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THE MIRROR OF PUBLIC OPINION

Address by

EDWARD E. MURANE

My subject, as shown on the program, is: THE MIRROR OF PUBLIC OPINION, and for a few minutes I would like to discuss with you practicing lawyers what the public thinks of you as an attorney.

It may come as a shock to some of you to realize that many of the general public are antagonistic, envious, untrusting, and afraid of lawyers. Without doubt, we are all aware of the court test case on unauthorized practice of law that occurred in Arizona two years ago and, with considerable satisfaction, read the opinion of the Supreme Court supporting the attorneys. Then, with some chagrin we saw the results of the initiative vote amending the Constitution where the lawyers and realtors had a public image contest and the lawyers came out a poor second. Without doubt, we could have had the same result, had such a contest occurred in Wyoming.

It is fairly well conceded that we have no one to blame but ourselves. We have been too busy to be bothered, or to care what the general public thought of us—too blase, too self-satisfied to do what all successful businessmen do—what the American Medical Association has done—and that is, adopt a progressive public relations program to advertise the Bar and our vital service to society.

However, it is further generally conceded that deluge of publicity concerning the services, activities, ethical standards and public responsibility of the legal profession will be *worthless* so long as the lawyer himself in his contracts with his clients *fails* to lay the groundwork for a better public image of the profession.

On the national level, a few years ago the American Bar Association decided to do something about our public image. The Committee on Economics of the Law Profession made the survey to find out why the legal profession was in disrepute, and what could be done about it.

They were amazed to find that hundreds of busy lawyers who daily gave advice to businessmen, who sat on numerous Boards of Directors, still did not know how much of their own money it took to open the front door of their office for a day, a week, or a month. Some had no idea what percentage of income went to overhead.

To help alleviate this situation, there were distributed thousands of lawyers' handbooks and pamphlets on office management, office equipment, training legal secretaries, reception room technique, and even such minor items as the gloomy whining phone girl.

Further, the ABA sponsored a Public Relations program through the various Bar associations by means of newspaper articles, radio broadcasts

and TV appearances all to help acquaint the general public with the need for and the functions of lawyers.

One of the Public Image programs is LAW DAY-USA, which celebrated its sixth anniversary last May. It started out as an antidote to Russia's May Day, and has developed into an excellent media of educating the public on the advantages of living in a country under law, as opposed to one governed by the whim of men.

Every lawyer should participate in this marvelous opportunity to strengthen our nation and our profession.

This last summer the State of Missouri, together with the PREN-HALL FOUNDATION, concluded a survey covering almost three years of the legal profession and the general population of the State of Missouri. The State had a population of about four million, with an integrated Bar membership of about seven thousand, and was considered the ideal place for conducting such a survey. They had two major metropolitan areas—Saint Louis, and Kansas City—and a number of smaller cities and a considerable amount of rural and farm areas, so that it seemed that such a survey would reflect the average attitude throughout the country.

It has been no secret that the lawyers economically have not kept pace with other professions. In 1940 the lawyers' position ranked with that of physicians. Then 15 years later the income of lawyers averaged 50% *lower* than that of physicians. Therefore one of the goals of this survey was to define the gap existing between lawyers and layman, and, once defined, to develop a program that would close this gap by making legal services better and more acceptable to the public. I will not go into the details of this survey, but the experts consider that the results were about 98% reliable: it covered questionnaires by over 2500 lawyers and thousands of citizens, for a total of 185,000 responses. With the assistance of IBM, they had material requiring over 2½ million calculations to record. I feel that the results of that survey will be interest to every lawyer in Wyoming.

One of the surprising results of the survey was: "WHAT LAYMEN THINK OF LAWYERS." Only 64% of the public use a lawyer's services; 51% of these for personal reasons, 17% for business reasons, and 30% for both. Of those who use a lawyer, 1/3 have seen him once in a period of five years; 1/3 have seen him 2 to 4 times during this period, and 1/3 see him on a more regular basis. Of the *non-users*, over 80% find they have never felt the need for legal services, and many of these obtain such services from an unauthorized source.

The obvious conclusion is, that a substantial segment of the public, in excess of 36%, had no awareness of the need for legal services or is obtaining such needed services from sources outside the legal profession. Both users and non-users think generally the same about the services which the lawyer offers—most think of him first in connection with accident and

damages cases; next, in regard to domestic relations, and wills. Very few see the lawyer as a guardian of the rights of an individual and only a very small percentage think first of a lawyer's services in connection with tax matters, real estate transactions, or general business advice.

