

Humanizing the Profession: Lawyers Find Their Public Voices Through Blogging

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I. INTRODUCTION

As a profession, we lawyers have an image problem.

While this assertion might come as a shock to those practitioners who have managed to avoid stumbling across any of the books or web pages devoted to lawyer jokes, most attorneys are well-aware of how the public views our profession. The legal profession has long been a stranger to the higher reaches of the public's esteem. Perhaps the nature of the legal system itself, which by design is adversarial, partially explains this longstanding antipathy, but over the last quarter-century or so, many attorneys have become alarmed at the apparent depth of the public's disdain for the profession. The potential for damage that this negative sentiment brings to the legal system as an institution and profession has prompted remedial efforts on a number of fronts to burnish our collective image.

The practice of law is most often characterized by insular activities directed toward discrete audiences. While attorneys' activities often involve interacting with non-lawyers, who usually play the roles of client, opposing party, juror, or business counterpart, these interactions are either personal ones or ones limited in scope to audiences of no more than a few dozen individuals. Personal communication, however positive, is not adequate to the task of altering the widely-held negative perceptions of the legal profession. Any successful effort to change a mass opinion requires mass communication and, at least until very recently, mass communication usually meant advertising.

II. COMMUNICATING THROUGH ADVERTISEMENTS: THE LEGAL PROFESSION'S ATTEMPT TO SATISFY THE MASSES

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Advertising technique is not a widely-held or widely-appreciated skill amongst legal practitioners. Notwithstanding the strict limitations every state places on attorney advertising,¹ there is a customary and still-widespread unease within the profession with most forms of crass commercial advertising. While these formal and informal strictures undoubtedly serve a worthy function, they leave most attorneys with a kind of cultural blind spot where mass communication is concerned. There are many attorneys and firms who have become quite skilled at speaking to the masses and promoting themselves commercially. As a profession, however, we are generally skilled at advocating a position for others but not for ourselves; as a result, promoting the profession as a collective being *is* particularly foreign to us. Nevertheless, consensus opinions within several state bars and professional organizations concur that the profession's reputation as a whole has been damaged and what had proven effective in promoting attorneys' financial well-being could also be effective in rebuilding their public stature. The hope was that advertising could help to humanize the profession.

One of the first concerted efforts in this area came in 1999, when the Virginia State Bar commissioned a series of five printed advertisements "in an effort to raise awareness of the value of the legal profession to the citizens of Virginia."² The campaign, funded by private donors and created by students at the Adcenter at Virginia Commonwealth University, depicted the roles attorneys play in protecting individual rights and the lives of endangered persons.³ One advertisement pictured an abused girl and described how criminal and civil lawyers stopped her abusive father's actions and helped the child find her way from a foster home to a permanent one. The advertisement concludes, "Her father almost killed her. A lawyer saved her life."⁴ Another advertisement pictured an HIV-positive woman and described how lawyers helped her secure claim coverage from her health insurer and remedied discriminatory conduct by her employer and landlord. In that ad, the tagline stated that, "The clinic gave her a death sentence. A lawyer gave her hope."⁵ Other advertisements focused on adoption, elder abuse, and minority business development.⁶

The advertisements themselves were striking, based upon an appeal to audiences' emotions rather than their intellects — lawyers were knights in shining armor, paladins fighting the good fight. The campaign was recognized by the National Newspaper Association with an

Award to Honor Excellence in Newspaper Advertising (ATHENA).⁷ The award recognized that those promoting the legal profession have their work cut out for them: “Shining a favorable light on lawyers is not exactly the easiest creative assignment in the world, but . . . the Virginia State Bar pulls it off convincingly.”⁸

