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Public and Professional Assessment of the Nebraska Bar

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Public and Professional Assessment Of the Nebraska Bar

*"Advocatus sed non latro, res miranda populo"**

I. INTRODUCTION

Public confidence in the bar descended to an all-time low in 1974 according to public opinion polls.¹ As the lay public watched Watergate unfold, they observed the public display of attorneys being held accountable for illegal conduct.

Coincidentally, the Nebraska State Bar Association ("NSBA") launched a public relations campaign designed to advise the public of active efforts to hold attorneys to the standards of the Code of Professional Responsibility.² The position of Counsel for Discipline³ was established in October, 1973, and began operation in March, 1974, with a budget of approximately \$5,000. In 1975, the Nebraska Supreme Court approved a special assessment of \$23.00 from each member of the NSBA, increasing the operating budget for handling disciplinary affairs to approximately \$60,000. Evaluation of the present success of the effort would be hasty and unwarranted, given its brief history; however, the issues that gave rise

* "He was a lawyer, yet not a rascal, and the people were astonished."
3 J. WIGMORE, PANORAMA OF THE WORLD'S LEGAL SYSTEM 960 (1928).
This was the popular verdict on Saint Ives and on the profession in
Brittany circa 1300.

1. Public Confidence in Institutions Mostly Lower, The Harris Survey
Press Release, Sept. 30, 1974.

2. A Nebraska State Bar Association release entitled "Counsel for Discipline Appointed by State Bar Association" appeared in the Lincoln Journal, March 28, 1974, at 6, col. 4. This was followed by: "Counsel for Discipline Needed to Make Good System Better," Lincoln Journal, Aug. 22, 1974, at 10, col. 5; "High Court Given Bar Discipline Ideas," Lincoln Journal, Aug. 23, 1974, at 1, col. 2. On October 16, 1974, the Lincoln Star printed a piece entitled "Bar Group Gets Okay to Develop System for Disciplining Lawyers," at 20, col. 3.

3. Information regarding the Counsel for Discipline was provided by Robert Blair in a telephone interview on November 19, 1974. Blair has held the position of Counsel for Discipline since its inception.

to the creation of the position of Counsel for Discipline are timeless.

Despite the rather bleak portrait of the bar painted by public opinion polls and the press in 1974-75, the status of the profession in the eyes of the public has remained largely unexplored.⁴ In an attempt to assess the status of the profession in Nebraska, a survey was conducted to compare opinions of the bar as they were expressed by lawyers and laypersons. Questions contained in the survey reflected concerns central to five of the Canons of Professional Responsibility.⁵ These canons were selected because they are not primarily in-house regulations; rather, they govern those aspects of the legal profession that most directly regulate the attorney-client relationship.

II. METHODOLOGY

Questionnaires designed to facilitate direct comparison between responses by attorneys and the lay public⁶ were sent to 500 laypersons randomly selected from telephone directories throughout the state; the sample was adjusted to allow greater representation from Omaha and Lincoln relative to the greater number of attorneys practicing in these areas. Names of 200 lawyers were randomly selected from the rolls of the NSBA as of October 1, 1974.⁷

In addition, approximately 25 in-depth interviews were conducted with members of the Nebraska Bar attending the annual

4. This is the first attitudinal survey of members of the bar and the lay public in the United States. No other study has directly compared public and professional responses to issues directly concerning the legal profession. One post-Watergate survey of lawyers is available, however, and is instructive. Those data are compiled from 243 questionnaires (of 1,000 originally mailed) completed by attorneys in the Boston area. Burbank & Duboff, *Ethics and the Legal Profession: A Survey of Boston Lawyers*, 9 SUFFOLK L. REV. 66 (1974).

5. "A lawyer should assist in maintaining the integrity and competence of the Legal Profession." ABA CODE OF PROFESSIONAL RESPONSIBILITY CANON No. 1 (1974). "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available." *Id.* CANON No. 2. "A lawyer should represent a client competently." *Id.* CANON No. 6. "A lawyer should represent a client zealously within the bounds of the law." *Id.* CANON No. 7. "A lawyer should assist in improving the legal system." *Id.* CANON No. 8.

6. The Lawyers' Questionnaire appears at Appendix A, *infra* at 76-82. The Laymen's Questionnaire appears at Appendix B, *infra* at 83-90.

7. The authors are indebted to the Nebraska Research Council and the University of Nebraska College of Law for providing funds and computer resources necessary for collection and analysis of these data, and to Professor James T. Ault III, Department of Sociology, Creighton University, who programmed the computer for these sample selections.

meetings of the NSBA and Nebraska Association of Trial Attorneys held in October of 1974. These interviews, focusing on selected topics included on the questionnaire, provided a critical source of data in that they allowed an expanded avenue of expression that is largely precluded by a standard survey. Quotes from those interviewed (indicated by *italics*) are used throughout the article as a means of "fleshing out" the bare statistical conclusions provided by responses to the questionnaire. Likewise, unsolicited comments which accompanied returned questionnaires are included in a further attempt to provide a complete and accurate portrait of the opinions surveyed.⁸

The authors attempted to be fair in the construction of this questionnaire and in the analysis and reporting of the data, yet some respondents were skeptical of the accuracy of the portrait to be painted of the bar:

Validity of this survey depends on much more than an adequate data base. It depends very much on the selection and wording of the survey questions, and on how carefully the respondents read them before answering, and on the type of analysis given the responses. I personally feel this is a poorly designed survey, with an inconsistent pattern to the wording of questions. I suspect

A total of 497 questionnaires were sent to laypersons throughout the state. Names of these potential respondents were randomly selected from telephone directories (which provided a more recent compilation of residents than is provided by census data). This sample contained persons in 89 percent of the counties in the state, the largest proportions of which were concentrated in Douglas and Lancaster counties, relative to the larger proportions of attorneys practicing in those locales. Of these 497 questionnaires initially mailed, 213 (43%) were completed and returned.

Two hundred questionnaires were sent to attorneys throughout the state whose names were randomly selected from the rolls of the Nebraska State Bar Association. Of these, 122 (61%) were completed and returned.

These response rates fall well within the acceptable range recognized by sociologists engaged in survey research. Dillman, Christensen, Carpenter, & Brooks, *Increasing Mail Questionnaire Response: A Four-State Comparison*, 39 AM. SOC. REV. 744 (1974).

A mailed questionnaire is a less preferable research tool than personal interviews because questions must be relatively short and capable of being quickly answered in order to encourage response. A related limitation is the risk of over-simplification inherent in designing questions of this sort. On the other hand, the mailed questionnaire is the most economical research tool, and, in fact, the only method financially available to the authors who desired two state-wide samples.

8. Approximately 40 percent of the lawyers and 20 percent of the laypersons responding took time to comment on particular questions or to the questionnaire in its entirety.

many respondents will not carefully analyze the questions and as a result will not qualify their answers where it is necessary to do so.

I doubt very much that you will produce truly valid results, and I fear that whatever is published will be misleading as to the attitudes of members of the Nebraska Bar.

