

A SURVEY OF PROFESSIONALISM AND CIVILITY

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INTRODUCTION

U.S. Supreme Court Justice Sandra Day O'Connor wrote in her memoirs, "[f]ew Americans can even recall that our society once sincerely trusted and respected its lawyers."¹ U.S. Magistrate Judge V. Sue Shields of the Southern District of Indiana similarly lamented in a written opinion:

The magistrate judge, having spent forty years as a judge in this state, recalls a time when law was practiced with civility and grace; a time when simple disputes were resolved by a telephone call and agreements between counsel were sealed with a handshake; a time when disputes not so resolved were brought before the court in a manner that minimized expense and strife, recognizing that reasonable people can, at times, reasonably disagree. As the instant dispute so clearly demonstrates, that time is no more. The magistrate judge mourns its passing.²

These respected jurists' observations support the conclusion that in Indiana, and throughout the nation, the image of lawyers and the legal profession has spiraled downward—and not necessarily undeservedly.

While lawyer bashing is nothing new,³ it is imperative that those who care about the legal profession obtain a better understanding of the root causes of these problems. Doing so will allow for more effective steps to be taken to address and correct these issues. To that end, the Indianapolis Bar Association ("IBA") recently conducted an online survey to examine the image of attorneys and the legal profession.⁴ This Article examines the eye-opening results of that

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1. SANDRA DAY O'CONNOR, *THE MAJESTY OF THE LAW: REFLECTIONS OF A SUPREME COURT JUSTICE* 226 (Craig Joyce ed., 2003).

2. *Paul Harris Stores, Inc. v. Pricewaterhouse Coopers LLP*, No. 1:02-CV-1014-LJM/VSS, slip op. at 1 (S.D. Ind. Jan. 31, 2005).

3. In England, people had a low opinion of lawyers for hundreds of years before the colonizing of America, and in colonial America "there was even more hostility toward lawyers than there was in England." Leonard E. Gross, *The Public Hates Lawyers: Why Should We Care?*, 29 SETON HALL L. REV. 1405, 1409 (1999).

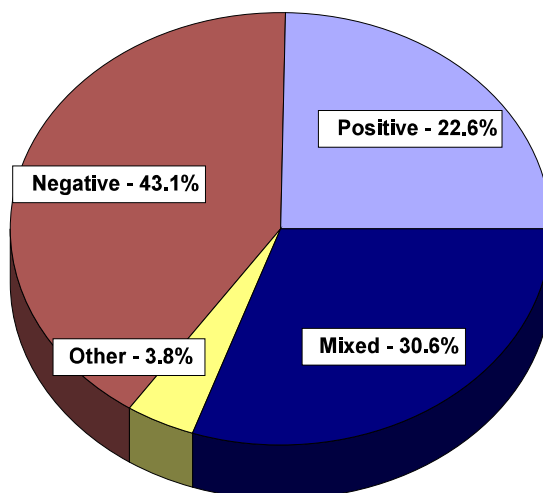
4. The origins of this survey stretch back to 2001, when the IBA formed a Task Force on Image Enhancement to study and address potential challenges caused by negative public opinion of, or a lack of confidence in, the legal profession. On November 27, 2002, the Task Force issued its final report, which was subsequently approved by the IBA Board of Managers. This author served on this Task Force and was subsequently appointed as the IBA's first Professionalism Coordinator, and in this capacity coordinated the survey that is the subject of this Article. A copy of the Task Force's final report is posted on the IBA's website, located at <http://www.indybar.org/files/ImageEnhancementFinalReport.pdf>.

survey, its suggestions for improvement, and related aspects of professionalism and civility.

