PERENNIAL IMAGE ENHANCEMENT

I am a member of the State Bar of Arizona, though I do primarily practice in Canada.

I liked what Dan McAuliffe wrote in his most recent "President's Message" (ARIZ. ATT'Y, October 2007).

I am *proud* to be a lawyer.

I am proud of the good that lawyers do in our community—Heart and Stroke, Boy Scouts, Girl Guides, Cancer Society, we are everywhere. The best people I know are lawyers.

If any one of my kids should become a lawyer it will tell me that I've done a good job as a parent—that the values and principles that I espouse and live by, I have been able to pass on to my kids.

Proud.

—Eugene Meehan, Q.C.
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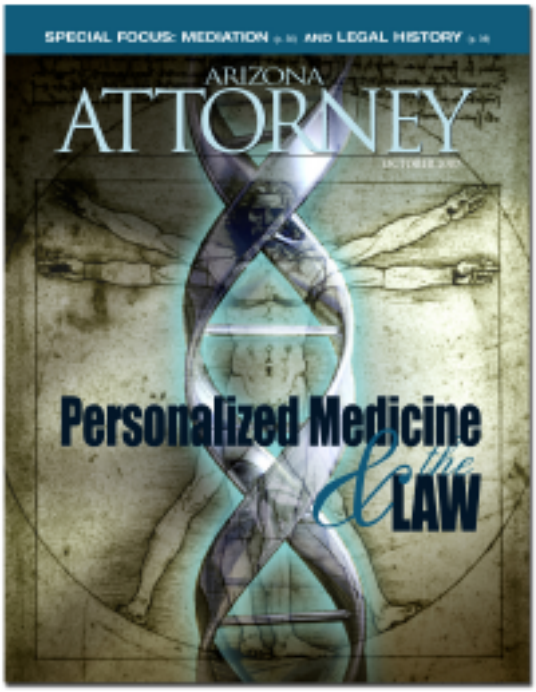

I enjoyed President Daniel McAuliffe's column on the lousy public image of lawyers and the importance of conducting ourselves professionally. In fact, I enjoy that column every year when the new president writes it.

Mr. McAuliffe suggests that we counter media mischaracterization of lawyers by digging out our Professionalism Course materials and asking ourselves if we adhere to the principles therein. Yeah, that'll work.

Boston Legal, a TV show that irked Mr. McAuliffe, averaged about 10 million viewers a week for 26 weeks last season. If every Arizona attorney called one person per day and recited the Creed of Professionalism, it would take 42 years to reach as large an audience, plus even more time to call back the millions who hang up.

We need to junk the fantasy that quietly doing good, without more, will improve our profession's image. The only way to counter bad media is with good media, created and controlled by us.

This means producing advertisements showing, in glowing cinematic terms, the extraordinary, often selfless work that lawyers do. It means raising the millions of dollars needed to place this material heavily on prime-time television statewide (and of course on YouTube for free) where somebody beyond the insular, self-congratulatory world of the State Bar will see it.

I doubt that a compulsory bar association has the legal authority, resources or rank-and-file support to take on this costly project. After all, bar leaders told us 20 years ago that MCLE would fix our image. How's that coming along?

Therefore, I encourage all Arizona attorneys with sufficient means to create an image enhancement consortium—Dreamworks for Lawyers—privately funding the mass media messages that could revitalize public respect for our profession. C'mon, *ricos.* It'll be fun. You can hang out on the filming set. You'll get written up in lawyer magazines and the *Wall Street Journal.* You might even syndicate the material to other state bars and reap huge profits, although I suggest playing down that aspect.

Best of all, you'll help your colleagues—at long last—swap our bad rap for a good rep.

And future presidents won't have to write that same old column.

—James C. Mitchell

On that subject I could not agree more with the President's Message. However, it's not just the fictionalized depictions of lawyers on television that's the problem. Our Bar President neglected to mention the "real-world lawyers" who appear in ever-multiplying numbers during every commercial break on television. From his omission, are we to conclude that the Arizona State Bar president does not consider those depictions as producing "erroneous preconceived notions … concerning the legal profession"?