In late 2003, the Allegheny County (Pennsylvania) Bar Association undertook a similar print advertising effort.⁹ This campaign was initially directed at the profession and it is not clear whether the advertisements were placed in publications geared toward non-lawyers. Nonetheless, the regional bar association members saw this advertising endeavor as necessary. Tom Loftus, then director of media and public relations for the association, indicated in 2003 that “our whole public relations effort is in response to our member survey last year that revealed our members thought the ACBA should be doing more to raise awareness and promote positive perceptions of attorneys.”¹⁰ The Pennsylvania Bar Association themed the advertisements “Today's Attorney” and constructed them around concepts which, as Loftus described, “reflect a positive statement about how attorneys are committed to providing excellent legal and community service.”¹¹ The advertisements included titles such as “Today's Attorney Believes everyone deserves a great defense”; “Today's Attorney Is ready to answer the needs of the public!”; “Today's Attorney Understands that a thriving, diverse legal community will benefit everyone!”; and “Today's Attorney Is diverse, determined and just downright good!”¹²

In 2002, the State Bar of Wisconsin embarked on a more comprehensive effort to “brand” the profession and “revitalize [its] promise to the public.”¹³ Michael Flaherty, a consultant to the State Bar, observed that the profession’s image problem was due, at least in part, to a perception that it had become disconnected from the public it purportedly served: “In an era when people are increasingly cynical of law and lawyers, it’s important for the Bar to focus its efforts on helping lawyers reconnect with their communities.”¹⁴ According to Flaherty, the branding effort was designed to “humanize lawyers and personalize the idea that they are experts in the law.”¹⁵ Trina Gray, the Bar’s media relations coordinator at the time, characterized the campaign as a remedial effort:

[I]f lawyers are doing all these good things for the public and for the profession, why don’t we talk about them in a consistent way and make people aware of

them? Why don't we say that lawyers are committed to serving the public and show the many different ways they do that? That's the focus of the branding effort – to educate the public about the value lawyers bring to their communities.¹⁶

In addition to printed advertising and branding, at least one bar association has tried radio to get its message across to the public. In a four-weeks-long campaign between October and November 2003, the New York State Bar Association aired a series of three thirty-seconds-long spots describing how lawyers assist people to receive AIDS treatment, to adopt children, and to start businesses.¹⁷ At the time, state bar association president Thomas Levin said:

The public . . . may not always recognize the vital nature of the work lawyers do and how they protect people's rights This radio campaign is designed to draw attention to the substantial and ongoing contributions of lawyers, to enhance the public's understanding of the law and to help build confidence in our legal system.¹⁸

Advertising is a series of interdependencies and assumptions. Regardless of medium, advertising possesses few characteristics which, while not necessarily limitations or drawbacks, make it a less-than-complete remedy for what ails the legal profession. To change an opinion, one needs to deliver a persuasive alternative message of news or events inconsistent with public perception, or of some insight into the misunderstood character of the subject previously held in ill repute by the holder. Public opinion is, by definition, public — that is, held by masses of people in a particularly-defined geography or demography — and thus, changing public opinion requires mass communication. While opportunities for mass communication may be available from time-to-time at little or no cost through happenstance, the opportunity to advertise on demand has been available only through paid commercial advertising — at least until now. Whether one is considering multi-million dollar spots during the Super Bowl or nickel-per-word classifieds in a local weekly, messages conveyed by paid advertising are inevitably shaped by the need to make every word count. Advertising as a medium is characterized by limited funds spent upon limited occurrences of limited words, and the messages conveyed or capable of conveyance are therefore necessarily limited.

During the State Bar of Wisconsin's branding effort,¹⁹ consultant Michael Flaherty emphasized to the association's members that, to be effective, the entire state bar needed a unified message. Flaherty said that, "[i]f you have multiple messages out there, you have no message. . . . You need to support a consistent message, and it has to be repeated and repeated and repeated."²⁰ This is likely true where a single message can be formulated and delivered forcefully. However, any bar association is comprised of many interests held by people who face one another as adversaries on a regular basis. Finding the common ground between prosecutors and defense attorneys, between labor attorneys and management counsel, or between attorneys for environmental advocacy groups and in-house counsel for oil companies is not a simple task. Probably unintentionally, Tom Loftus (of the Allegheny County Bar Association, mentioned above) pointed out this difficulty when he felt the need to explain the "everyone deserves a great defense" advertisement he had helped to produce: "While, obviously, everyone wants to win their cases, we all want to ensure that justice is served, which means that everyone deserves a great defense."²¹