The lawyer who added this comment expressed some of the authors' own reservations concerning the structure and use of survey research. The inconsistencies he⁹ noted were designed as internal checks on the reliability of responses.¹⁰ The most glaring example of this apparent inconsistency in the phrasing of questions appears in a series¹¹ exploring the concept of advocacy.¹² The pattern of responses to these questions was generally consistent within each group, indicating that neither laypersons nor lawyers were misled by potentially biased wording. Internal consistency of this nature lends increased credibility to the instrument.

III. DISCUSSION

CANON 1: A lawyer should assist in maintaining the integrity and competence of the legal profession.

Given the negative press that focused on the bar during the extended Watergate period, it would not be surprising to find laypersons increasingly reluctant to engage legal counsel. However, when directly asked to indicate their agreement or disagreement with the statement: I AM LESS WILLING TO SEEK A LAWYER'S ADVICE SINCE WATERGATE THAN I WAS BEFORE BECAUSE SO MANY LAWYERS WERE INVOLVED,¹³ 74 percent of the laypersons responding disagreed. Attorneys were more skeptical, as shown by the fact that only 65 percent thought the lay public would be as willing to seek legal advice since Watergate.

While this could mean that Watergate had no appreciable effect on the esteem in which Nebraska citizens hold the legal profession, it could also be evidence of the common belief that laypersons typi-

9. Since less than 1 percent of the practicing attorneys in Nebraska are women, the sample of lawyers was restricted to males. Consequently, the male pronoun is used in reference to Nebraska attorneys. Where appropriate, the pronoun form denominating lay respondents is "h/she."

10. J.P. GUILFORD, *PSYCHOMETRIC METHODS* 349 (1954).

11. Lawyers' Questionnaire [hereinafter cited as "LQ:"] numbers 31, 37, 40, 42, 44. Laymen's Questionnaire numbers [hereinafter cited as "LMQ:"] 34, 40, 43, 46, 48.

12. See text p. 63-64 *infra*.

13. LQ: 35. LMQ: 38.

cally retain counsel in a remedial rather than a preventive fashion;¹⁴ they consider seeking legal advice as a necessary evil. If this is so, then willingness to seek counsel is a function of need that laypersons believe can only be satisfied by legal expertise. They make most effective use of available legal resources when they believe they are confronted with a legal problem. Yet, as the survey shows, laypersons are relatively unable to recognize the legal implications of situations they encounter.

Support for this latter interpretation is found in a striking pattern that evolved in response to a series of questions regarding the recognition of common legal problems.¹⁵ In this sequence of questions, respondents were presented with fact situations and were asked to indicate whether and under what circumstances they would consult an attorney. In essence, the laypersons were asked: "If this happened to you, what would you do? Would you (1) not talk to a lawyer about it; (2) talk to a lawyer about it first; (3) only talk to a lawyer as a last resort?"

The dominant pattern which emerged in response to four of the seven scenarios presented was one in which laypersons indicated that they would seek legal advice only as a last resort, while lawyers advocated seeking legal advice first. The hypotheticals that precipitated this pattern of responses posed these problems for the layperson:

- h/she fell and got hurt at a neighbor's home
- h/her lawn mower exploded while h/she was trying to start it
- h/she experienced landlord-tenant problems
- h/she wanted to transfer property within h/her family.

In response to two additional situations, both laypersons and attorneys remained consistent in turning to a lawyer only as a last resort. The hypotheticals prompting that accord queried whether legal advice should be sought when an angry neighbor painted a fence to antagonize the lay respondent, and whether advice should be sought to correct an error in billing. Clearly, laypersons and lawyers agreed that legal expertise is immediately unnecessary to the solution of such disputes.

The one situation out of the seven presented that posed the most obvious legal problem concerned drawing a will. In this instance, lawyers and laypersons agreed that seeking legal advice should be the first alternative. The will situation is a stereotypical "legal" problem; hence, the laypersons' willingness to seek legal

14. See, e.g., discussion of fees, Section III A *infra*.

15. LQ: 20-26. LMQ: 23-29.

advice is not surprising. Most legal issues, however, are less conspicuously labeled.

We are led to believe thus far that laypersons spot fewer legal issues than lawyers (which comes as no surprise to anyone), and that they only seek counsel immediately when they define the problem confronting them as distinctly "legal." This raises questions regarding whether the bar should make more active efforts (or initiate efforts as the case may be) to inform the public of the values of legal advice, and if so, what efforts should be made.

CANON 2: A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.

This canon addresses the question of what efforts should be made to inform the public about the value of legal advice. Included within the rubric quoted are mandates regarding fees, selection of a lawyer, advertising of legal services, and limitation of practice. Each of these was explored in the survey.

A. Fees

One obvious reason for the admitted reluctance of laypersons to seek legal advice is economics. With the exception of the clear legal problem, advice of counsel is a luxury few laypersons feel they can afford. When asked if they thought attorneys charge too much,¹⁶ 74 percent of the lay sample responded affirmatively. Predictably, only a small percentage (15%) of the lawyers agreed with the public.

Although objecting to the cost of legal advice, the lay public, nonetheless, does recognize that a lawyer markets his time. Furthermore, they expect to pay for legal services even when they fail to benefit tangibly from counsel.¹⁷ This is indicated by the fact that 73 percent of the laypersons thought a lawyer should be paid even if he loses the case:

You pay a doctor even if you die; why not a lawyer? Charges should be according to energy expended, win or lose.

Additionally, the lay public admitted the legitimacy of a legal fee in responding to the following hypothetical: SUPPOSE YOU WENT TO A LAWYER AND, AFTER TELLING HIM ABOUT A PROBLEM YOU WERE HAVING HE EXPLAINED THAT IT WAS NOT A PROBLEM FOR WHICH YOU NEEDED LEGAL HELP AND THAT THERE WAS NOTHING HE COULD DO. WHAT

16. LQ: 14. LMQ: 17.

17. LQ: 13. LMQ: 16.

WOULD YOU EXPECT TO PAY FOR THAT ADVICE?¹⁸ Nearly 50 percent of both laypersons and attorneys agreed that whatever the lawyer thought was fair would be an appropriate fee. The second preference of both groups was, as one person stated: *No charge for no advice.*

When pressed further and asked: WHAT DO YOU THINK WOULD BE A FAIR AMOUNT TO PAY IN THAT SITUATION IF YOU HAD TALKED WITH THE LAWYER FOR 30 MINUTES?¹⁹, laypersons' responses were more varied. Eighteen percent again indicated that the appropriate fee was whatever the lawyer thought was fair, 29 percent thought \$10 would be fair, while 24 percent indicated that \$5 was appropriate. While only 11 percent of the lay public felt no fee should be charged, 20 percent of the lawyers responding to this question indicated that it would be most fair to charge no fee.

The strongest preference (31%) of attorneys was to charge "whatever is fair." Their explanatory comments indicated, however, that what is "fair" is a proportion of the standard hourly fee, an amount greater than any listed in the available alternatives. In addition, the comments indicated that a strong determinative factor of fairness was the client's ability to pay.

