereotypes is our members themselves, the vast majority of whom serve as daily examples of the conscientious ethical practice of law. In addition, the State Bar maintains a steady focus on the problem of lawyer image. Our media response program is coupled with substantive programs that serve as an honest, practical, and powerful rebuttal to negative lawyer stereotypes; chief among them are our Access to Justice program, Justice Initiatives, and public education programs, many of which have generated statewide and national acclaim.

In our common frustration with the unfair and persistent ridicule of our profession, it is easy to criticize a substance-based approach to lawyer image as too indirect and too slow. But the phenomenon of lawyer bashing is almost certainly as old as the profession itself, and the challenge of addressing it is not for the short-winded.¹ Public relations campaigns, if they have any effect at all, yield only short-term results. If a magic formula for fixing society's negative fixation with lawyers exists, I'm sure that such consummate legal practitioners and certified geniuses as Sir Thomas More, Adams, Jefferson, or Lincoln, to name just a few, would have provided it to us. The stereotype of the amoral lawyer persists despite the fact that the vast majority of lawyers are diligent and honest; the stereotype of the fat-cat, avaricious lawyer persists even though most lawyers have annual incomes that place them squarely within the middle of the middle class.

Perhaps the reason that lawyers are subject to scorn across centuries and cultures has nothing to do with lawyers themselves,

but everything to do with the nature of our work: we are the tradesmen of justice. People who perceive themselves to be victims of injustice are aggrieved to begin with, and understandably feel resentment at having to pay someone in an attempt to secure some semblance of justice. Even when a lawyer is successful on the client's behalf, in the view of the client, there is always a lawyer "bad guy" on the other side to leave a bad taste in the client's mouth.

The evidence suggests that we face a never-ending, uphill battle in our public image campaign. Given the magnitude of the challenge, it is with an acute sense of modesty that I offer the following advice to each Michigan lawyer: if you want to help the image of lawyers, start by defending what lawyers do.

To that end, I offer the following 30-second responses to have handy the next time you're in the vicinity of a verbal assault on lawyers, whether it comes in the form of a lawyer joke (note to self: laugh first, if it's clever), an off-hand remark, or a direct assault.

Stereotype: Lawyers will do anything to win.

Response: Lawyers operate under strict ethical rules, and the rules are enforced. Our rules of professional conduct and court rules hold lawyers to a strict standard of ethical behavior. Yes, as in every profession there are some

who break the rules. But lawyers who cheat or lie or unethically manipulate the system risk losing their license to practice law, and indeed, a number of them are disbarred each year. Our disciplinary system is rigorous and active. If the attack is aimed at prosecutors, it is worth noting that prosecutors operate under even more explicit ethical rules concerning disclosure, and that breach of the rules not only subjects them to lawyer discipline, but that violations can jeopardize convictions.

Stereotype: Lawyers are fat cats who will do anything for money.

Response #1: Lawyers are uncommonly generous. Unlike other professions, lawyers are obligated under our rules of professional conduct to give free legal service to the poor or to contribute to legal aid. Last year, Michigan lawyers contributed over \$1,000,000 to legal aid programs and provided millions of dollars' worth of free legal services to indigent clients.

Response #2: We're not as "fat" as you think we are. Lawyers in general are relatively well-compensated, and like all professionals, some are very well off, but we are not nearly as rich as most people think. The median net income for lawyers in Michigan in 2002 (our last survey) was \$73,500. Contrast that with these other reported median salaries of degreed professions in Michigan: physician, \$150,000; pharmacist \$86,500; MBA \$70,000.²

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Stereotype: Criminal defense lawyers are on the side of criminals.

Response: Criminal defense lawyers are society's best defense against a police state. It's the job of a criminal defense lawyer to ensure that his or her client has a fair trial, not to defend crime. The cumulative effect of the criminal defense bar is to keep the system honest. A lawyer defending someone accused of rape isn't defending the act of rape; he's ensuring that the investigation and prosecution have been fair. In the process, a defense lawyer not only makes it likelier that the result of the trial will be the right one, but that the investigation and prosecution of future crimes will be fair. The point is not that law enforcement and prosecutors are especially prone to error or corruption, but that every human system needs safeguards and accountability, and defense lawyers are the agents of that accountability. If you meet resistance with these points, ask your skeptical listeners what kind of defense they would want if *they* were unjustly accused of a crime. Ask what the presumption of innocence would mean if defense lawyers were not ethically required to be thorough and aggressive in their defense of their clients.

I dwell on the defense of the criminal defense bar not just because I am a criminal defense lawyer, but because attacks on the criminal defense bar are a particular challenge in a climate where fear of crime is heightened and political forces exploit that fear. Unfortunately, lawyers themselves fuel the attack. The brochure of a California Superior Court judge in 2000 described her opponent, a former public defender, as defending the actions of cop killers, violent criminals, and child molesters. The organized bar came to the defense of her challenger and she was defeated for reelection, but in other campaigns, similar attacks have been successful. Michigan is not immune from insinuations that lawyers who defend criminal defendants and judges who find constitutional infirmities in criminal convictions are somehow complicit in the crimes.

A final note: defending criminal defense work also requires an equal commitment to defending the work of prosecutors. In a *New*

York Times op-ed piece of January 26, 2006, Joshua Marquis, a district attorney in Oregon, addresses the attention being paid to wrongful convictions through such dramatic vehicles as the ABC series *In Justice*, Scott Turow's novels, and the celebrity-acclaimed play *The Exonerated*. He concludes that the public is being deluded into believing police and prosecutors are trying to send innocent people to prison. If this is an emerging stereotype, the response is the one noted above: prosecutors operate under strict rules of ethical conduct and break them at the peril of their licenses and their cases.

But I take strong issue with Marquis' conclusion that Americans "should be far more worried about the wrongfully freed than the wrongfully convicted." In a subtle but real way, such thinking is yet another attack on lawyers. I submit that everyone needs to have exactly the same level of concern for the wrongful convictions as for wrongful ac-

quittals, and that lawyers need to be in the forefront of explaining why. It's not simply a question of fairness; it's a question of public safety: when the wrong person is convicted, an injustice has not only been done against an innocent person, but the real offender is still at large.

The prescription for defending lawyers that I've laid out works only as long as our commitment to our ethical standards is strong. As I speak across the state to our members, I am convinced that our commitment is both strong and durable. I am also convinced that we can make headway in our campaign for lawyer image if we all go out and do what we have been so well trained to do: defend and persuade.

Lawyer, defend thyself. ♦

FOOTNOTES

1. Or the long-winded.
2. <http://www.payscale.com>.