
Volume 28

Number 2 *Symposium on Civility and Judicial Ethics in the 1990s: Professionalism in the Practice of Law*

pp.563-582

Symposium on Civility and Judicial Ethics in the 1990s: Professionalism in the Practice of Law

Te Demise of Legal Professionalism: Accepting Responsibility and Implementing Change

John C. Buchanan

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

John C. Buchanan, *Te Demise of Legal Professionalism: Accepting Responsibility and Implementing Change*, 28 Val. U. L. Rev. 563 (1994).

Available at: <https://scholar.valpo.edu/vulr/vol28/iss2/4>

This Symposium is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



Buchanan: Te Demise of Legal Professionalism: Accepting Responsibility and

THE DEMISE OF LEGAL PROFESSIONALISM: ACCEPTING RESPONSIBILITY AND IMPLEMENTING CHANGE

JOHN C. BUCHANAN*

I. INTRODUCTION: THE NATURE OF OUR PROBLEM

Few people, lawyers or laymen, can deny that the legal profession is now largely viewed negatively. Some may blithely dismiss this negativity as the price lawyers pay for their role in society—a role which often requires them to take on grossly unattractive causes. Duty has always demanded and always will demand that lawyers risk being misunderstood. But the public perception problems lawyers face today are deeper and more widespread than any the profession has ever faced before. Worse yet, the problems are growing.

Statements from two public figures aptly illustrate this century's changes in public opinion of the legal profession. In 1885, Oliver Wendell Holmes stated: "Of all secular professions this has the highest standards."¹ Over one hundred years later, former Vice President Dan Quayle noted:

Our system of civil justice is, at times, a self-inflicted competitive disadvantage. . . . Lets ask ourselves: does America really need 70% of the world's lawyers? . . . Is it healthy for our economy to have eighteen million new lawsuits coursing through the system annually? Is it right that people with disputes come up against staggering expense

* John C. Buchanan is the managing partner and co-founder of the law firm of Buchanan & Bos in Grand Rapids, Michigan, and president and founder of the International Society of Primerus Law Firms. Mr. Buchanan specializes in civil litigation and is a member of the International Academy of Trial Lawyers, the American College of Trial Lawyers, and the American Board of Trial Advocates. He was recently listed in the 1993 edition of "The Best Lawyers in America." Mr. Buchanan has authored several legal publications, including a nationally distributed text entitled *How to Use Video in Litigation*, published by Prentice-Hall. He is a graduate of the University of Michigan Law School.

Mr. Buchanan would like to acknowledge the efforts of Ronald M. Stella, Nancy L. Haynes, and Judy Bean in the preparation of this article. Mr. Stella is a 1991 graduate of Valparaiso University School of Law and practices in the areas of employment law, commercial litigation, and product liability at Buchanan & Bos. Ms. Haynes is a 1993 graduate of Indiana University School of Law at Bloomington and recently joined Buchanan & Bos. Ms. Bean is co-founder of Creative Cooperative, a Grand Rapids marketing firm, which has provided, and continues to provide, invaluable assistance to Buchanan & Bos, in attempting to improve the image of the legal profession.

1. Fred R. Shapiro, *Battle of the Quotes*, A.B.A. J., Dec. 1993, at 62, 62 (quoting Oliver Wendell Holmes, Jr., "The Law," Address at the Suffolk Bar Association Dinner (Feb. 5, 1885)).

and delay?²

Whatever your opinion of the former Vice President's statements, the contrast between his words and those of Justice Holmes is depressingly stark. It is nearly impossible to imagine a national leader praising lawyers in Holmes' way today. Quayle's attitude, shared by so many, is indicative of more than mere unpopularity on our part. It displays a fundamental lack of trust in both the legal profession and in the American legal system. This mistrust may well threaten our entire system of government and, correspondingly, all of the freedoms Americans so hold dear. How have lawyers sunk so low? Who is responsible for the profession's tarnished reputation? What are its implications for the profession's future and for the legal system's future? Most of all, what can be done?

This Article explores those questions and proposes some unusual answers. This Article analyzes the demise of professionalism and the symptoms of professional decline that face the legal culture every day. Further, this Article examines whether these symptoms are real or merely part of a public misperception about who lawyers are and what they do, and it projects the effects of the demise of professionalism and its implications for the future. Convinced that the problem is real, I present a solution to the problem. The potential solution I suggest is already in practice; I call it The International Society of Primerus Law Firms. The Society is explained later in this Article. However, suffice it to say that the Society is in essence a "seal of approval" for lawyers. Its membership is limited. It is built upon the standards of practice the public wants and all lawyers should strive to achieve. Perhaps most importantly, the Society has been formed with an internal policing function so that the public can be assured that the "seal of approval" assures competent, ethical, and caring lawyers.

I do not at all suggest that the answer to the demise of professionalism is to make all lawyers members of the International Society of Primerus Law Firms. However, I do suggest that the answer to reversing the demise of our profession lies in the acceptance and implementation by all lawyers of the standards upon which the Society was built.

II. THE DEMISE OF TRUST IN THE PROFESSION: IRREFUTABLE SYMPTOMS

Recognizing the decline of the profession may be the easiest part of addressing the problem. Symptoms of the decline are present everywhere. "Lawyer-bashing" represents the most recognizable, and unfortunately, the most

2. *Id.* at 63 (quoting Dan Quayle, Speech to the American Bar Association (Aug. 13, 1991)).

popular, symptom of our image problem. Dan Quayle represents but one form of bashing. Another form, which may prove more harmful to lawyers, is that employed by Jay Leno and his fellow comedians. It is fun to belittle lawyers! Laughter is contagious, humor seductive. Lawyer jokes abound broadly in the media and narrowly in the homes of the average American family.