While the data and comments from the public demonstrate a recognition of the inevitability of legal fees, some respondents expressed disgust with the fee structure. As one individual who refused to complete the questionnaire expressed it:

If you would have included the fee a lawyer would have charged had he done this much for me, I would have taken time to answer your questions.

Implicit in this quote is a conviction that attorneys are motivated solely by economic gain. According to the data, this feeling is widely shared by Nebraska laypersons.

In a series of questions designed to explore the dimensions of advocacy, a concept that has romantic (Perry Mason) and crass (\$400 suits) connotations, the conflict presented by these stereotypes became apparent. In essence, the romantic ideal of the lawyer driven by complete commitment to a client's cause is shaken when attention is focused on the price of that commitment.

The line of conflict was drawn most sharply by responses to two nearly identical questions. The lay public was asked to agree or disagree with this statement: IF HE GETS PAID ENOUGH A LAWYER WILL REPRESENT A CLIENT EVEN THOUGH HE THINKS HIS CLIENT IS WRONG.²⁰

18. LQ: 17. LMQ: 20.

19. LQ: 18. LMQ: 21.

20. LMQ: 43.

Sixty-two percent of the public agreed with that statement. However, when asked later in the same series of questions whether MOST LAWYERS WILL REPRESENT ANY CLIENT, EVEN THOUGH THEY THINK THAT CLIENT IS WRONG,²¹ only 38 percent agreed. The obvious difference between these questions is the emphasis on the economic factor in the first formulation and its absence in the second.

Economics was again stressed when laypersons were asked to indicate their agreement with the following statement: MOST LAWYERS WILL TAKE ANY CASE OFFERED TO THEM, NO MATTER HOW THEY FEEL ABOUT THE CASE.²² Only 41 percent agreed with the statement, in contrast to the 53 percent who agreed that A LAWYER IS A HIRED GUN, WILLING TO ARGUE ANY SIDE OF ANY QUESTION AS LONG AS HE GETS PAID FOR IT.²³ The conclusion drawn from these responses is that the lay public believes that money is the dominant, if not the sole, basis upon which lawyers decide to represent clients. Laypersons seem well aware of the practical aspects of the practice of law—that it is a business and a livelihood for those holding themselves out as attorneys. That they perceive lawyers as being more willing to take cases that promise greater economic gain may reflect two naïve premises: first, they discount the professional obligation of the bar to provide representation for clients irrespective of an individual client's ability to pay; or second, they are unaware that this obligation exists.

Thus far we have noted that the lay public seeks an attorney when h/she recognizes an obvious need for legal services, and h/she recognizes that those services must be purchased. The next stage of the process is obviously the selection of a particular attorney.

B. Selection of an Attorney

When first confronted with the need for legal advice, the initial hurdle for laypersons is the selection of an attorney. Questions regarding this selection were bifurcated so as to examine the extent to which clients are inclined to retain women lawyers, and to explore the general mechanisms by which lawyers are selected.

Traditionally, the legal profession has been a male bastion. In the last decade, however, women have become increasingly present in all professional phases of the criminal justice system.²⁴ A natural question concerning this increased involvement is whether women

21. LMQ: 48.

22. LMQ: 40.

23. LMQ: 34.

24. In 1965, one woman was enrolled at the University of Nebraska College of Law. In 1975, 89 women were enrolled at the University of

will be accepted as practitioners; one indication of such acceptance is the extent that laypersons are willing to hire a female attorney. Willingness to retain women attorneys may also indicate a general willingness of laypersons to accept change beyond their experiential limits.

Overwhelming majorities of laypersons (81%) and lawyers (75%) said they would hire a female attorney to represent them.²⁵ Curiously, slightly more lawyers were willing to hire women as associates in their firms (in which capacity they would be responsible for managing the legal problems of laypersons) than were willing to entrust to women their personal legal affairs.²⁶

The underlying reason for asking these questions was to measure willingness of the lay public and the bar to accept fundamental changes in the profession. Although this was not an attempt to test the impact of the women's movement, comments received from the minority who expressed an unwillingness to employ women may reflect a general negative response to the feminist movement:

Male lawyers are better qualified.

No particular reason.

I'm too old to adjust.

Female attorneys would not understand my legal problems.

I don't think they have the psychological background to handle legal problems as well as a man.

A basic willingness to accept change in the structure of the profession (change evidenced by increased inclusion of women) may relate to acceptance of other proposed changes in the legal system. Given that possibility, we explored the means by which laypersons choose an attorney and possible changes in that process.

Laypersons were given a list of possible means by which a lawyer might be selected and were asked to indicate how they had selected an attorney (if in fact they had ever retained one) or how they would choose a lawyer (if they had never hired one in the past).²⁷ Of the eight alternatives listed, three were clearly favored: 30 percent of the lay public indicated they would go to a lawyer they knew personally; 26 percent would ask a friend or a relative to recommend an attorney; 20 percent would select a lawyer who had an outstanding reputation in the community.

Nebraska College of Law. The corresponding figures for Creighton Law School are 3 women in 1965 and 33 women in 1975.

25. LQ: 50. LMQ: 52.

26. LQ: 48.

27. LMQ: 51. It should be noted that response to this question was not significantly related to responses to any other question in the survey. Neither were responses significantly influenced when a layperson surveyed claimed any lawyer as a close friend (LQ: 9).

When asked how they thought laypersons select an attorney,²⁸ 62 percent of the lawyers thought the public most generally asked friends or relatives for recommendations, 13 percent thought laypersons chose attorneys that were personal friends, and only 7 percent thought laypersons selected lawyers on the basis of their personal reputation in the community.

The informality of this selection process, as the public describes it, is clear and its import was reiterated in response to the following question:

HOW DO YOU THINK THAT LAWYERS SHOULD ATTRACT CLIENTS?

—THEY SHOULD DO A GOOD JOB AND BUILD THEIR REPUTATION IN THE COMMUNITY.

—THEY SHOULD BE ACTIVE IN COMMUNITY AFFAIRS.

—THEY SHOULD ADVERTISE.

—LAWYERS SHOULD NOT MAKE AN ATTEMPT TO ATTRACT CLIENTS.²⁹

The clear majority of both laypersons (74%) and attorneys (82%) thought that reputation should be the decisive factor. This could be read as an indication that both groups are satisfied that this informal system is operating as it should. On its face, however, the conclusion is somewhat simplistic and in its simplicity, misleading. That is, since most laypersons view the attorney as a last resort in time of need³⁰ it is unlikely that they have had occasion or desire to consider any "ought" factor to improve the selection process.

