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Lawyer-Bashing: It's Time to Turn the Tide Perspective.

Ward Blacklock

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LAWYER-BASHING: IT'S TIME TO TURN THE TIDE

WARD BLACKLOCK*

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I. INTRODUCTION

No, it's not your imagination. The wave of lawyer-bashing is definitely on the rise. As we have all witnessed during the recent presidential campaign, attacks on lawyers and our judicial system are increasing.

Permit me to cite a few examples. In President Bush's acceptance speech at the Republican National Convention, he denounced "sharp lawyers in tasseled loafers." Vice President Quayle, in his address to the American Bar Association (ABA) in 1991, asked rhetorically if "[Americans] really need 70% of the world's lawyers?" Andre Marrou, the Libertarian candidate for President, said on a radio talk show that lawyers "should not be allowed to serve in either the executive or legislative branches of the U.S. government."

Local "tort reform" committees and committees against "lawsuit abuse" are springing up around the country. These groups appear to be well-organized and -funded and the media, always eager for negative stories on anyone, especially the legal profession, readily picks up and publishes their press releases.

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One University of Texas professor, Stephen P. Magee, has gone as far to suggest that each "excess" lawyer in the United States (about 320,000 according to Magee) costs our nation \$1 million in Domestic National Product. You can be sure that many "tort reformers" will be mass-mailing digested reprints of Professor Magee's assertions to every legislator in the country.

II. WHY IS LAWYER-BASHING ESCALATING?

I have several theories about this phenomenon. First, lawyers are high-profile, easy targets. As we all know, except for our parents, spouses, and children, we lawyers are not held in very high regard by our fellow citizens. I think this is in large part due to the nature of our adversarial system. For example, if you are ever involved in litigation, or an acrimonious business transaction, your opponent's lawyer is automatically a money-grubbing obstructionist shyster. Therefore, from a client's point of view, at least 50% of all lawyers are automatically in the "bad group." Other reasons are the high cost of our judicial system and delays in obtaining justice. In our country, unless you are very poor and qualify for publicly funded legal assistance or pro-bono assistance from lawyers, or you are very rich, you simply cannot afford our system. Also, the media gives high visibility to aberrations of justice. For example, when huge judgments are granted or trials result in unreasonable verdicts, we all hear about it. However, the media fails to publicize the final outcomes of these cases, when the judgments are reversed or reduced to reasonable amounts. Finally, and perhaps most significantly, finger-pointing by politicians, insurance companies, the health-care industry and others, shifts the public's attention away from their own shortcomings, and focuses everyone's attention on a favorite scapegoat: the legal profession.

III. HOW SHOULD THE LEGAL PROFESSION RESPOND?

A. *Answer Our Critics with the Truth*

First, the ABA and our state and local bar associations must wake up and make vigorous responses to all of the negative publicity heaped upon us by the politicians and special-interest groups. These professional attacks on our system of justice have gone unanswered for too long. The opposition is filling the airwaves and the printed media with outrageous anecdotal stories of unbelievable judgments

and other apparent miscarriages of justice, while at the same time feeding the public assorted bits of disinformation.

For example, when Vice President Quayle in his ABA address asked, "Does America really need 70% of the world's lawyers?," he rhetorically suggested that the United States has a huge and disproportionate number of the world's lawyers. The facts are that the United States ranks 35th among all countries in per capita lawyers, and has only 9.4% of the world's lawyers, rather than the 70% suggested by Vice President Quayle.¹

For another example, many of the lawyer-bashers want the public to believe that our civil-justice system contributes significantly to the nation's health-care costs. A recent study, funded by the Texas Hospital Association, the Texas Medical Association, and the Texas Trial Lawyers Association, reflects that medical professional-liability costs constitute less than 1% of all health-care expenditures in Texas and the United States as a whole.² The study also finds that (1) very few claimants receive multi-million dollar payments, (2) caps on damages shift rather than reduce costs, (3) very few cases are resolved by jury judgments, and (4) noneconomic damages are minor factors in settlements.³

We often hear about the "litigation explosion." While it is true that our court system is slow because of the number of cases, the delays are caused primarily by criminal, rather than civil, cases. In fact, the number of civil cases filed has been declining since 1985.⁴

Finally, many noted economists are highly critical of Professor Magee's theories, but unless the organized Bar gets its act together and starts funding and widely publicizing research to discredit the Magees of the world, Magee's theories will be published widely and believed eventually by the public, even though the theories are suspect.⁵ Professor Magee's contention that each United States lawyer decreases our Domestic National Product by \$1 million has been refuted by other studies. The research of Professor Frank B. Cross, associate professor of Business Regulation at the University of Texas,

1. Ray August, *The Mythical Kingdom*, A.B.A. J., Sept. 1992, at 72.

2. See Steve Martin, *Political Assault for Political Gain*, TEX. B.J., Oct. 1992, at 947 (discussing report entitled, "Medical and Hospital Liability").