Once found, such common ground is less likely to be the basis for a compelling message than for a mere collection of generic platitudes. The State Bar of Wisconsin's tag line, the result of its carefully-considered branding decision, is a good example of this phenomenon: "Wisconsin Lawyers: Expert Advisors. Serving You."²² The tagline satisfies most for the same reason that plain vanilla is the most popular ice cream flavor in the world — the most bland and inoffensive choice will almost always be the least common denominator in any diverse group. Surely there are many members of the Wisconsin Bar who were not on the branding effort steering committee but nonetheless are enthusiastic about the chosen tag line; just as surely, there are many more that are neither outraged nor excited by the slogan.

Any well-thought-out undertaking is preceded and defined by two determinations — determining what *should* be done and determining what *can* be done with the resources available. Rarely do these two determinations yield the same set of actions. Confronted with anecdotal and statistical evidence that the public perception of their profession was poor, it is unlikely that the leaders of the Wisconsin Bar thought, "What we need to turn this around is a

six-word slogan.” Instead, what they realized *should* be done was to have knowledgeable attorneys correct every inaccurate newspaper story, satisfy the public’s interest in the inner workings of the legal profession by providing juicy details of courtroom life, and dispel the perception that lawyers view themselves as elites and are disengaged from the world at large by allowing everyone to hear the self-deprecating jokes and anecdotes lawyers usually only feel comfortable sharing amongst themselves.

In short, what *could* be done was to try to encapsulate a diverse profession in a few words and to repeat those few words as many times as possible. What *should* be done is to humanize the profession — to speak publicly to all who care to hear about it in understandable terms.

III. THE MORE HUMAN SIDE OF COMMUNICATION: THE IMPORTANCE OF UNDERSTANDING OUR AUDIENCE

Part of the problem is not necessarily the message but the messenger. One of the clichés in the classic science fiction Martian-landing genre is the first encounter wherein the recently-arrived Martian asks the fellow it encounters to “take me to your leader.” When someone unfamiliar with things wants to know who speaks for a large group, the answer usually involves a large institution, and in the Martian visitor stories, the human generally takes his alien charge to see the governor, the President, or the Secretary-General of the United Nations. However, if the alien encounter is more in the vein of *E.T. the Extra-Terrestrial*,²³ the objective is not so much finding who speaks for humanity but rather finding out what is said when humans are permitted to speak for themselves.

Those of us who grew up with E.T. learned something — when visitors are harmless and inquisitive, kids communicate with them as well as, and probably better than, the most powerful leaders. This kind of communication, from the rank-and-file rather than from their leadership, does not convey a consistent or complete message. E.T. learned about humanity from a group of suburban children who dressed him up and took him trick-or-treating.²⁴ Do children have a great sense of the broader human experience? Probably not. Do the suburbs give one an understanding of urban or rural life or life in the developing world? Probably not. Does trick-or-

treating sum up the entirety of human existence? Maybe it does, but if we were looking to put our best foot forward, we'd probably take E.T. to the National Gallery rather than to the neighbor's house for junk food. When E.T.'s phone calls were finally answered and he went home, he did not leave with a comprehensive picture of humanity or even a particularly deep understanding of the few people he encountered. Nevertheless, I would hazard that his overall impression was a positive one — humans good on the whole, but skip the neighborhood quarantine and the medical experiments next time, if possible.