In support of this hypothesis are the somewhat conflicting responses to questions concerning advertising, which has been widely discussed as affording a possible change in the traditional selection process.³¹ Only 12 percent of the lay public and 3 percent of the attorneys thought clients should be attracted by advertising, but these low proportions may only reflect the fact that lawyers presently do not advertise. When asked if attorneys *should* be able to advertise, more than 60 percent of the lay public responded affirmatively.³²

This marked increase most likely reflects the role of laypersons as consumers of legal expertise, interested in getting the most for their money. While some advertising practices may be misleading, advertising remains a major source of information on which consumers rely and a commercial practice with which they have consid-

28. LQ: 47.

29. LQ: 29. LMQ: 32.

30. See text p. 60-62 *supra*.

31. See, e.g., Wilson, *Madison Avenue, Meet the Bar*, 61 A.B.A.J. 586 (1975).

32. LQ: 10. LMQ: 13.

erable personal experience. Although the bar has traditionally objected to advertising on the grounds that it would commercialize the profession, this very commercialization would be favored, and even preferred, by a "consumer" public compelled to purchase the unknown product of "legal services" in times of probable stress and reluctance.

One type of "professional advertising" with which the lay public is familiar is the listing of various specialties among doctors and dentists. Such publicly acknowledged specialization among attorneys has not yet evolved and continues as a subject of persistent and heated debate within the bar. The discussion has been somewhat polemical, with opponents generally ignoring that de facto specialization does exist.³³ The results of the present survey show that both laypersons (84%) and attorneys (73%) strongly support specialty listings;³⁴ probably both view it as benefitting their own interests.³⁵ For the lay public it could be helpful in insuring a more informed situation in which to select an attorney; for the attorney who specializes, it could serve as a screening device for clients. As one attorney expressed it:

I'm not so sure listing the speciality in the phone book helps the consumer element as much . . . as it does filtering those clients or consumers he [the attorney] refuses to take. I think he's doing it not to list his specialty but telling those consumers who don't need it, not to call him.

It should be noted that specialty listing is only helpful to those laypersons able to identify and classify accurately their legal problems, helpful in the obvious case of a will or tax problem, but of more doubtful aid in a tort action.

CANON 8: *A lawyer should assist in improving the legal system.*

To carry out the directive of this canon, EC 2-1 specifies that

33. See, e.g., Committee on Specialization [State Bar of California], *Preliminary Report on Certification of Specialists*, 44 J. ST. B. CAL. 140 (1969); Committee on Specialization [State Bar of California], *Final Report on Certification of Specialists*, 44 J. ST. B. CAL. 493 (1969). These reports show that two-thirds of all lawyers in California specialize, and in firms of more than ten members, four out of five specialize.

34. LQ: 11. LMQ: 14.

35. The benefits realized may be costly to the consumer; however, both groups thought that specialists would charge higher fees than lawyers engaged in general practice. See LQ: 12; LMQ 15. That the increased overhead would be passed on to the client was clearly recognized by one respondent who commented: "There are too many expenses now—why add one you really don't need?"

members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services.

A. Education

The survey presented two possible formats to fulfill these goals. The lay public was asked: IF A FREE COURSE WERE OFFERED IN YOUR COMMUNITY DESIGNED TO EXPLAIN COMMON LEGAL PROBLEMS, DO YOU THINK YOU WOULD ATTEND?³⁶ Fifty-six percent indicated that they thought they would attend. Those who said they did not think they would attend such a course were asked:

IF YOU ANSWERED "NO" TO QUESTION NUMBER 10, WHY DO YOU THINK YOU WOULD NOT ATTEND?

—I DO NOT HAVE THE TIME.

—I AM NOT INTERESTED.

—I DO NOT HAVE THE LEGAL PROBLEMS SO I DO NOT NEED THAT KIND OF COURSE.

—OTHER, PLEASE EXPLAIN.³⁷

Thirty-nine percent of those responding indicated the "no time" option, and explained this predominantly by *I don't think I'd want to spend my leisure time this way*. Twenty-four percent responded that they had no interest in a course of this nature.

While the choices presented were not mutually exclusive, the 21 percent indicating that they would have no need for such a course because they had no legal problems may be a deflated figure. Interest and willingness to invest time in an activity of this nature might be a function of perceived need. Considered in light of the discussion of non-recognition of legal problems,³⁸ we may be faced with a threshold problem of a public that does not know enough to know what they need to know, or as one lawyer stated it:

People are problem-oriented. Those who would go to such a course would also go to a lawyer for advice; in other words, those who need it, wouldn't go.

The parallel question on the attorneys' survey asked if they thought there was a need for such a course in their communities.³⁹ Sixty-one percent acknowledged that there was such a need. Those who did not believe the need existed were asked why they thought it unnecessary.⁴⁰ In response, 53 percent thought the course would be too general, 19 percent worried about appearing to "drum up"

36. LMQ: 25.

37. LMQ: 26.

38. See text p. 61-62 *supra*.

39. LQ: 7.

40. LQ: 9.

business, while 14 percent thought the public would show no interest.⁴¹

I doubt that the bar could do any good suggesting when people have a cause of action. Suggesting when they should see a lawyer would be like soliciting business. People would think that the lawyer was trying to promote business for himself and not to help the public.

Fourteen percent of those who saw no need for educating the public in this manner found the alternative responses provided to be inadequate and marked "other." Some included their own reasons: *Legal Aid does enough harm already.* More typical, however, was a comment stressing the importance of educating the public to use the law in a preventive fashion:

The bar should be doing more to inform the public about what legal services are available, the need for people to obtain legal services before they get in trouble instead of waiting until afterwards.

In contrast to those who indicated that a course of this nature would be seen as a method for lawyers to drum up business, one attorney offered a rather unique perspective:

I think there is a need for public education as to what the limitations of the legal system are. A particular example would be in the area of divorce settlements or family dissolutions. Someone involved in that expects the attorney to make everything right in their marriage, everything that's been wrong for however many years it took them to become disenchanted. Dissolution is to dissolve the legal bond and assess responsibility. I hope we don't educate the public necessarily to what his first reaction should be if his lawn mower explodes because in the normal course of things he'll find that out. I'd be more interested in the bar reaffirming that we exist because of people-problems and people-rights as opposed to the role of consumer opposed to manufacturer.

In structuring these questions on legal education, the authors may have fallen into the trap of equating the concept of legal education with identification of legal issues. This hindsight was sparked by the remark quoted above and was made more apparent by the responses to the entire survey which revealed a dearth of lay information about both legal "facts" and the operation of the legal system. One gets the impression from these data that in the lay mind "the law" and lawyers operate in a sphere divorced from

41. Interestingly enough, both laypersons and lawyers preferred that such a course, if offered, be taught by a practicing attorney rather than by a judge or law professor. Informed laymen as instructors in such a course failed to receive an encouraging vote of confidence. They were preferred, however, to law students—a result of peculiar and distressing interest to the authors.

lay influence. The survey revealed that such a separation leads to confusion among laypersons; this confusion was most apparent with respect to discipline of attorneys.

B. Lawyer Discipline

Canon 8's directive to work for improvement of the legal system is concerned not only with education. Inevitably it must involve the task of holding lawyers accountable for misconduct. This has both in-house (censure, suspension, disbarment) and public (malpractice) aspects. Perceptions of the extent to which attorneys are held to be accountable revealed the greatest divergence of opinion between responding attorneys and laypersons.

When asked whether lawyers seem to do a good job keeping each other honest,⁴² only 24 percent of the lay public agreed, sharply contrasted to 71 percent of the lawyers.

