

LAWYER BASHING AND ATTICUS FINCH

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Towards the end of *To Kill a Mockingbird*, after a passionate but unsuccessful defense of a black man accused of a rape, Atticus Finch walks from the courtroom beneath a balcony filled with the black population of Maycomb and a single white soul, Jean Louise Finch, Atticus' daughter "Scout," the novel's narrator. The blacks rise from their seats in deference and respect of Atticus; Scout is admonished, "Miss Jean Louise, stand up. Your father's passin'!"

Our national history is one of a procession of great lawyers: Webster, Holmes, Lincoln, Darrow and their brethren. To have been a lawyer was an honor, a badge of respect. Yet now, to be a lawyer is to be despised and the butt of mean-spirited jokes. Being called a lawyer is to be insulted and mistrusted and perceived as greedy and untruthful.

How did this happen? How did the former most honored profession in the nation become the most despised?

I graduated law school not long before the onset of the events known as Watergate. When Watergate began to unravel, all the bad guys — from Nixon to John Mitchell — were lawyers. Even John Dean, Special Counsel to the President, whose conscious eventually got the best of him, was embroiled in the deception at the beginning. The spectacle of the President and the Attorney General exposed as liars and betrayers of the public trust helped start the slide.

Ensuing events did not help. A procession of national scandals have been accompanied by lawyers defending the worst of the transgressors, from the Iran-Contra hearings, when Oliver North asserted that lying for the right cause was justified, to today's common-sense defying legalistic arguments made by President Clinton (a lawyer) and his lawyers, with mind-boggling rhetoric in which sex is not "sex" and "is" does not mean "is."

Another cause of the current position of my profession is the tacit unwillingness of the courts to do what they are sworn to do - to find the truth. The facts to be measured by a judge or jury cannot be quantified into lengths, times or volumes — they deal with veracity and subjective perception, shadows of facts shaded by litigants to advance their case. It is therefore possible and expedient for witnesses to lie, to knowingly advance false facts in order to win,

How can this be possible? Is it not the crime of perjury to knowingly offer false sworn testimony? Is it not the duty of lawyers to knowingly prevent the advancement of perjurious testimony? Today, such conduct is more than possible -- it is commonplace in courtrooms. Lawyers know this, so courtroom perjury is employed without fear of consequence. There is rarely a prosecution for perjury. (The current national convulsion is the exception not the rule — the product of the inability of the alleged perjurer and those who are required to judge him to hide from the light of public scrutiny.) The only prosecution for perjury in a criminal case within anyone's memory was that against Mark Fuhrman, whose hand was slapped with a fine and who is now a best selling author and public speaker.

Legal commentators decry the low esteem in which our system of justice is held, trying to

explain how dishonesty has become so deeply imbedded in our social fabric. Why, they ask, is the lie the weapon of choice in litigation? The answer is plain: There is almost never a consequence to be suffered by the liar. Lying is tacitly sanctioned by the very institution which purports to be our last fortress of truth — the courts. Each time obvious perjured testimony is offered by a witness and a court, by its silence, fails to invoke a consequence for its utterance, public perception of the integrity of the courts is lowered and its cynicism increased. Like Frank Galvin in the film *The Verdict*, "We become tired of hearing people lie and, after a time, we become dead."

Another cause for the public's despisement of lawyers is the perception that we are driven by greed and not concerned with truth, justice or righteousness. The economic system in which most lawyers earn money encourages the creation and perpetuation of litigation. Most lawyers are paid by the hour and there are strong economic disincentives for an hourly-paid lawyer to settle cases.

Most lawyers are no better or worse than any other group of people, struggling to make ends meet, working harder than we should, and not seeing enough of our families. We are engaged in one of the most highly stressful occupations one can imagine, simultaneously dealing with difficult, unhappy and demanding clients, hostile opposing lawyers and overworked and unfocused judges. Try that full time for 50 weeks a year.

What can be done to restore an old and honorable profession to its former place — or at least raise it from the gutter of public opinion?

First, when a judge or a prosecutor hears palpable perjury, the reaction must be swift and certain. Truth must be restored to the American courtroom. Second, there must be economic incentives for hourly-paid lawyers who settle cases quickly. Conversely, lawyers who perpetuate litigation for economic gain must pay consequences for such conduct. Finally, lawyers who routinely or cavalierly refuse to negotiate settlement possibilities must be required to defend that refusal and pay penalties if such refusal is judged to be unjustified under realistic criteria.

Shakespeare's oft-quoted passage from *Henry VI*, "The first thing we do, let's kill all the lawyers." is almost universally quoted out of context. The statement was made as a means to assure anarchy, i.e., without lawyers, law and societal order break down. Shakespeare was right — lawyers are the front lines troops, the legal Marines, we send into battle against those who would deprive us of our freedoms and liberties.

It is unrealistic to expect contemporary Americans to rise out of respect when a lawyer walks by, as did the blacks in the balcony of the Maycomb County Courthouse when Atticus Finch passed beneath them. However, as Shakespeare knew, when lawyers are rendered ineffective by public scorn, ridicule or mistrust, we will all stand defenseless before those who would steal our liberties.