In remedying our professional image problems, we need to recognize that a large number of the minds we need to change are of the E.T. variety — apprehensive but curious — and that we should not address them with the hard sell or the polished sales approach. In fact, we probably should not be trying to “sell” them at all. Professional legal associations on the national, state, and local levels have been sincere in their efforts to reach out to the public for our collective professional benefit. Nonetheless, what has been sought by a large portion of that public is just a bit of insight and personal communication. Providing human contact is what *should* be done, but it is beyond the capacity of large bar associations — or of any large group — to provide. When it comes to communication, what large organizations *can* do is broadly advertise a slogan and repeat a polished, practiced, and impersonal theme. Abraham Maslow observed that, “If the only tool you have is a hammer, you tend to see every problem as a nail.”²⁵ When it comes to communicating, bar associations seem to have only hammers — advertising budgets, press liaisons, and official spokesmen. It is therefore quite natural that these groups should see every problem, including public disdain and misunderstanding, as nails to be hammered down. Even armed with the knowledge that numerous individuals just want some insight and reassurance — some humanity — from the legal profession, bar organizations have no capacity to address those individuals on a personal level. What has been required of us as a profession is a personal solution, not a collective one:

A few years ago, the Nevada Bar Association embarked on an advertising campaign designed to improve the public's perception of lawyers in Nevada. The campaign involved billboard advertisements and television commercials and cost more than \$250,000 in the first year alone. The slogan for the campaign was

‘Nevada lawyers and judges make the law work for everyone.’ The perceived need for such an advertising campaign to burnish the image of a tarnished profession brings to mind an observation of Cassius in Shakespeare’s *Julius Caesar*: ‘The fault . . . is not in our stars, but in ourselves.’ . . . We as lawyers are the most effective advertisement for the legal profession in Nevada and responsibility for improving our profession lies with us.²⁶

Businesses and other entities have already come to understand that advertising, while useful to sell products, is not an effective means to change perceptions. Instead, it is only by connecting the people inside the organization with those outside in an honest, unmediated fashion that the latter group’s opinions of the former begin to change.

IV. BLOGGING: THE LEGAL COMMUNITY’S MOST EFFICIENT AND EFFECTIVE COMMUNICATION DEVICE

The most efficient and effective forum developed thus far to facilitate this direct connection is blogging. Understandably, technology companies have been the earliest adopters of this unfiltered — or perhaps only lightly filtered — communication between knowledgeable insiders and the public. Robert Scoble, co-author with Shel Israel of *Naked Conversations*, a book on the nature of blogging,²⁷ is himself a leading blogger, writing independently but from within the Microsoft Corporation.²⁸ Israel recently described the rise and effect of insider blogging at the leading technology companies Microsoft and Sun Microsystems: “Microsoft and Sun have more than 1,000 bloggers, and the companies are becoming humanized.”²⁹ Executives of these large, centralized organizations have begun to realize that what those entities say about themselves — official statements and corporate slogans — is less credible, meaningful, and persuasive to their target audience than what insiders, and especially rank-and-file “everyman” insiders, say about the organization and its products.

It is this realization that we attorneys must also internalize if we are to remedy the perception problem affecting our profession. Although law firm marketing has its place, our problem is not “moving product.” What we have is an image problem and, as with other

impersonal entities like Microsoft and Sun, what we need to do is to humanize ourselves; humanity is not conveyed by slogans but by human interaction. This is not about “dumbing-down” the practice and study of law for consumption by non-lawyers, but is instead about sharing insight and access with curious outsiders. Humanizing our profession does not mean “sugar-coating” that which is less-than-admirable, but rather means communicating with authentic voices. Just as real life is somewhat chaotic, so too should be the interaction between lawyers and non-lawyers; polished presentations do not always persuade.

Until very recently, however, there has been no real ability for most people to speak as individuals to other individuals on anything more than a personal scale. As individuals, our capacity to engage in mass communication is constrained by both expense and time. In the past, only personal communication, or speech to limited groups, has been either free or of only nominal cost to the speaker. Until now, the magnitude of communication has been directly correlated with its cost. The degree of financial outlay required to mount a public communication campaign — even one using materials already developed, as with the Allegheny County Bar Association advertising copy, which was offered to private practitioners — is relatively expensive, if not prohibitively so, for most individuals.