While nearly half (47%) of the lay respondents thought that discipline within the bar was inadequate, a significant portion (26%) failed to respond to the question. It is this latter group's "response" to a question merely calling for an opinion that deserves special consideration. Absent non-response of this magnitude, the results would clearly indicate a vote of no confidence, or a stereotypical answer consistent with the image of "the bar protecting its own."

Considering the data as a whole, there are two plausible explanations to account for the large number of laypersons who failed to respond. First, the non-response could reflect the respondents' inability to reconcile their personal experience with lawyers who did not appear to require discipline with the publicity given to the attorneys involved in Watergate and the relatively light discipline seen there. At the local level, the laypersons may have had no personal experience with lawyers failing to keep one another honest, even though the national scenario surrounding Watergate conflicts with this. Second, since in-house disciplinary proceedings are rarely played out in the public arena,⁴³ the non-response may reflect a lack of knowledge of disciplinary action. Perpetuation of this sort

42. LQ: 38. LMQ: 41.

43. The secrecy of these proceedings is so complete that an exhaustive survey of discipline within the profession could only obtain information on proceedings in three states. See Marks & Cathcart, *Discipline Within the Legal Profession: Is It Self-Regulation?*, 1974 UNIV. ILL. L. F. 193, in RESEARCH CONTRIBUTIONS OF THE ABA, No. 6 (1974), a survey funded by the American Bar Foundation. It showed that in Wisconsin, California and New York less than 2 percent of all complaints resulted in any public disciplinary sanction. Marks & Cathcart, at 215.

of public ignorance was encouraged by the ABA's Special Committee on Evaluation of Disciplinary Enforcement,⁴⁴ insofar as that body recommended keeping all disciplinary charges against attorneys in complete confidence pending proof of the allegations. This recommendation was founded on the fear that public knowledge of any such allegations, even though later proven false, might cause irreparable harm to the lawyer in that it might diminish his practice and jeopardize his future influence with the bench and other members of the bar. Certainly, these possibilities exist. Diminution of one's practice and weakening of one's influence are substantial prices to be paid for proving an allegation false. On the other hand, if it is true that the public is suspicious because they receive no word on discipline of the bar, some disclosure must be made. The committee suggestion that the bar meet its burden of disclosure by widely publicizing the full scope of all disciplinary activities that have resulted in informal admonitions, censure, and suspension, as well as in disbarment,⁴⁵ may meet this need.

Such procedure has not been proposed in Nebraska nor does its adoption seem likely at this time, although the Nebraska Bar is moving somewhat in that direction. This is evidenced by the revised rules of discipline adopted by the Nebraska Supreme Court in June, 1975, which *inter alia* provide for appointment of two laypersons who shall serve on the board which is responsible for making final recommendations to the court regarding discipline of attorneys.⁴⁶

Within the context of the privacy of Nebraska disciplinary procedures, we find a relatively large proportion of laypersons unwilling to commit themselves regarding adequacy of discipline, nearly half of whom believe we are not doing a good job of keeping each other honest. If these data elicit a vague sense of "paranoia on the plains," that unease may not be unfounded; the implicit doubts raised by laypersons regarding the quality of self-regulation in the bar were echoed by lawyers when 65 percent of the attorneys surveyed agreed that MOST LAWYERS WOULD NOT ACCEPT A MALPRACTICE SUIT AGAINST AN ATTORNEY PRACTICING IN THEIR COMMUNITY.⁴⁷ Not a single respondent qualified his answer. Furthermore, every attorney interviewed admitted, often with instructive comments, the

44. ABA SPECIAL COMM. ON EVALUATION OF DISCIPLINARY ENFORCEMENT, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 138-42 (1970).

45. *Id.* at 143-46.

46. Rule 5, Article III, Revised Rules of the Supreme Court of the State of Nebraska (July 2, 1975).

47. LQ: 36.

reluctance to bring a malpractice suit against another local attorney.

I probably wouldn't take a malpractice suit—unless the guy did something really bad.

Undoubtedly, part of the reluctance to bring a malpractice action stems from the recognition that even an unsuccessful malpractice suit could seriously damage the reputation of the lawyer-defendant. A paternity or libel suit could be equally as damaging, however, and one wonders if attorneys would apply as strict a standard in accepting a case involving an attorney in these circumstances.⁴⁸

Comments by attorneys which would most likely alarm the public were those revealing that practical considerations (i.e., economics) constitute the most compelling reasons for their reluctance to take local malpractice suits. For example, a lawyer from City "A" said:⁴⁹

If a lawyer lived in [City "B" or "C"] we'd probably handle the case. If it was another lawyer in [City "A"], that you had to do business with every month or so, you'd hesitate to bring suit unless it was very flagrant.

This comment and others in the same vein exposed what the authors entitle (somewhat reluctantly) "The Sixty Mile Rule." Stated in its simplest form the "rule" is:

If you want to sue an attorney within a sixty mile radius of your home, you'd better have an air-tight case. Beyond the sixty mile radius, your chances of letting the trier-of-fact determine the merits are greater.

The layperson must first convince h/her own lawyer that it is safe for h/her (the lawyer) to bring this plaintiff's suit. In light of the data produced by the survey, this may prove to be the most difficult burden of persuasion the client will encounter. The difficulty is increased by unawareness on the part of the layperson that the attorney h/she seeks to have represent h/her may fashion conduct of the case on bases unrelated to its merits (i.e., reflecting the lawyer's reluctance, discussed above, to initiate action against a local colleague).

That the public is generally unaware of this hurdle is reflected

48. The Ethical Consideration states:

The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his rejection of tendered employment.

ABA CODE, *supra* note 5, CANON No. 8, E.C. 2-28.

49. This quotation has been edited to delete names of specific cities in order to preserve the anonymity of the respondent.

by the fact that 56 percent disagreed with this statement: IT WOULD BE ALMOST IMPOSSIBLE TO SUE A LAWYER BECAUSE NO OTHER LAWYER WOULD TAKE A CASE AGAINST ANOTHER ATTORNEY.⁵⁰ It must be noted that the question was not confined to malpractice actions, nor did it refer specifically to "local" attorneys. Given the response from attorneys to the malpractice question, failure to limit the corresponding question on the lay survey to malpractice suits was unfortunate since it hindered direct comparison. Laypersons probably understood the question in terms of malpractice, but that supposition cannot be substantiated. Failure to refer to "local" attorneys can be considered harmless error since most laypersons seek legal advice within the bounds of their local communities.

In sum, the results of the survey indicate that the directives of the Code of Professional Responsibility mandating self-discipline do not appear to enjoy stringent adherence. Close reading of the Code indicates that professional conduct of lawyers is to be measured by a standard of reasonable care,⁵¹ but the plaintiff has a heavy burden in that h/her attorney may not find negligence sufficient to bring suit, a double standard of which the layperson may be unaware.