—Donald L. Ghareeb

I have been practicing for 24 years—5 in Arizona and 19 in Las Vegas. I have read literally hundreds of articles like Mr. McAuliffe's about what the members of the bar can do to change the (presumed) public opinion of lawyers. What troubles me about such articles—and the underlying thought that we can do something to change the public perception—is its profound naivete.

In truth, the public always has had and always will have a poor perception of lawyers. As I've said for years, those who use a lawyer—a relatively small percentage of the population—generally think

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well of them; those who do not share the uneducated negative view (or, as is the true case, have no opinion at all). This has been the case since Shakespeare's time and will continue indefinitely.

Why is this the case? The answer is simple: People always resent those who wield great power and have control over the lives of others, but who provide an essential service without which the social structure upon which they depend would fail. To put it more bluntly, lawyers do not create the awful messes that they clean up, those who have a low perception of lawyers do.

The process of law reifies much of what is worst in human beings. It is this process of exposing the dark side of humanity that underlies the poor perception of lawyers, and this is exactly why articles like Mr. McAuliffe's will go on endlessly with no change ever occurring in the public perception. A fair analogy is the "war on drugs." People like criminalizing drugs and blaming them for their children's problems because the alternative—that they, the parents, have miserably failed to raise their children so that they fill their lives with wholesome, healthy activities. It is far easier and less psychologically damaging to blame a substance than the person using it, or the persons who formed the character of the user. And to make this work, the government sets up a propaganda machine to reinforce the perception that it's the drug, not the user, that is bad. The result is that billions are spent on the drug war—including stopping harmless use, such as the recreational pot smoker—rather than treating the problem for what it is, a social health and welfare problem that is best solved by acknowledging that some drug use is far less harmful than alcohol, and spending the money on the early intervention and education that has a chance to minimize drug abuse.

So with lawyers: The public who do the awful things that engender work for so many lawyers simply will not—in most cases cannot—accept responsibility for their acts. Damning the lawyers shifts that responsibility onto lawyers. While wrongheaded and unfair, it is a self-preservation technique that is, in my view, hardwired into our genetic code as part of a survival mechanism that will never end. And most perniciously, those folks do not even perceive what they are doing. The low esteem in which the public hold lawyers is 500 years old and will continue for another 500 years—if we last that long. Those who doubt this should provide a better explanation for why the public has and always has had such a negative view of lawyers.

—Thomas Rondeau

ANTITRUST PLEADING

In regard to the series of articles on pleading requirements after *Bell Atlantic Corp. v. Twombly* (ARIZ. ATT'Y, September 2007):

By virtue of A.R.S. § 44-1412 (the "uniformity" provision of our state antitrust laws), where a complainant in an Arizona state court attempts to assert a claim under 15 U.S.C. § 1 or A.R.S. § 44-1402 of which a "contract, combination or conspiracy" within the meaning of those statutes is an essential element and a defendant challenges the complaint for failure to state such claim, the court should sustain defendant's challenge if the complaint does not set forth "enough factual matter (taken as true) to suggest that an agreement was made" between or among the alleged contractors, combination participants or conspirators.

Even taking *Bell Atlantic Corp. v. Twombly,* 550 U.S. __, 127 S. Ct. 1955 (2007), as directly controlling, that opinion neither requires anything more nor teaches anything else. The particular context and defined scope of *Twombly* are made clear in the opening paragraphs of Justice Souter's discussion of the case:

> [W]e have previously hedged against false inferences [of "agreement"] from identical behavior [of alleged § 1 conspirators] at a number of points in the trial sequence. An antitrust conspiracy plaintiff with evidence showing nothing beyond parallel conduct is not entitled to a directed verdict; proof of a § 1 conspiracy must include evidence tending to exclude the possibility of independent action; and at the summary judgment stage a § 1 plaintiff's offer of conspiracy evidence must tend to rule out the possibility that the defendants were acting independently.
>
> This case presents the antecedent question of what a plaintiff must plead in order to state a claim under § 1 of the Sherman Act. (Slip op. at 7; citations omitted).

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