3. *Id.*

4. *Id.*

5. One economist called Professor Magee's theories, "total nonsense." Robert Elder, Jr., *Nightmare on Tort Street*, TEX. LAWYER, Nov. 2, 1992, at 32.

suggests a positive economic correlation to the number of lawyers in a country. Professor Cross's study reveals that there is no connection between the number of lawyers in a nation and poor national economic performance. On the contrary, there is evidence of a correlation between the number of lawyers in a country and a higher rate of economic growth. Furthermore, there is substantial evidence reflecting that the number of lawyers in a nation has a positive correlation with higher literacy rates, lower infant-mortality rates, greater freedom of the press, and even increased numbers of doctors.⁶

B. *Put Our Own House in Order*

The Bar must actively seek to reduce cost, complexity, waste, and delay in our judicial system. While there has been much progress in this area in the past few years, much remains to be done. We must make our system of justice more accessible and affordable for middle-class Americans. One way we can do this is set out in the Phi Delta Phi ritual, which states that

not alone by brilliant triumphs as an advocate, but more often as the advisor and friend, does the lawyer find the sphere of largest usefulness. By discouraging suits and encouraging settlements, by aiding the prompt administration of the law, by making it profitable not to litigate, the able counselor promotes the interests of the client and inculcates justice.⁷

C. *Increase Professionalism*

I believe much of the criticism in this area against our profession is well deserved. "Rambo" litigation tactics do a disservice to the public, the legal profession, and our justice system. Judges and grievance committees should be highly proactive in stopping abusive litigation tactics. In fact, the duty to stop this abuse falls upon all members of the legal profession. Phi Delta Phi has a unique role in the area of professionalism and ethics. Initiating over 3,500 law students each year, the fraternity has had the opportunity to stress and stress again the importance of ethics and professionalism to students before they begin practicing law.

6. Frank B. Cross, *Let's Not Kill All the Lawyers*, TEX. LAWYER, Aug. 31, 1992, at 20.

7. Phi Delta Phi Ritual.

D. *Increase Funding for Our Courts*

While it is a truism that governments at all levels never have enough money for all of their activities, and while there are tremendous pressures on our political leaders to increase funding for education, job training, health care, and other programs, the Bar must stand up and fight for increased funding for our courts. Presently, the courts are overextended, understaffed, and overwhelmed with drug cases. Judges, prosecutors, public defenders, and other court personnel are overworked and underpaid. In a nation founded on the principle of equal justice, it is shockingly disgraceful that only 3% of all government funding is allocated to our justice system.

IV. THE CONSEQUENCES OF NONACTION

I am convinced that continued unanswered attacks on the legal profession and the legal system will have dire consequences, not only for our profession but for our country. If we are not careful, Congress and state legislatures will “throw the baby out with the bath water.” Since our country’s birth, lawyers and courts have been champions of individual rights and liberties. Courts are needed to act as the guarantors of our freedom, and lawyers dedicated to protecting individual rights do not deserve to be the whipping boys and girls of politicians and special-interest groups. In the United States, lawyers have improved recognition of civil rights for minorities; spurred the development of safer highways, automobiles, and products; forced society to provide cleaner and safer work and living places; and spearheaded the movement to improve health care. The concept of restricting lawyers from serving in the executive or legislative branches of government is absolutely incredible, yet there are those, like Mr. Marrou, who firmly believe the country would be improved if such were the case. Has Mr. Marrou forgotten that Thomas Jefferson, a lawyer, drafted the Declaration of Independence? Has he also forgotten that thirty-three of the fifty-five delegates who drafted the United States Constitution were lawyers? Throughout our history, lawyers have played vital leadership roles, and we should not now shirk that responsibility. Individual lawyers and the Bar must take the lead in correcting problems with lawyers and the legal system. We must, however, also take the lead in defending our profession and our legal system. If we don’t, who will?