The existence of this double standard has not gone unnoticed by all however.⁵² It was documented in the Clark Committee Report:

After three years of studying lawyer discipline throughout the country, this Committee must report the existence of a scandalous

50. LMQ: 39.

51. The argument supporting this duty proceeds: (1) Violations of disciplinary rules are defined as misconduct under DR 1-102; (2) DR 6-101 provides that lawyers shall not take cases in areas in which they are not competent, or handle a matter for which they have not adequately prepared in advance; (3) DR 1-103 provides that lawyers (and judges are lawyers, too) shall report violations of DR 1-102 and, therefore, shall report violations of DR 6-101 as well. Marks & Cathcart, *supra* note 43, at 200-03.

52. A "profession" is distinguished from other occupations, even other licensed occupations, by the following characteristics: (1) a skill acquired through higher education and specialized training as a prerequisite to entry; (2) monopoly rights over the performance of certain functions; (3) control of admission; and (4) assertion of formal and informal authority of the professional community over at least minimum standards of professional conduct and perhaps performance. The legal profession fits this model reasonably well, although it has failed, for the most part, to exercise authority over the ways that its members perform their services and conduct themselves.

J. Ben-David, *Professions and Professionalization* 1 (1970) (unpublished monograph at the University of Chicago Department of Sociology).

situation that requires the immediate attention of the profession. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility.⁵³

That conclusion stemmed from an exhaustive study of inter-bar discipline which revealed attorneys' failure to hold one another accountable; that failure was also noted with respect to public discipline, i.e., malpractice.

IV. CONCLUSION

A review of the data presented here shows Nebraska attorneys are generally held in good stead in the eyes of the public. This conclusion emerges in spite of laypersons' willingness to characterize members of the profession as "legal guns for hire" and in spite of their doubt regarding the extent to which attorneys adequately police themselves. It seems contradictory to say on the one hand "The bar is operating well", and on the other "But it fails to the extent it is so predominately motivated by the market economy, and discipline is lacking." Such contradiction may not be a source of conflict for most laypersons, if their point of reference is a local one, or if they are unaware that proper enforcement of the Code of Professional Responsibility has a direct bearing on the quality of legal services they receive. That a local (as opposed to cosmopolitan) referent was a predominant factor in the laypersons' responses is apparent from their evaluation of the Nebraska Bar divorced from Watergate. While we cannot safely assume that the national fiasco had no impact on these results, its influence appeared surprisingly indirect⁵⁴ and minimal: *As soon as you forget about Watergate, the better off you will be.* Ironically, that local orientation operates to shield the bar (and may, to the same extent, operate to injure the public) in that lack of local pressure for accountability creates a situation in which local attorneys can eschew responsibility for misconduct of their fellows. This was recognized by one attorney who dismissed the effect of Watergate on a relatively small Nebraska community as follows:

Sure, I take a lot of ribbing about Watergate. But when we get right down to it, they always admit that we've got damned good lawyers in [City "X"].

53. ABA SPECIAL COMMITTEE ON EVALUATION OF DISCIPLINARY ENFORCEMENT, *supra* note 44, at 1.

54. According to the ISR Newsletter, Summer, 1975, at 4, recent and ongoing studies conducted by the Institute for Social Research at the University of Michigan have shown consistent indirect (but no direct) effects of Watergate on the public regard for political institutions.

Such admissions, comforting as they may be, beg the question of the adequacy of self-regulation. If, in fact, the public is unaware of the standards to which lawyers are to be held, they cannot be expected to demand performance that matches these standards. Under these circumstances, the bar has a two-fold responsibility: reporting violations of its standards, including negligent performance, and informing the public of the applicable standards so as to enable them to demand competent and equitable legal services.

Mechanisms presently exist for the enforcement of these ethical standards; however, as the survey revealed, the ability of the public to utilize the malpractice procedure is limited in Nebraska. Failure of attorneys to measure up to an admittedly ill-defined standard of care is most likely to be dealt with through in-house disciplinary procedures of the Nebraska Bar. Such procedures remain clothed in secrecy, and if experience of other states can be taken as any indication,⁵⁵ they rarely result in any official action against attorneys. While this low level of probable sanction may well reflect a superior bar, one wonders why such good news is not widely shared with the public.

The bar can only rely on public assessment of its performance to the extent the public is informed of the standards that are to be met; uninformed praise is content-free. Likewise, uninformed criticism of our self-regulation process is damaging if it results in undeserved bad press for a bar that is regulating itself as required. Indeed, if we are effectively policing our fellow professionals, only adequate public disclosure of that function will convince the public.

Susan Jacobs '76
June Wagoner '76

55. See note 43 and accompanying text *supra*.

Appendix A

LAWYERS' QUESTIONNAIRE
PUBLIC CONFIDENCE IN THE BAR

1. In what year were you born?
Median Age 52 years
2. What is your household income?
 1. 0.0 Below \$5,000 per year
 2. 0.9 \$5,000 to \$10,000 per year
 3. 11.1 \$10,000 to \$15,000 per year
 4. 18.5 \$15,000 to \$20,000 per year
 5. 67.6 Above \$20,000 per year
 - (1.9 No Answer)
3. In what size city do you live?
 1. 10.2 Less than 2,000 population
 2. 5.6 2,000 to 5,000 population
 3. 6.5 5,000 to 10,000 population
 4. 9.3 10,000 to 20,000 population
 5. 7.4 20,000 to 75,000 population
 6. 20.4 75,000 to 200,000 population
 7. 40.7 Over 200,000 population
 - (0.0 No Answer)
4. In what year did you graduate from law school?
Median 1950
(13.0 No Answer)
5. In what type of practice are you presently engaged?
 1. 63.9 Private
 2. 14.8 Public/government
 3. 16.7 Business/corporate
 4. 4.6 Other
 - (0.0 No Answer)
6. How many years have you practiced in Nebraska?
 1. 25.9 1-3
 2. 13.9 4-7
 3. 13.0 8-12
 4. 13.9 13-20
 5. 33.3 More than 20
 - (0.0 No Answer)
7. Do you think there is a need for a free course to be offered in your community to explain common legal problems to laymen?
 1. 61.6 Yes
 2. 38.0 No
 - (0.9 No Answer)
8. If you answered Yes to number 7, do you think that such a course should be taught by
 1. 8.3 A Judge
 2. 36.1 A practicing attorney
 3. 6.5 A professor from a law school
 4. 0.0 A law student
 5. 1.9 An informed layman