I. SURVEY SAYS: LAWYERS' IMAGES SUFFER

In April 2004, the IBA initiated an online survey to measure the image of lawyers and the legal profession. The survey was not designed to be a “scientific analysis,” but rather as a “snapshot of problems recognized by lawyers and the general public.”⁵ By the time the survey concluded on December 31, 2004, 459 people had responded. The results of the survey are illuminating and troubling. Respondents were asked to describe their general impression of lawyers. The chart below summarizes the responses.⁶

General Impression of Lawyers



As the foregoing reveals, 43.1% of the respondents had a negative impression of lawyers. Typical negative terms used to describe lawyers included: not trustworthy; greedy; arrogant; unethical; expensive; thieves; cold-hearted;

5. Brent Adams, *Law Group Taking Stock of Public Perception*, INDIANAPOLIS BUS. J., June 28, 2004, at 19A.

6. The results of that survey are contained in a final report dated February 28, 2005, submitted by this author to the IBA Board of Managers. All information contained in this Article regarding the findings of the survey is extrapolated from that final report. Tim A. Baker, Final Report on the IBA's Survey on the Image of Lawyers (Feb. 28, 2005) [hereinafter Baker, Final Report], available at <http://www.indybar.org/files/FinalReportonIBAProfessionalsSurvey.pdf>.

money-grubbers; and shysters. One of the more mordacious comments elicited by the survey was, "I have worked for 2 law firms in my time and only came across one [attorney] who was not crooked."⁷ Such a statement—while exceedingly harsh given the integrity and honesty demonstrated by many lawyers—nevertheless reflects a viewpoint that cannot be discounted or dismissed out of hand.

On the contrary, the survey revealed that only 22.6% of the respondents held a positive image of attorneys. Typical positive terms used to describe lawyers included: hard-working; intelligent; trustworthy; help people resolve complex issues; compassionate; professional; active in the community; honest; creative advocates that instigate change; noble profession; problem solvers; smart and assertive. These favorable descriptions labeled lawyers as problem solvers who are "professional and capable."⁸

Slightly more than 30% of the survey responses are properly characterized as "mixed"—some good, some not so good. These mixed responses tabbed lawyers as "both feared and revered" and "knowledgeable but arrogant." As one respondent succinctly put it, "Some are saviors, others are bottom-feeding bloodsuckers." A less pointed response noted, "Until I worked for them, I had a very negative image of them. Now, I realize that they are unfairly maligned, due to the actions of a few bad apples in the profession."⁹

Another respondent compared lawyers to members of Congress.¹⁰ According to this survey response, "I believe lawyers are viewed like Congress. Everyone complains about them but rarely do those complaints include the lawyers they know or have worked with personally. Incumbent Congress persons are reelected at least in part because most voters view their guy or gal as an exception to the rule."¹¹ This comment foreshadows a common theme noted below: people like their own lawyers; it's everyone else's lawyers who seemingly cause problems.

It is not enough to conclude that lawyers and the legal profession have an image problem.¹² Such a conclusion was fairly obvious even without the benefit of a survey. As mentioned earlier, the paramount purpose is to understand the

7. *Id.* Another respondent decried that lawyers "tend to bill worse than telephone companies." Another respondent observed that lawyers are "too busy to do a good job for each individual client." Other unflattering terms directed toward lawyers included slick, slimy, good ol' boys club, unethical, and sneaky. *Id.*

8. *Id.*

9. *Id.*

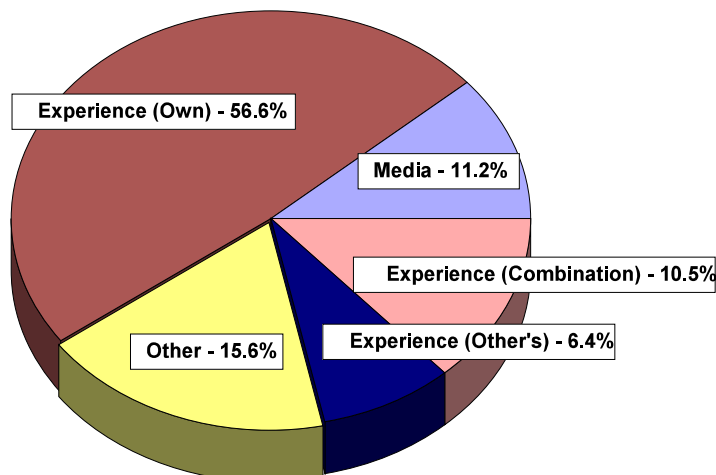
10. Such a comparison is not altogether surprising given the number of lawyers who are serving, or have served, in Congress.