One conclusion is that direct contact with the lawyer does not help educate the public about the variety of services the lawyer offers. Another conclusion is that laymen find many of these services offered elsewhere.

This survey also was quite startling as to the reputation of lawyers. Eight out of ten laymen rated the general reputation of lawyers in their community as average or better. Significantly, however, *non-users* have a higher opinion of lawyers than users. Equally significant is the finding that users rate their own personal lawyers higher in terms of reputation than they rate the profession in general. This suggests:

- (1) lawyers are their own worst detractors:
- (2) Lawyers boost themselves by downgrading other lawyers in dealing with their clients:
- (3) or both.

The one most influential factor used by the public in judging a lawyer is the *professional ability*. Next, honesty and, third, participation in civic, church and governmental affairs.

Features which detract from the lawyer's reputation, in the order of their importance, were: low ability, dishonesty, solicitation, drinking and marital discord. In regard to reputation for professional ability, lawyers rank as high as, or higher than other professions (the clergy, physicians, bankers, etc.) but when general reputation is considered, the public image of the legal profession suffers, as they rate most other professions higher.

A substantial segment of the public believe that a great many lawsuits are created unnecessarily and that this is brought about by claims for fake injuries and damages and that the main object for this is to increase the lawyers' fees.

The first step on the road to better public relations for the legal profession is the *lawyer's office*. Lawyers themselves should be better informed and should take steps with each client to protect and improve the public image of the profession.

This includes more effort to explain and discuss *fees*, development of annual or personal *legal check-up programs*, less *knocking* of other lawyers and judges to explain a "lost case," and to create more awareness of professional responsibilities.

Another phase of this survey dealt with the question: "ARE CLIENTS SATISFIED WITH THE LEGAL SERVICES?" Among the dissatisfied, 7%, the chief complaints were about lawyer *delays* and failure to *keep them*

informed, and failure to *explain fees*. Another complaint: "Lawyers have a rude or superior attitude, are aloof, and are too indifferent." Interestingly, the *results obtained* for a client was mentioned by very few laymen for either satisfaction or dissatisfaction. While lawyers think service factors such as results, honesty and efficiency, *please* clients most, the clients rank personal factors higher. FRIENDLINESS was mentioned by more than 50% of the satisfied clients as an important reason for their feelings.

Lawyers listed as the No. 1 factor adversely affecting lawyer-client relationship the unnecessary delays in handling clients' affairs.

This Missouri survey further indicates that most laymen go to lawyers for *positive advice*—that is, to learn what they *can* or *should* do, and *not* what they *can't* do.

Most laymen would have no objection to being offered business advice in connection with the legal advice they seek, and many would welcome it. From this portion of the survey it becomes obvious that lawyers should give more time and attention to dealing with human aspects of their relationship with clients. Fees should be discussed fully at the earliest opportunity and the client kept better informed of the progress on his case. In approaching the client's problem the accent should be in making the client feel you are trying not to stand in his way, but *helping* him to do *what he wants to do*.

Another interesting phase of the Missouri report is on the subject of how lawyers obtain clients. Two-thirds of the lawyers' clients come to his office because of his general reputation for capability, honesty, or both. Prospective client's are, however, more than twice as concerned as the lawyers think they are about the attorney's professional skill and ability. Lawyers obtain less than 25% of their clients by "getting around and meeting people."

Direct referral by laymen account for only 13% of the lawyer's clients—about half of what *he* thinks it does.

When recommending lawyers, most laymen rate professional skill and ability higher than personal or business connections, or fee reasons.

As a result of the survey it was learned that lawyers consider their reputation for honesty and integrity to be less important than do laymen as a selection factor. Based on this survey, it was learned that a lawyer's reputation for professional ability is his most effective means for obtaining and keeping clientele. His primary *practice-building* time, attention and energy should be devoted not to extra-practice activities but to doing a *better job* for his clients and preparing himself to do still a better job.

This most unusual survey also covered the question of ETHICS. The survey showed most people realize the conduct of lawyers is governed by a Code of Legal Ethics. Since users of lawyers know little more about

ethics than do nonusers, it is obvious that lawyers are not educating the public about this as they should.

It is also interesting to note approximately 20% of laymen are suspicious of lawyers who lunch with opposing counsel during litigation, and 39% of them hesitate to select a lawyer known to be a personal friend of opposing counsel.

Enforcing and adhering to the *Canons of Professional Ethics* is extremely significant to both the public and the Bar. Soliciting cases and unethical conduct has a highly adverse affect on the public's attitude toward lawyers, and the use of their services.