Even more disturbing is lawyer-bashing of the folk wisdom variety. Negative stereotypes about lawyers are now widely accepted as fact. Consider the following exchange in a recent Ann Landers column. The popular advisor received a letter from parents claiming to have been falsely accused of molesting their little girl, now grown. In anguished terms, they described their problem as "false memory syndrome," a problem they said was created by over-eager therapists. The usually level-headed columnist agreed that such therapists could cause problems, but then quickly and inexplicably shifted into a near-attack on lawyers, remarking that the problem was partly due to "lawyers who see an opportunity to make a killing . . . nailing a well-known (or well-heeled) person."³ Yet the suffering parents' letter contained no mention of lawsuits or lawyers. The Dan Quayles of the world are no longer our problem. It is people such as Ann Landers, who are kind-hearted, respected, opinion leaders with seemingly no axe to grind, who are now promoting the negative stereotypes.

Movies provide another window into our societal beliefs. *The Firm*, based on the novel written by lawyer-turned-writer John Grisham, featured the following exchange:

"It's supposed to be an honorable profession, but you'll meet so many crooked lawyers that you'll want to quit and find an honest job.

Yeah, Mitch, you'll get cynical. And it's sad, really."

"You shouldn't be telling me this at this stage of my career."

"The money makes up for it. It's amazing how much drudgery you can endure for two hundred thousand a year."⁴

What a sad departure from the days of movies such as *To Kill A Mockingbird*, in which Gregory Peck, portraying a Southern, small-town White lawyer defending an African-American accused of rape, represented a virtual paragon of courage and decency.⁵

Such examples are, of course, as anecdotal as they are dismal. The public's mistrust of lawyers is also a readily identifiable sign of the profession's

3. Ann Landers, *Victimized by False Memories of Abuse*, CHI. TRIB., Dec. 12, 1993, at C3.

4. JOHN GRISHAM, *THE FIRM* (1993), cited in Patricia Chisholm, *The Public on Lawyers—Guilty*, MACLEAN's, Oct. 11, 1993, at 68.

5. Chisholm, *supra* note 4, at 68.

decline. More quantifiable and disturbing evidence comes in the form of public opinion surveys. These notorious surveys, which have long ranked lawyers low as a group, now show that people are less likely to trust lawyers as *individuals*. In other words, where people once said, "I don't trust lawyers in general, but I do trust my own," they are now more likely to say "I don't trust any, not even my own."

The positive side of surveys is that they point out specific areas of bad and good feeling, allowing lawyers to target certain areas for improvement. For example, the most recent ABA survey of consumer attitudes toward lawyers points out such areas: lack of compassion, lack of ethics, and greed.⁶

Over half of the survey respondents said that today's lawyer is no longer "a leader in the community, a defender of the underdog, and a seeker of justice."⁷ Almost forty percent said that the phrase "honest and ethical" does not describe lawyers. Interestingly, the public perceived ethical problems as including fee disputes, lack of communication, and other matters of lawyer-client relationships. This inclusion does not correspond to a precisely defined law school idea of what ethics comprise.

As for the perception of greed, "three-fifths of respondents (63%) said lawyers make too much money, 59% said lawyers are greedy and 55% said it is fair to say that most lawyers 'charge excessive fees'."⁸ Those who felt negative about lawyer advertising most often said it was because they believed the motivation of the advertising was greed.⁹

III. WHO IS TO BLAME?

Tempting as it may be to blame politicians, comedians, or the media for the legal profession's misfortune, lawyers must first examine their own role in the profession's decaying position. Certainly, popularity of any group waxes and wanes, as the public is notoriously fickle. But the problem is not public fickleness, nor a mere dip in a popularity index. Lawyers have long been on a steady downhill slide in public perception, and they must have the courage to take responsibility for it.

The public is perceptive, in much the same way as a jury. Abraham

6. Gary A. Hengstler, *Vox Populi*, A.B.A. J. Sept. 1993, at 62.

7. *Id.*

8. *Id.* at 63.

9. *Id.*

Lincoln himself said, "You can't fool all of the people, all of the time."¹⁰ If lawyers as a group were merely misunderstood, they would have been fooling most of the people for a very long time now, which would seem to contradict President Lincoln's wisdom.¹¹

Much has been said, in bar disciplinary committees and in court, about lawyer advertising. Advertising by certain lawyers further exhibits the profession's decline, most of which is worse than overly solicitous: it is unintelligent, inflammatory, and often outright misleading. Often it appeals to the desire to make a buck instead of service to the client in the community. A lawyer in California advertises that "we can settle your claim quickly and \$ucce\$\$fully without going to court . . . To handle your accident case, call: 1-800-SUE-THEM." Many lawyer advertisements blatantly cater to negative emotions such as fear, anger, and greed. Logically, the negativity is associated by viewers with the sponsors. Yet lawyer advertisements seem to grow more and more outrageously mean-spirited. Lawyers have appropriated the media to persuade the public to despise them. The public has obliged.

But advertising is not lawyers' only problem, any more than restrictions on freedom of speech are a solution. The win-at-all-cost mentality further exhibits the problems that lawyers face. Many lawyers excuse deceptive, hyper-aggressive, and otherwise reprehensible behavior as doing their utmost for their client. A 1990 article in *Newsweek* magazine described the following "over-zealous" representation that took place in a Dallas law firm:

[L]awyers from two powerhouse Manhattan firms were interviewing witnesses in a multizeroed commercial case when tempers flared over a trivial document . . . then things got, well, out of hand: Somebody pointed a finger, another grabbed at a piece of paper, and suddenly three grown men in tailored suits were squirming around the floor, fists aflying among the bodies.¹²

This type of melee, unfortunately, is not all that shocking in the contemporary legal arena, where phrases such as "show no mercy" and "take no prisoners" have become rallying cries all in the name, of course, of service

10. BARTLETT'S FAMILIAR QUOTATIONS 524 (Little, Brown & Company, 15th ed. 1980) (citing ALEXANDER K. MCCLURE, LINCOLN'S YARNS AND STORIES (1904)).