11. Baker, Final Report, *supra* note 6.

12. The legal profession holds no monopoly on incivility. One need look no further than the National Basketball Association (NBA) to confirm this. On November 20, 2004, an on-court altercation during an NBA game prompted a fan at the game to throw a beverage on Indiana Pacer player Ron Artest. Artest responded by going into the stands, and a fist-flying melee resulted. When the smoke cleared, player suspensions, criminal charges, and other consequences followed. Jeff Rabjohns, *Fans Think Punishment Is Too Harsh*, INDIANAPOLIS STAR, Nov. 22, 2004, at D1.

root causes of these problems so as to permit more effective steps to be taken to address and correct these issues. So what did the survey show?

Primary Reason for Impression



As the foregoing chart vividly demonstrates, respondents' personal experiences with attorneys and the legal profession were the most frequently reported basis for the opinions held. In response to a separate question, the survey also revealed that 76.5% of the respondents believed that their impression of the image of lawyers is shared by the public in general. Combining these findings leads to the conclusion that nearly half of the respondents have a negative impression of lawyers, that this impression more often than not is based on the respondents' personal experiences, and that more than three-fourths of the respondents believe others feel the same way. One respondent wryly noted that "people laugh when someone says they are a lawyer, as if that alone is the punch line of a joke." Or as another respondent recounted, "everyone cringes when I tell them I am in law school."¹³

On the other hand, other respondents recognized that negative views of lawyers are far from universal. The two comments set forth below aptly demonstrate this fact:

I believe that my impressions are shared by some and not by others. Lawyers have a reputation for being greedy bottom feeders. I feel that although that applies to some lawyers, lawyers are individuals and most

13. Baker, Final Report, *supra* note 6.

are true professionals.

If the client gets a good result, then they are happy; if not, they feel the attorney is incompetent.¹⁴

This latter comment hits on yet another root cause of negative lawyer impressions: people who need a lawyer frequently are in a state of personal or family strife. The lawyer suddenly becomes a valued ally to someone who finds him or herself in jail. Divorce, loss of a job, bankruptcy, personal injury, or death can be tragic and traumatic events requiring the services of a lawyer. As one survey respondent appropriately remarked, “No one comes to an attorney because they are having a good day (unless you won the lottery and you need a tax planner). So it’s hard to sell.”¹⁵ Thus, even the most civil and professional lawyers and legal system would undoubtedly produce some disappointment, frustration, and displeasure.

Personal experiences of course are not the only bases for these negative perceptions. The media also was identified 11.2% of the time as the source of these impressions. Picking up on this theme, one respondent stated, “I think the media does a great disservice to the image of lawyers. They are shown as greedy, selfish and arrogant. They are lampooned frequently, and the public is encouraged to gloat when lawyers are hurt or embarrassed.”¹⁶

One powerful example of media lampooning of lawyers and the legal profession is found in the popular television show “The Simpsons.”¹⁷ In this long-running series, Chief of Police Clancy Wigum is drawn to closely resemble a pig and is plainly incompetent.¹⁸ Lionel Hutz is the ambulance-chasing trial lawyer who carries nothing more in his briefcase than a newspaper and an apple core, and is described as a “shyster” who instinctively rises every time he hears a siren.¹⁹ And in one memorable episode, Homer Simpson is the lone holdout in the jury room in an allusion to the classic film “Twelve Angry Men”—only Homer is not holding out because he believes the defendant is innocent, but rather to continue his sequestration in a hotel with free cable television.²⁰

14. *Id.*

15. *Id.*

16. Three additional survey responses are also worth noting: (1) “I think the public never really gets to know lawyers on a personal basis, just their public image or what they see in the media.” (2) “The public in general make television shows about lawyers highest in the ratings.” (3) “People’s opinions are framed by their own experiences, as well as outside influences like the media.” *Id.*

17. For an excellent discussion of how “The Simpsons” has affected perceptions of the law and the legal system, see Kevin K. Ho, “*The Simpsons*” and the Law: *Revealing Truth and Justice to the Masses*, 10 UCLA ENT. L. REV. 275 (2003). The article is as humorous as it is thought provoking.