Perhaps the greater constraint, however, is that of time. Communication is a time-consuming activity. For better or worse, every minute spent making small-talk is a minute which cannot be billed or otherwise dedicated to productive work. Hours spent speaking to individuals and small groups in an effort to better their perception of lawyers and understanding of the practice of law are hours most of us do not have to spare for ourselves, let alone for the benefit of our professional brethren. Moreover, personal communications have long suffered from a lack of persistence; what is said in passing today cannot be passed along easily to others — it must be re-communicated, with each re-communication requiring yet another investment of time.

The rise of the Internet has alleviated, or at least ameliorated, each of these limitations on individual communication. Global communication can now be had by almost anyone free-of-charge. No e-mail? You can set-up a free account at any of the many free web-based e-mail sites, including Microsoft-owned HotMail,³⁰ Yahoo! Mail,³¹ or Google's Gmail.³² No web page?

Go to Yahoo!'s GeoCities³³ site. Inspired by the contents of this issue of the *NEXUS Law Journal* to try blogging? At Google-owned Blogger,³⁴ you can be up-and-running in minutes at no cost.

With these new tools — static mass communication through web pages and dynamic mass communication through blog posting — at their disposal, individuals are now truly capable of speech to the masses. To the extent that this scope of communication could be had at all, it was previously available to individuals only at great expense — for example, Ross Perot's chart-laden economics chats presented on network television at his expense during the 1992 presidential campaign — or at the pleasure of communications gatekeepers — for instance, publication of individuals' views on a major newspaper's op-ed pages either as a guest column or a letter to the editor. As previously noted, there was an apparent correlation in "old media" between the availability of mass communication opportunities and expense. While these old economies continue in traditional media outlets such as television broadcasting and newspaper publishing, it can now be safely said that, with the advent of Internet-based mass communication, this correlation has little ongoing relevance for most individuals.

Possibly more revolutionary than either the advances in reach or decreases in cost of mass communication, is the ability to communicate persistently. For instance, when someone queries the Google/Blogger³⁵ or Technorati³⁶ databases looking for legal information and commentary, the overwhelming majority of those pages retrieved were not composed the day of the query, and few of those results were posted by people known to the searcher. Instead, these pages reflect a sea of change in individual mass communication — the decoupling of writer and reader without significant disconnection between the parties.

Conversations have an immediacy and a humanity which give the conveyed information value, but spoken words are either heard when they are spoken or they are lost. Commentary in a newspaper is accessible and timely, but fragile — read when published, but thereafter quickly abandoned to the vagaries of human memory or the dusty archives of libraries. By design, formal publications like treatises and journals trade immediacy and accessibility for authority and durability.

Blogging combines the best aspects of conversation and newspaper commentary — immediacy of content presented with a lighter touch — with the kind of permanence heretofore associated only with archived printed matter. By caching and indexing blogged content, search engines make this information manageable and easily-retrievable. Future audiences are able to access the information nearly as easily as regular, current readers, effectively expanding the audience for blogged communications without additional time investments by their authors.

V. CONCLUSION

This should be an optimistic time for the legal profession. Image problems that, quite recently, seemed all but intractable should now appear as opportunities to inform rather than as untruths to be corrected. The rise of legal blogging is not a matter of a few attorneys riding a new wave of communications technology, but instead marks the legal profession's welcome return to an ongoing community dialogue. As participants in that dialogue, we attorneys will find our place in the public's esteem more secure and will also find that downturns can be more readily resolved.

We have always had the will to change the public's view of our profession. With blogging, we now have the means at our disposal to do so.

¹ A collection of links to these various rules is available at the American Bar Association's Responsible Client Development web site. See American Bar Association, *Information on Responsible Client Development: Links to State Ethics Rules Governing Lawyer Ethics, Solicitation and Marketing*, <http://www.abanet.org/legalservices/clientdevelopment/adrules.html#> (last visited Mar. 19, 2006).