The use of lawyers does not necessarily cause a client to think better of the legal profession. In fact—*non-users* have a higher regard for lawyers than do *users*. Obviously a lawyer's technique in handling clients often impresses them negatively—lowering their opinion of the entire legal profession.

Laymen do not understand that a "trusted relationship" must be set up between the lawyer and his client before legal advice can be ethically volunteered. On the other hand, laymen clearly resent approaches from lawyers whom they have never engaged before. In many situations, however, the laymen who go to a lawyer would want him to volunteer advice and would consider the lawyer's failure to do so a dereliction of duty.

For example, if a law has been passed affecting the will a lawyer had drawn for him, 98% would welcome his volunteered advice. If the lawyer learned of a laymen's inheritance or a death in his family, after he had drawn a will, 75% would welcome advice. Lawyers, when asked if they would volunteer advice in these instances, were generally more reluctant than the laymen.

As a result of this portion of the survey, it is recommended that the Bar be made more aware of the CANON OF ETHICS by a grossly expanded ethical program. Also, that more strict enforcement of ethical standards, both personal and judicial, is imperative. Unless this is done first, any effort to educate the public would be in vain.

Lawyers themselves must take more care to avoid misunderstandings with clients by communicating fully the ethical aspects of the lawyer's conduct. This should include a frank explanation of the relationship with opposing counsel.

Since *the public* created a monopoly for the legal profession, protection of the public is a responsibility the legal profession must assume. Lawyers individually, and the organized Bar should develop a positive program for reclaiming the business outside the profession. For example, only 15% of those contacted in the survey bought or sold real estate with a lawyer's service.

Only 34% had a lawyer for a written lease or contract. Only 76% went to lawyers for their wills. Lawyers themselves are often responsible for non-lawyers performing legal work.

My last reference to the survey is on the question of *FEES* and *BILLINGS* which is of daily interest to every practicing lawyer. This survey stated that over 40% of the public believed that lawyers' fees are too high. The fact that person has never used a lawyer makes no difference in this attitude. However, as the income of clients increases, so does their degree of satisfaction with the lawyers' fees.

Laymen want lawyers to *initiate* the discussion of fees at the first meeting. They also want a *full explanation* of the fee basis, and an itemized bill. Since 62% of the laymen complained lawyers did not itemize their bills the belief of most lawyers (84%) that their bills satisfied their clients is obviously incorrect.

To the layman the most important factor in setting legal fees is the effort the lawyer expends. Other important factors considered by the laymen are complexity of the case and the client's ability to pay. Not as important in the layman's mind is the result obtained. Almost 90% of the laymen accepted the principle of the contingent fee, although many do not understand the percentage usually charged. Three out of every four laymen believe 25% contingent fee would be fair.

So the results growing out of this phase of the survey would be:

- (1) the developing and use of fee schedules;
- (2) that lawyers should not only talk about fees early, but should discuss them in detail;
- (3) The attorney who fails to communicate his efforts expended on behalf of his client fails in a key area of lawyer-client relationship.

Bills to clients should be fully itemized, and those items not readily understandable, such as briefing and conferring with other lawyers, should be fully explained; and, lastly,

- (4) there should be an effort to more fully inform the public about contingent fees.

There are many other excellent "bread and butter" results obtained from this survey, which I hope will be made available by our Bar Association.

We in Wyoming have adopted the CONTINUING EDUCATION program, just as the A.B.A. has, with its regional and national meetings. This has done much to improve the financial stature of the lawyers. I refer to them as BREAD AND BUTTER programs, such, as we are having at this convention. Every lawyer benefits from the many hours of work voluntary given by members who participate in these panels and discussions.

One activity of the A.B.A. is the creation of a committee to examine Federal statutes and administrative agencies regulating and limiting attorney's fees. It is a form of socialized legal service where some Board sets the fees of the attorneys, irrespective of the work involved and the results accomplished. In the Federal area alone there are at least 21 statutes and 14 administrative regulations that impose fee limitations.

A similar problem exists at the State level. For example: the representation of an employee in Workmen's Compensation matters has his fee set by statute. Personally, I resent some political Board arbitrarily setting the fee for my services.

In closing I can only urge the attorneys present, based upon not only the Missouri Bar survey, but on surveys conducted by the A.B.A. and other State organizations, that our first job in closing the gap existing between lawyers and laymen is to improve our own services, change our own attitudes, and let the public be aware of our attendance at State and Regional meetings where we go to better prepare ourselves to serve them. Our personal relationship with our own clients can be greatly improved and enhanced by taking the time to explain our fees, what we are doing and what must be done in the interests of protecting our clients' rights and property.