6. 7.4 No preference
(39.8 No Answer, 37.0% of whom answered "no" to #7.)
9. If you answered No to question number 7, why do you think such a course is unnecessary?
 1. 4.6 Laymen would not be interested.
 2. 6.5 It would look as if lawyers were trying to drum up business.
 3. 17.6 Every legal problem has different factors, and glossing over legal issues in a general manner would serve no useful purpose.
 4. 4.6 Other, please specify.
(66.6 No Answer, 62% of whom answered "yes" to #7.)
10. Do you think that lawyers should be able to advertise?
 1. 17.6 Yes
 2. 82.4 No
(0.0 No Answer)
11. If a lawyer wants to limit his practice to one area of law, do you think he should indicate that in the telephone book?
 1. 73.1 Yes
 2. 25.9 No
(0.9 No Answer)
12. Do you think lawyers who specialize charge a higher fee than those in general practice?
 1. 73.1 Yes
 2. 22.2 No
(4.6 No Answer)
13. Do you think a lawyer should be paid even if he loses his client's case?
 1. 93.5 Yes
 2. 1.9 No
(4.6 No Answer)
14. Do you think that lawyers charge too much for their services?
 1. 14.8 Yes
 2. 79.6 No
(5.6 No Answer)
15. Do you think people should be able to purchase insurance to defray legal expenses in the same way they use medical insurance?
 1. 78.7 Yes
 2. 17.6 No
(3.7 No Answer)
16. If legal insurance was available, do you think you would purchase it?
 1. 26.9 Yes
 2. 68.5 No
(4.6 No Answer)
17. Suppose a layman who had not previously been a client of yours came to you and explained a problem he was having. After listening to him, you determined his dilemma did not pose a legal problem and there was nothing you could do for him. What would you charge for that advice?
 1. 40.7 Nothing
 2. 50.9 Whatever you thought fair under the circumstances

3. 8.3 Other, please explain
(0.0 No Answer)
 18. What do you think would be a fair amount to charge in that situation if the layman had talked with you for 30 minutes?
 1. 20.4 Nothing
 2. 2.8 \$5.00
 3. 19.4 \$10.00
 4. 19.4 \$15.00
 5. 30.6 Whatever you thought was fair under the circumstances
 6. 6.5 Other
(0.9 No Answer)
 19. Do you think we should provide a legal center for laymen that they could call and that would only charge a small fee to tell them whether or not they need further legal advice?
 1. 50.9 Yes
 2. 47.2 No
(1.9 No Answer)
- PEOPLE HAVE DIFFERENT OPINIONS ABOUT WHEN THEY SHOULD SEEK LEGAL ADVICE. PLEASE READ EACH OF THE FOLLOWING AND TELL US IF YOU THINK A LAYMAN SHOULD SEEK LEGAL ADVICE IF:
20. He fell and hurt himself while he was at someone else's home.
 1. 19.4 He probably does not need to talk to an attorney
 2. 46.3 He probably should consult a lawyer first
 3. 32.4 He should talk to a lawyer after taking other non-legal action
(1.9 No Answer)
 21. His neighbor continually insulted him and finally painted his fence that adjoins his property an ugly color to make him mad.
 1. 18.5 He probably does not need to talk to an attorney
 2. 37.0 He probably should consult a lawyer first
 3. 42.6 He should talk to a lawyer after taking other non-legal action
(1.9 No Answer)
 22. His lawn mower exploded while he was starting it.
 1. 3.7 He probably does not need to talk to an attorney
 2. 75.9 He probably should consult a lawyer first
 3. 19.4 He should talk to a lawyer after taking other non-legal action
(0.9 No Answer)
 23. His lease stipulates that the landlord will make repairs; his roof leaks and he has complained three times but the landlord has not done anything about it.
 1. 1.9 He probably does not need to talk to an attorney
 2. 73.1 He probably should consult a lawyer first
 3. 25.0 He should talk to a lawyer after taking other non-legal action
(0.0 No Answer)
 24. He is 60 years old and does not have a will; his only living relative is a daughter who resides with him.
 1. 10.2 He probably does not need to talk to an attorney
 2. 87.0 He probably should consult a lawyer first
 3. 1.9 He should talk to a lawyer after taking other non-legal action
(0.9 No Answer)

25. He received a bill for merchandise that he did not purchase; he did not pay the bill but sent a letter explaining that the company had made an error; the company has sent him a nasty letter.
1. 22.2 He probably does not need to talk to an attorney
 2. 29.6 He probably should consult a lawyer first
 3. 47.2 He should talk to a lawyer after taking other non-legal action
(0.9 No Answer)
26. He wants to save his nephew some money so he sells him his brand new car for \$200.00.
1. 30.6 He probably does not need to talk to an attorney
 2. 63.9 He probably should consult a lawyer first
 3. 4.6 He should talk to a lawyer after taking other non-legal action
(0.9 No Answer)
27. Should he always seek legal advice before he decides to build a new house?
1. 78.7 Yes
 2. 20.4 No
(0.9 No Answer)
28. Should he always seek legal advice before he buys a house?
1. 86.1 Yes
 2. 12.0 No
(1.9 No Answer)
29. How do you think that lawyers should attract clients?
1. 81.5 They should do a good job and build their reputation in the community.
 2. 12.0 They should be active in community affairs.
 3. 2.8 They should advertise.
 4. 1.9 Lawyers should not make an attempt to attract clients.
(1.9 No Answer)
- THERE HAVE BEEN A LOT OF NEWSPAPER AND MAGAZINE STORIES LATELY ABOUT LAWYERS AND THE LAW, AND PEOPLE HAVE VOICED MANY DIFFERENT OPINIONS ABOUT THEM. WOULD YOU PLEASE READ EACH OF THE FOLLOWING AND TELL US WHETHER YOU AGREE OR DISAGREE WITH THE OPINIONS EXPRESSED.
30. It is just as important to have a family lawyer as a family doctor or dentist.
1. 44.4 I strongly agree
 2. 46.3 I agree
 3. 7.4 I disagree
 4. 0.0 I strongly disagree
 5. 0.9 I have no opinion
(0.9 No Answer)
31. A lawyer is a hired gun, willing to argue any side of any question as long as he gets paid for it.
1. 4.6 I strongly agree
 2. 20.4 I agree
 3. 51.9 I disagree
 4. 22.2 I strongly disagree
 5. 0.9 I have no opinion
(0.0 No Answer)

32. For the typical kinds of legal problems (like automobile accidents, for example) one lawyer is as good as another.
1. 1.9 I strongly agree
 2. 3.7 I agree
 3. 49.1 I disagree
 4. 45.4 I strongly disagree
 5. 0.0 I have no opinion
(0.0 No Answer)
33. When people are not sure whether or not they have a legal problem, they generally do not seek legal advice because it would be a waste of time and money.
1. 7.4 I strongly agree
 2. 48.1 I agree
 3. 26.9 I disagree
 4. 8.3 I strongly disagree
 5. 8.3 I have no opinion
(0.9 No Answer)
34. People believe that since a lawyer receives a fee for handling a law suit, he should go to court and earn his money at trial instead of settling the case out of court.
1. 2.8 I strongly agree
 2. 13.9 I agree
 3. 57.4 I disagree
 4. 20.4 I strongly disagree
 5. 5.6 I have no opinion
(0.0 No Answer)
35. People are less willing to seek a lawyer's advice since Watergate than before because so many lawyers were involved.
1. 2.8 I strongly agree
 2. 14.8 I agree
 3. 54.6 I disagree
 4. 10.2 I strongly disagree
 5. 17.6 I have no opinion
(0.0 No Answer)
36. Most lawyers would not accept a malpractice suit against an attorney practicing in their community.
1. 6.5 I strongly agree
 2. 58.3 I agree
 3. 25.9 I disagree
 4. 4.6 I strongly disagree
 5. 2.8 I have no opinion
(1.9 No Answer)
37. Most lawyers will take any case offered to them, no matter how they feel about the case.
1. 3.7 I strongly agree
 2. 10.2 I agree
 3. 63.0 I disagree
 4. 22.2 I strongly disagree
 5. 0.9 I have no opinion
(0.0 No Answer)
38. Lawyers seem to do a good job of keeping each other honest.
1. 12.0 I strongly agree