11. Lincoln also said, "Public opinion is everything. With public opinion, nothing can fail. Without it, nothing can succeed." *Id.* His words serve as a fitting warning for all attorneys.

12. David A. Kaplan & Ginny Carroll, *How's Your Lawyer's Left Jab?*, NEWSWEEK, Feb. 26, 1990, at 70, 70.

to the client.¹³ In Michigan, one lawyer proudly promotes himself as a "bounty hunter." Elsewhere, lawyers take pride in comparing themselves to Rambo and Attila the Hun.

But lawyers' conduct in the courtroom, once a shrine of decorum, reveals most vividly their hand in the profession's decline.¹⁴ Think of the angry, antagonistic way lawyers address one another in court. Such displays do nothing but further entrench the negative image of the legal profession in the eyes of the public. And lawyers' actions in the courtroom will have an even greater and longer-lasting impression on the public as the courtroom becomes more of a public forum with the incursion of television cameras.¹⁵ Members of the public see lawyers shout at, sneer at, attempt to sanction, and generally treat one another with flagrant disrespect. In part, because of lawyers' conduct, tongue-lashing from the bench is the end result. This disrespect to the court and from the court only further entrenches the humiliation of lawyers in the eyes of the public.¹⁶ This trend is likely to mushroom with the increasing use of television cameras. But the idea of restricting or banning television cameras raises more First Amendment issues.

Even in non-confrontational situations, the quality of the work and service lawyers provide their clients is perhaps the most damning evidence of professionalism's decline. Think of lawyers' resentment toward continuing legal education (CLE) requirements, which only serve the purpose of making them more qualified and more capable of handling client matters. Such requirements have been jokingly referred to as "Ceaseless, Long-winded Exhibitionism." Moreover, there have been many movements among bar groups to lessen CLE

13. Such conduct flies in the face of traditional expectations of lawyer behavior. As Shakespeare wrote, attorneys who are adversaries should "strive mightily, but eat and drink as friends." WILLIAM SHAKESPEARE, *THE TAMING OF THE SHREW*, act 1, sc. 2.

14. There are myriad examples of attorney conduct that illustrate a general lack of decorum. Consider, for example, a recent Delaware case in which an attorney "informed" opposing counsel that he "could gag a maggot off a meat wagon." *Paramount Communications, Inc. v. QVC Network, Inc.*, No. 428,1993, 1994 WL 30181, at *17 (Del. Feb. 4, 1994). Although this insult was delivered during a deposition, it is not dissimilar to the unfortunate exchanges that too often occur between attorneys in the courtroom.

15. All but five states now allow television coverage of judicial proceedings. A television series called *Verdict* aired in July, 1991, and is providing a news format covering trials across the country to viewers during a half-hour show. The Court Television Network provides 24-hour-a-day coverage. It is estimated that up to 5 million viewers in 38 states will be able to watch this network. Paul Raymond, *The Impact of a Televised Trial on Individuals' Information and Attitudes*, 75 JUDICATURE 204 (1992).

16. Fortunately, television also provides an opportunity for lawyers to reverse the negative trend. Viewers learn about the court system by viewing television coverage. In a study performed in Madison, Kentucky, in 1989, 60 residents watched a live, televised trial. Afterwards, 57% had learned something about the legal system from the trial. *Id.* Obviously, televised courtroom drama has the opportunity for shaping public opinion.

requirements. What does that say about the members' commitment to keeping informed about current law? Yet lifelong learning is essential to true professionalism. Lawyers, who have such a rich opportunity to continue learning, seem to view it with resentment, as another inconvenient demand on their time.¹⁷

Most vividly ironic, perhaps, is some lawyers' lackadaisical attitude toward client service. And even the most well-meaning of lawyers could probably improve the timeliness with which they return phone calls, and otherwise respond to requests for information. Think of the many times that client phone calls and requests for information are not responded to in a timely manner. In a recent survey by the American Bar Association, seventy-two percent of those surveyed indicated that they preferred tougher ethical standards for lawyers who violated the code of ethics *or who repeatedly ignored their clients*.¹⁸ The public seems to equate poor client service with poor ethics, and I for one tend to agree with them.

Without question, each of the symptoms discussed above can be identified in today's society. In fact, lawyers doubtlessly perceived these "symptoms" long before they were ever set forth here. Having identified them, questions remain: Are these symptoms truly real? Or are they mere perceptions by the public which need not be seriously addressed? Is the negative aura that follows lawyers an image problem subject to marketing "hocus pocus," or is it truly a disease that needs to be cured? Research shows that the more familiar that people are with lawyers, the *lower* is their opinion of the profession. This disturbing conclusion can be easily drawn from a study by the National Center for State Courts, the findings of which indicated that the more knowledgeable that subjects were about the courts and lawyers, the more likely they were to render an unfavorable opinion.¹⁹ Likewise, in the 1993 ABA Survey, a logical parallel was indicated, i.e., those who knew little or nothing about the legal system, gave lawyers a higher approval rating (forty-seven percent) than those who were knowledgeable (twenty-five percent approval).²⁰ And those who had gained their information about lawyers from television had a more favorable

17. There seems to be a welcomed countertrend to this position, however. In 1980, the American Inns of Court was established with the goal of improving the quality of legal services rendered, as well as promoting civility and professionalism among judges, lawyers, professors, and students. *HOW TO CREATE AN AMERICAN INN OF COURT* (1992). Currently, there are 219 American Inns of Court in the United States with over 10,000 members. See Brent E. Dickson & Julia Bunton Jackson, *Renewing Lawyer Civility*, 28 VAL. U. L. REV. 531 (1994).