18. *Id.* at 279.

19. *Id.* at 285.

20. *Id.* at 286.

Recurring media images such as these, repeatedly broadcast into homes throughout the country by way of a hugely popular or long-running television series, reinforce negative views of the law and those who operate in the legal system.

Any discussion of the media would be incomplete without mentioning the sometimes misleading and inaccurate news coverage of the legal system. One example from the survey period is particularly noteworthy. On June 23, 2004 the *Indianapolis Star* ran an article under the headline, "Disabled worker awarded \$4.6 million."²¹ The article described a jury verdict in the Southern District of Indiana in which a jury returned this award against Daimler-Chrysler because the company refused to let a disabled plaintiff do certain jobs.²² While the jury did in fact make this award (specifically, the jury awarded her \$100,000 in compensatory damages and \$4.5 million in punitive damages), the statute under which the woman brought suit—the Americans with Disabilities Act—caps compensatory and punitive damages awards at \$300,000.²³ Yet nowhere did the article mention this cap. Nor does it appear that the *Indianapolis Star* ran an article regarding the trial judge's decision to reduce the award of compensatory and punitive damages, consistent with this cap, to \$300,000.²⁴

Thus, the media's coverage of this court proceeding would lead the public to conclude that a plaintiff in a fairly routine employment discrimination case recovered an excessive multi-million dollar verdict. In fact, the actual award—while still significant—was significantly smaller than originally reported. This skewed coverage likely was not intentional; reporters operate on tight deadlines, have limited copy space or air time, and have no easy method of keeping tabs on when a judge might issue a significant post-judgment modification to a jury award. Nevertheless, this example demonstrates how erroneous news coverage of legal proceedings can feed the public's negative perceptions of lawyers and the legal system.

The media—not unlike lawyers—is an easy target. It would be simple to single out the media as the driving force in the public relations debacle in which lawyers find themselves. Putting significant blame at the media's feet, however, would be disingenuous. As the survey revealed, the media was held out as the culprit of negative images only 11.2% of the time. Therefore, it is reasonable to conclude that the media is only minimally responsible for lawyers' image predicament. Rather, the current, undesirable state of affairs seems to be largely of the legal profession's own making.²⁵

21. Fred Kelly, *Disabled Worker Awarded \$4.6 Million*, INDIANAPOLIS STAR, June 23, 2004, at B1.

22. *Id.*

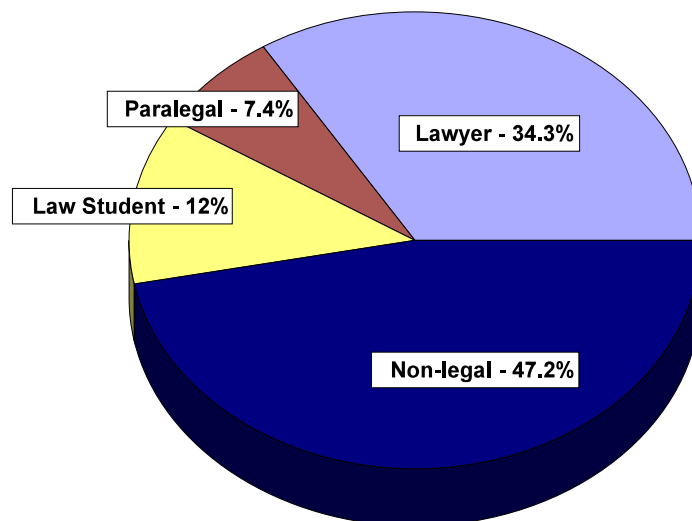
23. See 42 U.S.C. § 1981a(b)(3)(D) (2000).

24. *Young v. Daimler Chrysler*, No. IP 01-0299-C-M/S (S.D. Ind. June 30, 2004) (Entry of Judgment).

25. Judges are not to be excluded from the negativity associated with the legal profession. Judges are likely held to a higher standard than lawyers in the public eye, and when judges stumble the negative fallout on the legal profession can be significant. During the survey period, the media

The survey also inquired into the occupations of the respondents. The chart below reveals the findings.