² Virginia State Bar, *Public Education Campaign*, <http://www.vsb.org/publications/ads/> (last visited Mar. 19, 2006).

³ *Id.*

⁴ *Id.* (follow "Abuse Ad" hyperlink).

⁵ *Id.* (follow "Aids Ad" hyperlink).

⁶ *Id.* (follow "Adoption Ad," "Retirement Ad" or "Business Ad" hyperlinks, respectively).

⁷ For information about the ATHENA Awards, see Newspaper Association of America, ATHENA[®] Awards, <http://www.naa.org/AboutNAA/NAAAwardsPrograms/ATHENAAwards.aspx> (last visited Mar. 19, 2006).

⁸ Virginia State Bar, *Public Education Campaign*, *supra* note 2 (quoting National Newspaper Association, *ATHENA Award Notice* (Sept. 23, 1999)).

⁹ See Allegheny County Bar Association, *Today's Attorney Campaign*, http://www.acba.org/ACBA/press_room/internal_advertising.shtml (last visited Mar. 19, 2006).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Dianne Molvig, *Branding the Profession: Educating the Public About the Value of Lawyers*, 75 WIS. LAWYER (Apr.2002), available at <http://www.wisbar.org/AM/PrinterTemplate.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=49304> (last visited Mar. 19, 2006).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Bar Association Using Radio Campaign to Improve Lawyers' Image*, BUFFALO BUSINESS FIRST, Sept. 30, 2003, available at <http://www.bizjournals.com/buffalo/stories/2003/09/29/daily12.html?t=printable>.

¹⁸ *Id.*

¹⁹ See discussion *supra*.

²⁰ Molvig, *supra* note 13.

²¹ Allegheny County Bar Association, *supra* note 9.

²² Molvig, *supra* note 13.

²³ E.T. THE EXTRA TERRESTRIAL (Universal Pictures 1982).

²⁴ *Id.*

²⁵ See *Abraham Maslow Quotes*, http://www.brainyquote.com/quotes/authors/a/abraham_maslow.html (last visited Mar. 19, 2006).

²⁶ Daniel F. Polsenberg, Heidi Parry Stern & Scott Halvorsen, *The Professionalism Problem: Are We Unprofessional or Just Impersonal?*, COMMUNIQUÉ, Aug. 2004, available at http://www.clarkcountybar.org/communique/communique_aug2004.html (last visited Mar. 19, 2006).

²⁷ ROBERT SCOBLE & SHEL ISRAEL, *NAKED CONVERSATIONS: HOW BLOGS ARE CHANGING THE WAY BUSINESSES TALK WITH CUSTOMERS* (Wiley 2006).

²⁸ See Robert Scoble, Scobleizer, <http://scobleizer.wordpress.com/> (last visited Mar. 19, 2006).

²⁹ Shelley Solheim, *Industry Giants Press Blogs into Service*, EWEEK, Oct. 24, 2005, at 12, available at <http://www.eweek.com/article2/0,1895,1876269,00.asp>.

³⁰ MSN Hotmail, <http://login.passport.net/ui/login.srf?lc=1033&id=2> (last visited Mar. 19, 2006).

³¹ Yahoo!Mail, <http://mail.yahoo.com> (last visited Mar. 19, 2006).

³² Gmail, <http://mail.google.com> (last visited Mar. 19, 2006).

³³ Yahoo! Geocities, <http://geocities.yahoo.com/> (last visited Mar. 19, 2006).

³⁴ Blogger, <http://www.blogger.com/start> (last visited Mar. 19, 2006).

³⁵ Google is primarily a general internet index; the related Blogger search engine (<http://search.blogger.com/>) is focused on indexing the more frequently-updated content within blogs.

³⁶ Technorati (<http://www.technorati.com/>) is the leading blog search index, although others, including Blogger (*supra* note 35) and Ice Rocket, (<http://www.icerocket.com/>) are also widely-used for searching blogged content.