18. Hengstler, *supra* note 6, at 62.

19. YANKELOVICH, SKELLY & WHITE, INC., *THE PUBLIC IMAGE OF COURTS: HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES, LAWYERS AND COMMUNITY LEADERS* 6 (1978).

20. Hengstler, *supra* note 6, at 61.

impression of lawyers than people whose knowledge came from personal experience. This may surprise some lawyers who blame the negative image on unfair media portrayals.²¹

The public is not simply misinformed. Lawyers are not innocent victims of cruel misunderstanding. If that was the sole reason for the negative image of lawyers, one would expect the opposite of the results above. Instead, these findings demonstrate that the public is *experiencing* real problems with lawyers and the legal system. The types of problems reported further demonstrate the reality and depth of the profession's decline. This point could not be more aptly stated than in the following quotation summarizing the recent ABA Survey: "The problem goes far beyond image. The public perception seems based on strongly rooted dissatisfactions with some aspects of the way the system works and how lawyers practice their skills."²²

The fault, to paraphrase Shakespeare, lies not in lawyers' stars but in themselves.²³

IV. THE EFFECTS OF THE PROFESSION'S DEMISE

Lawyers' *feelings* about this situation are most likely to spur them to action, so these feelings should not be discounted. But I submit that there are much bigger things than lawyers' egos now at risk. Granted, there is not much empirical evidence to indicate exactly what the effects of this problem have been, or will be, for society. But we should examine some issues that may relate and put our well-educated minds to work on constructive conjecture. One issue to consider is our own clients' trust in us. Research has already shown us that people are now more likely to mistrust their own lawyer, in addition to lawyers in general. This may well be the effect of "reverse generalization," a phenomenon with which certain ethnic groups are all too familiar. Whatever the reason for clients' mistrust of their counsel, the effects of that mistrust on lawyer-client relationships, and thereby on representation, can hardly be viewed optimistically. Another, more trackable trend is the recent increase in Alternative Dispute Resolution (ADR) activity, which many people, some of them lawyers, have named as an example of society moving away from

21. *Id.*

22. *Id.* at 60.

23. WILLIAM SHAKESPEARE, JULIUS CAESAR, act 1, sc. 2.

If you are a concerned, conscientious lawyer, you may take some umbrage at this point. You may feel that you are not guilty of any of the transgressions cited above, and therefore not to blame for the legal profession's problems. And you may well be right. But there is a larger issue beyond blame: the issue of responsibility. Those who care about an institution must take responsibility for it, as is discussed in section IV of this article.

involving lawyers in solving its problems.²⁴

Thomas W. Church, associate professor of Political Science for the State University of New York at Albany, expressed concern for this movement away from the court system.²⁵ Professor Church noted that the power of the judiciary lies in its independence. However, if that independence is characterized by aloofness from everyday citizens whom the judiciary is supposed to serve, problems will continue to be solved outside the courtroom through channels like ADR, and, presumably, less peaceful means as well. The result may be that "courts . . . find that they have maintained their cherished independence, and decreased their workloads, but only at the expense of growing irrelevance to the life of the community."²⁶

On a related note, research may have also suggested a link between the under-funding of courts and the negative image of the legal profession. A 1978 survey by the National Center for State Courts noted that the public maintained a very high level of concern about the efficiency of the legal system and remained committed to providing the courts with sufficient funding. Over seventy percent of those surveyed wished to commit tax dollars to make good lawyers and judges available.²⁷ Despite this commitment, courts remain under-funded. Could this apparent contradiction be explained by the lack of public confidence in lawyers, the most visible representatives of the court system? Legislators possess the power to provide the needed funding, but their constituents have an unfavorable opinion of lawyers and the legal system.²⁸ What politician would want to be held accountable to voters who had no confidence in the funding he voted for?

One of several criticisms noted by the public was the lack of caring and compassion on the part of lawyers.²⁹ This was based upon the fact that over half of those surveyed stated that today's lawyer is no longer "a leader in the

24. Joel Schavrien, *ADR: No Longer the Wave of the Future*, MICH. B.J., Oct. 1993, at 1008. "The public and the business community are heaping criticism on the legal system and our profession. It has become increasingly apparent that the legal profession must respond and react to meeting client needs for dispute resolution by changing its approach to providing legal services." *Id.*

25. Thomas W. Church, Speech at the Second Annual Oration on Judicial Administration (Melbourne University, Oct. 31, 1990), reprinted in Thomas W. Church, *The Mansion vs. the Gatehouse: Viewing Courts from a Consumer's Perspective*, 75 JUDICATURE 255 (1992). Although Mr. Church's speech had as its focus the Australian courts, he drew extensively from examples and studies conducted about the American judicial system and the lawyers within it.

26. *Id.* at 260-61.

27. *State Courts: A Blueprint for the Future*, Proceedings of the Second National Conference on the Judiciary, Williamsburg, Virginia, Mar. 19-22 (1978), at 6.

28. Church, *supra* note 25, at 261.

29. Hengstler, *supra* note 6, at 62.

community, a defender of the underdog, and a seeker of justice."³⁰ Similarly, a lack of ethics was also noted by almost forty percent who said that the phrase "honest and ethical" does not describe lawyers. Once again demonstrating the "reality" of the problems facing the profession, the public believed that ethical problems extended to matters of lawyer-client relationships, including fee disputes and lack of communication. This definition of "ethics" is not possessed by most lawyers and clearly would not be understood by those who have not had troublesome experiences with lawyers.