Occupation of Respondents



Thus, survey respondents were split fairly evenly between persons with law-related backgrounds and non-legal types. Even more interesting, however, is an examination of the views these different groups of respondents held regarding the image of lawyers. The following table is illustrative:

	Positive	Negative	Mixed
Paralegals	20.8%	28.6%	50.4%
Law Students	56.8%	17.6%	24.8%
Non-Legal	17%	50.8%	33%
Lawyers	25.7%	35.5%	38.7%

As this table reveals, non-legal respondents most often (50.8%) held a negative image of lawyers. Lawyers were the next most frequent group (35.5%)

carried numerous stories about judges' alleged missteps. See, e.g., Abigail Johnson, *Lake County Judge Removed*, IND. LAW., Oct. 20, 2004, at 3; Vic Ryckaert, *Judge Receives Private Discipline*, INDIANAPOLIS STAR, Aug. 10, 2004, at A1; Kevin Corcoran, *High Court Judge Steps Down from Penalty Case*, INDIANAPOLIS STAR, Nov. 7, 2003, at B5.

to hold such a view. Law students overwhelmingly (56.8%) held the most positive view of lawyers, followed distantly (25.7%) by lawyers. Not surprisingly, non-legal respondents were the least likely (17%) to report a positive view of lawyers. These results suggest that efforts to improve the image of lawyers and the legal profession should be targeted primarily to non-lawyers, but that any such efforts would likely fall short unless lawyers—who often view other lawyers unfavorably—are also targeted. In addition, since law students held the most positive view of lawyers, this idealism can perhaps be harnessed and nurtured for the overall benefit of the profession.

II. COMMON THEMES AND SUGGESTIONS FOR IMPROVEMENT

The survey uncovered several common themes. These include: people like their own lawyer, but not other lawyers; lawyers are money-driven and greedy; high profile cases bring out the worst in lawyers and the legal system; lawyers do not return telephone calls or care about the client;²⁶ and there are too many frivolous cases. Of all the themes revealed by the survey, the notion of frivolous litigation seemingly most concerned respondents. As one survey response stated, “[t]he public seems to believe that attorneys are mostly out for themselves and trying to make money and create claims where there weren’t claims before.”²⁷

The case most often mentioned among respondents bemoaning frivolous litigation was “the McDonald’s coffee case.” This is the case in which Stella Liebeck won a jury verdict of about \$2.9 million against McDonald’s after she was burned by spilling scalding hot coffee on herself.²⁸ Liebeck has been described as the “poster lady” for tort reform,²⁹ even though by one account: (1) Liebeck received second and third degree burns from the coffee, was hospitalized for seven days, and underwent skin grafts; (2) McDonald’s had received 700 burn complaints in the 10 years prior to the incident; and (3) the judge lowered the award to \$640,000.³⁰ Picking up on this theme of misinformation, one survey respondent did state, “[The public] is not educated. For example, everyone talks about the woman that sued McDonald’s because of the hot coffee burn. But nobody knows that McDonald’s had been warned on many instances before that

26. For an egregious example of this, see *In re Davidson*, 814 N.E.2d 266 (Ind. 2004) (disbarring counsel for accepting retainers and/or filing fees and then taking little or no action and failing to respond to clients’ inquiries about their cases).

27. Baker, Final Report, *supra* note 6.

28. *Liebeck v. McDonald’s Restaurants*, No. CV-93-02419, 1995 WL 360309 (D. N.M. Aug. 18, 1994).

29. Her case even prompted the creation of the “Stella Awards,” which recognize what are described as the most frivolous lawsuits in the United States. For more information about these awards, visit <http://www.stellaawards.com>.

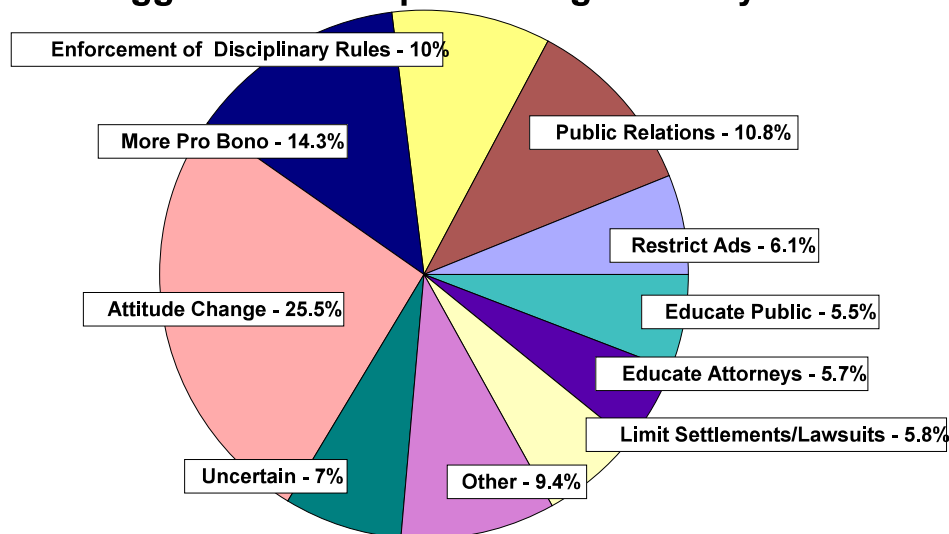
30. Lynn Liberato, *The Image of the Legal Profession*, 5 TEX. PARALEGAL J. No. 3 (1999). Liberato was the president-elect of the State Bar of Texas at the time Liberato submitted this article for publication.

their coffee could cause injury.”³¹

Regardless of whether the McDonald’s coffee case is viewed as frivolous or fitting, the fact remains that some litigation is frivolous. If litigation were not sometimes frivolous, there would be no need for Rule 11 sanctions. As a result, the public somewhat understandably views the legal system with a suspicious eye. As former Indiana State Bar Association President Sherrill William Colvin put it, “[t]he stereotypical image of manipulative lawyers and rapacious clients bringing frivolous lawsuits is almost as much of American lore as George Washington chopping down the cherry tree.”³²

While perhaps nothing can be done to erase or clarify the images of the McDonald’s coffee case in the public’s mind, survey respondents suggested various ways to improve the image of lawyers, including: increase disciplinary actions; initiate a public relations campaign; instill more honesty in the profession; curtail inflammatory television advertising; highlight pro bono work; change/improve the legal education process; and more aggressive screening on character and fitness. The chart that follows illustrates these responses.

Suggestions to Improve Image of Lawyers



Some of the more interesting survey responses included the following:

“Get the message out . . . it is a few lawyers who are making life

31. Baker, Final Report, *supra* note 6.

32. Sherrill William Colvin, *Civil Justice System Under Attack*, 47 RES GESTAE 5 (Dec. 2003).

miserable for the rest of us.”

“Quit being so money hungry and start caring about the client.”

“Lawyers should remember that they are working for the client, not the other way around.”

“The profession has to become more specialized so that the public knows the expertise of the lawyer.”

“Make pro bono service mandatory at X# hours/year. This would get more lawyers helping more people for free, which is a good thing from a PR point of view.”

“Put restrictions on advertising.”

“Stricter admissions and disciplinary policies.”

“Limit the number of law school admits. With so many law school graduates, lawyers will take any kind of case and do anything to win.”

As the foregoing reflects, the IBA survey produced an abundance of suggestions to improve the image of lawyers and the legal profession. Separately, numerous other initiatives have been taken to improve professionalism and civility and, in the process, the public’s perception of lawyers and the legal profession. For example, the Indiana Supreme Court amended the Rules of Professional Conduct effective January 1, 2005. New language in paragraph [1] of the Indiana Preamble provides in part, “[w]hether or not engaging in the practice of law, lawyers should conduct themselves honorably.”³³ This amendment emphasizes lawyers’ duty to conduct themselves honorably at all times.