Another public observation was that of greed. As quoted earlier, but worth repeating, "three-fifths of respondents (63%) said lawyers make too much money, 59% said lawyers are greedy, and 55% percent said it is fair to say that most lawyers 'charge excessive fees'."³¹ Similarly, of those who had a criticism of lawyer advertising, it was because they believed the motivation of such advertising was greed.³²

Assuming that the symptoms of professional demise truly exist and are more than a mere image problem, these symptoms give little pause for concern if they have no effect on society. But what are the effects of the profession's demise on society? How are they manifesting themselves?

Regardless of the incompleteness of the empirical record today, most lawyers can appreciate that a public that does not trust lawyers—one that thinks lawyers are greedy and unethical—will not have confidence in or respect for the system in which they operate, and are perceived to dominate. Erosion of trust and confidence in lawyers will lead to declining public acceptance of the judicial branch overall.³³

Americans' common experiences in civics classes demonstrate that this country and its constitution rest upon the notion of a system of checks and balances. The legislative branch creates the laws; the executive branch administers the laws; and the judicial branch interprets the laws. By interpreting the law, the judicial branch assures that the other branches of government are kept in check. This system will continue to work only if people accept the American form of government and are confident in its effectiveness. As Thomas Jefferson stated: Government derives its powers from the consent of the governed.³⁴ Without that consent, no government, however idealistic or sensible, can last.

30. *Id.*

31. *Id.* at 63.

32. *Id.*

33. *Florida Bar v. McCain*, 361 So. 2d 700, 709 (Fla. 1978).

34. DECLARATION OF INDEPENDENCE para. 3 (U.S. 1776).

Therein lies the most surreptitious, yet important, cause-and-effect relationship between the decline of professionalism and its effect on society. As the symptoms of the legal profession's failures continue to appear, the public becomes less and less confident in its ability to carry out its governmental role. This loss of confidence in a vital branch of government—one third of the cherished American tripartite—erodes the very foundation upon which our government depends.³⁵

The suggestion that the decline in the image of lawyers could be linked to the fall of our government is a radical one indeed. However, it is not as far-fetched as it sounds. The Weimar Republic in post-World War I Germany is a classic example.³⁶ The Weimar Republic was conceived as a near-model democracy, but still, it fell. There are two factors to consider, relative to our own situation, in its demise: (1) its constitution lacked a bill of rights, and (2) more to the immediate point, it was grossly unpopular among the German people.³⁷ Hitler, who worked within the system quite capably until he consolidated his power, took advantage of this situation.³⁸ Hitler never forcibly overthrew the German government, he merely took advantage of growing German discontent.³⁹ Hitler, of all people, understood Thomas Jefferson's warning that power—sometimes lethal power—lay in the "consent of the governed."

V. REVERSING THE DECLINE: A RETURN TO THE TRUE MEANING OF "PROFESSIONALISM"

The ultimate question is what can lawyers do to reverse the demise of professionalism? Obviously, if the symptoms of the problem are real, the legal profession cannot simply ignore the problem. Nor can lawyers remedy it with mere efforts to inform the public that they are misunderstood. Instead, lawyers must "own up" to their image and face the unpleasant fact that the public may not be entirely wrong. The profession's problems can no longer be ignored. Nor can they, it appears to me, be enforced or legislated away by bar associations. No bar has the power or right to dictate the day-to-day,

35. "The administration of justice is the firmest pillar of government." George Washington, reprinted in *The American Public, The Media, & The Judicial System: A National Survey on Public Awareness and Personal Experience* (Hearst Corp., New York, N.Y. 1983) (citing a speech by Frank A. Bennack, Jr.).

Neither of the other two branches currently enjoys a surfeit of confidence. All three are in similar straits, although lawyers' situation, as representatives of the judicial branch, is arguably the most urgent.

36. J. ANTHONY NICHOLLS, *WEIMAR AND THE RISE OF HITLER* 26-51 (1968).

37. *Id.* at 169.

38. *Id.* at 168.

39. *Id.*

fundamental attitudinal changes I believe necessary to recapture the public's trust.

What lawyers must do is work together to reestablish their bond with the laity. They must understand the public's concerns and help them understand lawyers and the system they represent. That is the essence of the solution I propose.

The legal system needs to adopt "a consumer-oriented perspective in all of the relationships of courts and lawyers to the public."⁴⁰ Citing a quote from Yale Kamisar, Dean of the University of Michigan Law School, Professor Church explained that the law can be viewed through two perspectives: the "law of the mansion" and the "law of the gatehouse."⁴¹ The "law of the mansion" exists in the panelled courtrooms of superior courts and the chambers of appellate court judges.⁴² The "law of the gatehouse," on the other hand, exists in the rough and tumble of the police station, in corridors, in cells, and in the backrooms of lawyers' offices.⁴³ As Church pointed out, Dean Kamisar intended this imagery as an example of the fact that how the law *looks* is a function of the perspective from which it is viewed.

The point is that in thinking about a return to professionalism, lawyers must understand that most of those they serve see the law from the "gatehouse" and not the "mansion." Unfortunately, as Professor Church points out, "practitioners working in the courts are usually preoccupied with the law of the mansion, with the legal doctrine that is their stock and trade."⁴⁴ Professor Church's comments are well taken. As previously discussed, the findings of surveys demonstrate that real problems exist with the legal profession.⁴⁵ These surveys candidly reveal the legal profession's lack of "consumer-orientation," adding further proof that attorneys view the law from the mansion and not the gatehouse.

But lawyers' challenge is to understand the gatehouse, not to forsake the mansion. The gatehouse is the site of practical concerns, the mansion the realm of principles. I submit that the best lawyers act as envoys between both. This

40. Church, *supra* note 25, at 259. See also Burnele V. Powell, *Open Doors, Open Arms, and Substantially Open Records: Consumerism Takes Hold in the Legal Profession*, 28 VAL. U. L. REV. 709 (1994).

41. *Id.* at 255 (citing Yale Kamisar, *Equal Justice in the Gatehouses and Mansions of American Criminal Procedure: From Powell to Gideon, from Escobedo to . . .*, in CRIMINAL JUSTICE IN OUR TIME 1, 11 (A.E. Dick Howard ed., Univ. Press of Va. 1965)).

42. *Id.*

43. *Id.*

44. *Id.*

45. See *supra* notes 6-9, 19-23 and accompanying text.

is how they can best serve clients, while maintaining high standards of professionalism. Professionalism is, most of all, what lawyers can control and must improve. Once lawyers dedicate themselves to the highest standards of professionalism, they can then address the public's negative perceptions.

The first step is to recognize that lawyers are professionals, whose responsibilities go beyond the desire to make a living representing clients. Lawyers must recognize that change will only come about if they understand and implement the true meaning of "professionalism." I realize the word "professionalism" has become fuzzy and weak through recent usage. So I will offer a definition from two thinkers greater than I. This quote, which I heard in a speech from U.S. District Court Chief Judge Douglas Hillman,⁴⁶ originated from former Harvard Law School Dean Roscoe Pound. As Judge Hillman stated, Dean Pound defined professionalism as "pursuing a learned art . . . in the spirit of public service—no less a public service because it may incidentally be a means of livelihood."⁴⁷ Neither Dean Pound nor Judge Hillman suggested that we starve in order to serve. They did, however, make it clear that the "spirit of public service" was the true measure of a professional. Money-making is incidental: not evil in itself,⁴⁸ but certainly not what motivates the true professional.

Yet these days, economic factors seem to have made money the highest goal of lawyers. As more and more lawyers compete for the pool of potential clients, and as larger firms swallow smaller ones, it seems that the pressure posed by the perceived need for financial growth has begun to corrupt professional values. As Judge Hillman said, "I fear the genius of the law profession is in the process of shifting its attention from [public service] to marketing and productivity. Professional intangibles such as loyalty and caring for others are deemed irrelevant to the single task of making money."⁴⁹ In other words, the law is in grave danger of becoming a mere trade, rather than a true profession. Perhaps a little cold comfort exists in thinking that the disrepute lawyers now face may be a sad measure of their former glory. After all, lawyers were once respected as leaders of our society. As the saying goes, "The bigger they come, the harder they fall."⁵⁰

46. Douglas W. Hillman, Speech to the Lawyer-Pilots Bar Association (Jul. 15, 1989) [hereinafter Hillman Speech].

47. *Id.* at 4-5.

48. Even the Bible does not condemn money itself as evil. Rather, it says that "the love of money is the root of all evil." 1 *Timothy* 6:10 (emphasis added).

49. Hillman Speech, *supra* note 46, at 29.

50. Various attributed to John Sullivan, Robert Fitzsimmons, and the philosophers Horace ("Towers fall with heavier crash which higher soar") and Herodotus ("It is the gods' custom to bring low all things of surpassing greatness"). BARTLETT'S FAMILIAR QUOTATIONS 78 (Little, Brown & Co., 15th ed. 1980).

But I for one am not willing to concede my status as a professional, any more than I am willing to quit defending the judicial system. So, given harsh economic realities, how do we shift our attention back to public service—to professionalism?

Of course, law firms still have pro bono programs, some of them less grudging than others. But lawyers' concept of public service must reach far beyond such restricted activities, into every task they perform, for every client, in every case, every day. These are perhaps lofty words. That is why I and some fellow lawyers with similar concerns sought a practical, quantifiable way to define the standards of professionalism and public service, and to convey those standards to the public (to carry the banner from the mansion to the gatehouse, as it were). The result of this planning is a national network of carefully chosen, committed professionals known as the International Society of Primerus Law Firms.

A. What is the International Society of Primerus Law Firms?

The International Society of Primerus Law Firms is what the name implies, a "Society" with limited membership and very specific goals designed to identify high quality lawyers and communicate their whereabouts to the public, in an effort to instill in the public the confidence and trust that once existed in our profession. The Bylaws of the Society state that:

The corporation is formed for the purpose of establishing and promoting an association of licensed attorneys dedicated to upholding the highest ethical and professional standards applicable to the legal profession. . . . The corporation shall also promote the honor, dignity and public awareness of the legal profession through community service and outreach programs, the sound administration of justice, and civility and professionalism between and among attorneys.⁵¹

Three essential components of the Society assure its goal of bringing professionalism back to the legal profession: (1) limited membership, including adherence to six principles from which professionalism is derived; (2) communication of what Primerus is and what it is accomplishing; and (3) surveillance of its members.

B. The Limited Membership of the Primerus Society

In order to assure that professionalism will be carried out and projected to

51. International Society of Primerus Law Firms, *Bylaws* (1993), at 1.

the public, Primerus membership is extremely limited. Each charter member of Primerus is interviewed by at least one member of the Board of Directors of the Society. Attorneys and judges from the local bar of the applicant are also contacted. Only after the interviews and a variety of other "litmus" tests⁵² are conducted are applicants offered membership in the Primerus Society, and then only if the applicant takes an oath to uphold the six pillars upon which Primerus is founded. These pillars or standards, I believe, are as good a measure as any of legal professionalism.