In October 2004, the American College of Trial Lawyers distributed to every sitting federal judge a copy of its “Code of Pretrial Conduct and Code of Trial Conduct.” As Chief Justice William H. Rehnquist explained in his introduction to the code, the American College of Trial Lawyers first adopted its Code of Trial Conduct in 1956, and introduced the new pretrial code as “part of a continuing effort to promote professionalism and courtesy among trial lawyers during all stages of litigation.”³⁴ In addition, on August 24, 2004 the IBA presented a day-long seminar for law students entitled “Surviving & Thriving as a New Lawyer,” stressing professionalism, mentoring, and the like to law students. This program, which is under consideration to be repeated annually, is just one of a number of IBA professionalism initiatives that followed the

33. IND. PROF. COND. R., pmbl., para. 1.

34. William H. Rehnquist, *Introduction*, in AMERICAN COLLEGE OF TRIAL LAWYERS, CODE OF PRETRIAL CONDUCT AND CODE OF TRIAL CONDUCT (2002).

creation in 2003 of the position of IBA Professionalism Coordinator.

Yet well before this, bar associations throughout the state and the country were taking steps to promote professionalism and thereby improve the image of lawyers and the legal profession. Thus, in 2002, the IBA reaffirmed its “Tenets of Professional Courtesy,”³⁵ first adopted in 1989. These tenets are designed to promote professional courtesy and improve professional relationships among bar members. In June 1992, the Committee On Civility of the Seventh Federal Judicial Circuit issued its Final Report, which among other things included proposed standards for lawyers’ duties to other counsel and lawyers’ duties to the court.³⁶ Despite several long-running efforts to improve the image of lawyers and the legal profession, the survey results suggest that there remains much work to be done and that there is considerable room for improvement.

CONCLUSION

As the former president of the American College of Trial Lawyers recently wrote:

To me, the case for civility is overwhelming. I am unable to understand why one would abandon civility in favor of boorish, bullying, obnoxious, unfair behavior that is harmful to his reputation and in most instances, to the interests of his client. Not only does civility cost nothing, but it also holds the promise of sparking benefits.³⁷

Indeed, the case for professionalism and civility is overwhelming. It promises a return to the days referenced by Justice O’Connor when “society sincerely trusted and respected its lawyers.”³⁸ It promises a return to a time when, as Magistrate Judge Shields recalled, law was practiced with civility and grace.³⁹

35. These tenets provide as follows:

[1] In all professional activity, a lawyer should maintain a cordial and respectful demeanor and should be guided by a fundamental sense of integrity and fair play. [2] A lawyer should never knowingly deceive another lawyer or the court. [3] A lawyer should honor promises or commitments to other lawyers and to the court, and should always act pursuant to the maxim, “My word is my bond.” [4] A lawyer should make all reasonable efforts to schedule matters with opposing counsel by agreement. [5] A lawyer should make all reasonable efforts to reach informal agreement on preliminary and procedural matters. [6] A lawyer should not abuse the judicial process by pursuing or opposing discovery arbitrarily or for the purpose of harassment or undue delay. [7] A lawyer should always be punctual in communications with others and in honoring scheduled appearances.

36. In addition, Indiana recently joined other states in requiring all lawyers within their first three years of practice to complete an “Applied Professionalism” course.

37. Gene W. Lafitte, *Civility Costs Nothing*, THE BENCHER, at 21, July/Aug. 2004.

38. O’CONNOR, *supra* note 1, at 226.

39. Paul Harris Stores v. Pricewaterhouse Coopers LLP, No. 02-CV-1014-LJM/VSS, slip op. at 1 (S.D. Ind. Jan. 31, 2005).

The IBA survey reveals that negative impressions of lawyers are widespread, that these impressions are more often than not based on people's own experience with lawyers, and that there is a perception that others overwhelmingly share these negative views. These survey results should cause those who care about this honorable profession to take action. The survey itself suggests several steps that warrant further study. There will be no magic bullet. It is likely, however, that any improvement in these negative views will depend upon a sustained, multi-faceted approach aimed at improving the quality of legal representation, promoting the countless good deeds that lawyers do, and correcting any public misunderstanding of the nature of the legal practice.