The first standard for a Primerus lawyer is *integrity*. It is the most fundamental standard of professionalism in our philosophy. Primerus lawyers reject, categorically, the "win at all costs" mentality that too often tempts attorneys to withhold information, forget their agreements, badger witnesses or otherwise behave in a less-than-decent matter. Primerus lawyers care for their clients, and do their utmost for them, with one important caveat: they refuse to abuse or corrupt the system within which the client seeks help.

Another standard of professionalism Primerus employs is *excellence of work product*. This is a dual matter—a matter of the thoroughness and intelligence with which one handles clients' cases, and a matter of how clearly and considerately one communicates with one's clients.⁵³ The thoroughness and intelligence of dealing with clients are likely to result in fewer public reprimands from judges. The clarity and consideration for clients are obvious boons to enhancing individual faith in our profession.

A third standard is *reasonable fees*. Primerus philosophy holds that high fees are antithetical to public service, however good the lawyer may be. Survey results indicate that over half of the public characterizes lawyers as greedy and believe that they make too much money.⁵⁴ This standard of reasonable fees does not suggest that lawyers should not make a living. But it does require lawyers to communicate with clients about the fees and adjust the fees appropriately to bring the amount of compensation in line with notions of fairness to the clients, and norms in the community.

52. These litmus tests include, among others: (1) reference checks from judges, other attorneys, and clients; (2) verification that the applicant is a member in good standing of the state and national bars; (3) check of the applicant's standing in professional organizations; (4) verification of awards or honors received by the applicant; (5) verification of whether the applicant's firm has mandatory CLE requirements; and (6) verification of the professional ratings given to the applicant in *Martindale Hubbell*.

53. As indicated above, the latter is of utmost importance given the fact that survey results indicate that a majority of the public favor stricter disciplinary measures for lawyers who refuse to communicate with their clients. See Hengstler, *supra* note 6, at 64.

54. See Hengstler, *supra* note 6, at 62.

Primerus membership also requires a commitment to *ongoing professional education*. In fact, the organization's CLE requirements are the most stringent of which I am aware. Primerus members must affirm their commitment to conducting at least thirty hours of continuing legal education in their areas of specialty each year. Because the law changes constantly, professionals must seek constant augmentation of their knowledge.

The Society also requires a commitment to *community service*, which is a slightly narrower concept than public service. Within Primerus, community service encompasses pro bono practice, community activism, charitable donations, and public education. Public education activities, which Primerus helps provide for, include seminars, educational literature, and, perhaps surprisingly, advertising.⁵⁵

The public has very little knowledge of the legal system and how it operates. A study conducted by the Hearst Corporation in 1983 revealed that only twenty-one percent of the population believed that of the three branches of government, they were best informed about the judicial system.⁵⁶ The Hearst study also reported that over fifty percent of the American public believed that in a criminal trial the defendants must prove their innocence.⁵⁷ Perhaps the lack of knowledge of the courts is to be expected, given that only twenty percent of those surveyed had ever been a party to a lawsuit.⁵⁸

This simply presents the need and opportunity for public education to make a difference in the perception of lawyers by the public. It goes without saying that the more informed the public becomes about the system, the more likely the distrust that belies the system will disappear. Knowledge of the system is of utmost important to a democratic society as it enhances use of the system and serves as a check on those who operate it.⁵⁹

Finally, the membership standard, which some no doubt find old-fashioned, is the requirement that Primerus lawyers conduct themselves with *civility* toward the bench and fellow members of the bar. Quaint as this requirement may sound, its inclusion is essential to the Primerus mission, and to any chance we have of reclaiming, or deserving, respect. The law is, in many ways, all about

55. The role of advertising to enhance the professional image of lawyers is discussed more fully later. See *infra* notes 61-65 and accompanying text.

56. *The American Public, The Media & The Judicial System: A National Survey on Public Awareness and Personal Experience* 5 (Hearst Corp., New York, N.Y., 1983).

57. *Id.*

58. *Id.* at 23.

59. Raymond, *supra* note 15, at 205 (citing *In re* Petition of Post-Newsweek Stations, Florida, Inc., 370 So. 2d 764 (1979)).

civility. Without our system of laws, society would revert to settling disputes with fists and guns. Indeed, among disenfranchised groups, notably in our inner cities, many feel that such a regression is already occurring. Lawyers, as the emissaries of our system of law, should by extension act as the very personifications of civility. When lawyers behave in a less-than-civilized manner, they display a lack of respect not only for one another, but also for the institutions they claim to hold dear.⁶⁰ When they display disrespect for the goals they claim to represent, they also display a lack of self-respect. How can lawyers then turn to the public and ask for its approval or understanding?

These six standards: (1) integrity; (2) excellence of work product; (3) reasonable fees; (4) professional education; (5) civility; and (6) community service, I believe, form the foundation upon which the return to professionalism must be built. Once we define and deliberately seek this level of professionalism, our public can begin to realize new truths about lawyers. This process will not be quick or painless, but I have faith in its inevitability. Our professionalism is our "product," so to speak, and as we rebuild it, public trust can be reconstructed.

C. The Role of Advertising: Educating the Public

For years now, advertising has been among the most taboo words in the legal profession. It has been viewed as "ambulance chasing," outright solicitation, and unprofessional. The "honorable" lawyer shunned it at every chance. However, advertising carries with it no moral weight. It is the moral equivalent of putting a stamp on a letter, simply a means of paying to communicate.

The *substance* of advertising—not the act itself—is the key to its vice or virtue. Within the Primerus concept, advertising is approached not as a self-promotional or solicitous activity, but as a means of sharing honest information with the public. In 1990, the American Bar Association conducted the Survey on the Image of Lawyers in Advertising.⁶¹ Surprisingly, the survey revealed that ninety percent of the consumer respondents said that lawyer advertising was acceptable under certain conditions.⁶² A direct correlation was noted between the public's approval of advertising and the advertising's degree of "dignity."⁶³ Although the concept of "dignity" is obviously amorphous, the survey demonstrated that the public perceived dignified advertising as advertising that

60. See *supra* note 14.

61. ABA Commission on Advertising, *Report on Survey on the Image of Lawyers in Advertising* (1990).

62. *Id.* at 14.

63. *Id.* at 29.

illustrated the competency of the lawyer; helped the consumer make a more intelligent choice of legal services; and, in general, provided useful information beyond just promoting a particular lawyer or firm.⁶⁴

The Society seeks to accomplish through advertising the very matters set forth above and approved by the ABA.⁶⁵ Choosing a lawyer presents a monumental task to most individuals, usually at times when such individuals are least able emotionally to deal with the decision. Thus, advertising that truly is aimed at providing information to the public when it is most in need of it will likely foster confidence and trust. This is especially true given that a lack of information is an underlying cause of most stereotypes. The less informed the public remains about what lawyers do and how they do it, the more likely it is that the public will continue to perceive lawyers in a negative light. The second purpose of Primerus, communication with the public, is accomplished through advertising that seeks to tell the public who lawyers are and how they function, in order to bridge the gap between the known and unknown, and thereby reduce public mistrust.

D. The Primerus Society as a Police Force for Lawyers

The third, and perhaps most important, function of the Primerus Society is the monitoring of lawyer performance. Unlike any other organization of which I am aware, Primerus lawyers police the performance of one another to assure that the performance and ethical standards are being upheld. Violations of the standards will result in suspension of an individual's rights in the organization.

The "policing" function of the Society enhances the lawyer's image in two ways. First, to the extent this function is made known to the public, confidence and trust in the performance of lawyers will be instilled, as only lawyers who truly uphold the stringent standards of the organization will remain. Second, the very concept of lawyers taking the initiative to police the performance of their peers will demonstrate the firm conviction that lawyers possess in assuring that the public's perception is changed.

Those lawyers who have always striven to maintain the qualities listed above may take some umbrage at my proposal. "What he's saying just proves

64. *Id.* at 39.

65. Perhaps that is why the American Bar Association has recognized Primerus materials in its annual Dignity in Advertising award. See *No Blatant Appeals*, A.B.A. J., Nov. 1992, at 45. Recently, the American Bar Association has announced its plan to find a new "communications" plan aimed at telling the public about the good that lawyers do in their communities. Katia Hetter, *Dues-Paying Group is Offering Ad Campaign and Seal of Approval*, WALL ST. J., July 15, 1993, at B1.

that this mess isn't my fault," they may think. They may be right. They may not be to blame in the least. But a large difference between blame and responsibility exists. Blame looks backwards and asks, "Who did it?" Responsibility looks forward and asks, "What can we do?" Those lawyers who are willing to take responsibility, to work with others and within themselves for change, will save the legal profession's image, the judicial system, and perhaps American society—if indeed they are to be saved.

E. The Primerus Seal of Approval

One final element in securing the public's trust—a focal point for consumer differentiation—is the Primerus Seal. This emblem can be displayed only by firms that have met, and continue to meet, Primerus's high standards. Long-range plans provide for growing consumer awareness of the seal and what it means on a city-by-city basis, as the Primerus network grows. Ultimately, the goal is to have consumers everywhere look for the seal, understand its positive implications, and feel a sense of assurance upon seeing it. As long as lawyers live up to the ideals the seal represents, the implications for the lawyer-client relationship are nothing but positive.

VI. SOME CLOSING THOUGHTS

Because I have gone to such lengths to assert that our problems are matters of reality, far beyond the curative powers of mere marketing, it is perhaps paradoxical that my closing comment comes from an essay called "Image Trouble," written not for lawyers but for entrepreneurs.⁶⁶ In an article for *Inc.* magazine, marketing writer Peter Laundy defines the difference between companies that concentrate on *image*, and those that focus on *character*. The latter, Laundy says, "are aware of competitors, but not focused on battle . . . [They have] a shrewd idealism coupled with aspirations *beyond winning*."⁶⁷ These idealistic companies, which include Apple Computer, Ben & Jerry's Ice Cream, and University National Bank & Trust, "don't have to rely on expensive self-praise. They *express their character*, and in so doing, find that others are praising them."⁶⁸

I use this example to demonstrate what I believe this Article offers to the legal profession. As I indicated at the outset, I am not suggesting that everyone must be a Primerus lawyer or belong to a similar organization. But I am suggesting that the concept of Primerus and the six standards upon which it has been founded represent the best model for initiating the return to professionalism

66. Peter Laundy, *Image Trouble*, *INC.*, Sept. 1993, at 80.

67. *Id.* at 81 (emphasis added).

68. *Id.* at 80 (emphasis added).

and in turn, a reversal of the negative image of the legal profession. Primerus, like the successful companies discussed above, is not solely focused upon image, but instead seeks to develop moral character. Lawyers should pay attention to what the public is telling them and strive towards the six standards and what they illustrate—building better character and lawyer self-monitoring.

All caring lawyers should examine the principles of professionalism, and re-dedicate themselves to meeting the highest of professional standards. The stakes—for both the legal profession and for society—are monumental and immediate. If lawyers fail, they may find themselves increasingly irrelevant to the workings of American government—a government which without lawyers will have little provision for the defense of constitutional rights. But if lawyers succeed, they may find themselves once again acknowledged for the vital role they play in society. Years from now, they may indeed find the ever-elusive public praise.