2. 59.3 I agree
 3. 20.4 I disagree
 4. 3.7 I strongly disagree
 5. 4.6 I have no opinion
(0.0 No Answer)
39. A judge's political ambitions often influence his decisions.
1. 3.7 I strongly agree
 2. 14.8 I agree
 3. 53.7 I disagree
 4. 17.6 I strongly disagree
 5. 9.3 I have no opinion
(0.9 No Answer)
40. People think that if he gets paid enough, a lawyer will represent a client even though he thinks his client is wrong.
1. 8.3 I strongly agree
 2. 63.9 I agree
 3. 22.2 I disagree
 4. 1.9 I strongly disagree
 5. 2.8 I have no opinion
(0.9 No Answer)
41. Lawyers do not tell other people about their client's legal problems.
1. 25.0 I strongly agree
 2. 63.0 I agree
 3. 8.3 I disagree
 4. 1.9 I strongly disagree
 5. 0.9 I have no opinion
(0.9 No Answer)
42. If everyone deserves his day in court, then lawyers should be willing to accept cases they do not agree with.
1. 15.7 I strongly agree
 2. 38.0 I agree
 3. 34.3 I disagree
 4. 7.4 I strongly disagree
 5. 2.8 I have no opinion
(1.9 No Answer)
43. A good lawyer will not bother his client with decisions that have to be made but will make all of the major decisions himself, in the best interests of his client.
1. 3.3 I strongly agree
 2. 4.6 I agree
 3. 54.6 I disagree
 4. 37.0 I strongly disagree
 5. 0.0 I have no opinion
(0.0 No Answer)
44. Most lawyers will represent any client, even though they think the client is wrong.
1. 2.8 I strongly agree
 2. 22.2 I agree
 3. 61.1 I disagree
 4. 11.1 I strongly disagree
 5. 1.9 I have no opinion
(0.9 No Answer)

45. Lawyers pay more attention to the problems of wealthy and influential people than they do to others.
1. 6.5 I strongly agree
 2. 47.2 I agree
 3. 34.3 I disagree
 4. 7.4 I strongly disagree
 5. 4.6 I have no opinion
(0.0 No Answer)
46. Even though many lawyers were involved in Watergate, I think most lawyers are honest.
1. 53.7 I strongly agree
 2. 43.5 I agree
 3. 1.9 I disagree
 4. 0.0 I strongly disagree
 5. 0.9 I have no opinion
(0.0 No Answer)
47. How do you think most laymen go about selecting an attorney?
1. 1.9 Choose one from the telephone book
 2. 62.0 Ask friends, relatives who to go to
 3. 7.4 Choose a lawyer who has an outstanding reputation in the community
 4. 0.0 Call a Legal Referral Service and ask them to recommend a lawyer
 5. 0.0 Ask a lawyer you know personally to recommend someone
 6. 13.9 Go to a lawyer you know personally
 7. 0.0 Consult several lawyers, then select one
 8. 0.9 Ask employer to recommend a lawyer
(13.9 No Answer)
48. Would you hire a female attorney as an associate or partner?
1. 84.3 Yes
 2. 14.8 No
(0.9 No Answer)
49. If you answered "No" to question number 48, what is the reason for your response?
1. 3.7 No female attorneys interested in working in my area
 2. 4.6 Laymen will not accept female attorneys yet
 3. 0.0 The bench has not fully accepted female attorneys yet
 4. 4.6 Other, please explain
(87.1 No Answer, 84.3% of whom answered "yes" to #48.)
50. Would you personally employ a female attorney to handle your own legal problems?
1. 75.0 Yes
 2. 23.1 No
(1.9 No Answer)
51. If you answered "No" to question number 50, what is the reason for your response?
1. 8.3 No female attorneys in my area
 2. 3.7 The bench has not fully accepted female attorneys yet
 3. 7.4 Other, please explain
(80.6 No Answer, 78.7% of whom answered "yes" to #50.)

Appendix B

LAYMEN QUESTIONNAIRE
PUBLIC CONFIDENCE IN THE BAR

1. How many grades of school have you completed?
 1. 8.2 1-8 grades
 2. 9.3 9-12 grades
 3. 26.4 High school diploma
 4. 31.3 Some college or trade school
 5. 14.3 College Diploma
 6. 8.2 Post-graduate work
(2.2 No Answer)
2. What is your occupation?
3. Are you
 1. 77.5 Male
 2. 22.5 Female
4. In what year were you born? ——
Median Age of those responding was 55 years
5. What is your household income?
 1. 9.9 Below \$5,000 per year
 2. 18.7 \$5,000 to \$10,000 per year
 3. 30.2 \$10,000 to \$15,000 per year
 4. 17.6 \$15,000 to \$20,000 per year
 5. 21.4 Above \$20,000 per year
(2.2 No Answer)
6. In what size city do you live?
 1. 23.6 Less than 2,000 population
 2. 4.4 2,000 to 5,000 population
 3. 11.5 5,000 to 10,000 population
 4. 4.9 10,000 to 20,000 population
 5. 8.2 20,000 to 75,000 population
 6. 15.9 75,000 to 200,000 population
 7. 29.1 Over 200,000 population
(2.2 No Answer)
7. Have you ever served on a jury?
 1. 15.4 Yes
 2. 84.6 No
(0.0 No Answer)
8. Have you consulted an attorney about any legal matter in the last three years?
 1. 61.0 Yes
 2. 39.0 No
(0.0 No Answer)
9. Are any of your close friends attorneys?
 1. 36.8 Yes
 2. 63.2 No
(0.0 No Answer)
10. If a free course were offered in your community designed to explain common legal problems, do you think you would attend?

1. 56.0 Yes
 2. 42.9 No
(1.1 No Answer)
11. If you answered "Yes" to question number 10, would you prefer that this course be taught by:
1. 4.4 A judge
 2. 22.2 A practicing attorney
 3. 11.0 A professor from a law school
 4. 2.2 A law student
 5. 2.7 An informed layman
 6. 13.7 No preference
(44.0 No answer, 39.6% of whom answered "no" to #10.)
12. If you answered "No" to question number 10, why do you think you would not attend?
1. 15.9 I do not have the time
 2. 9.9 I am not interested
 3. 8.8 I do not have the legal problems so I do not need that kind course
 4. 7.1 Other, please explain
(58.2 No Answer, 53.3% of whom answered "yes" to #10.)
- LIKE DOCTORS AND DENTISTS, LAWYERS ARE NOT ALLOWED TO ADVERTISE OR TO PUBLICIZE THE AREAS OF LAW IN WHICH THEY SPECIALIZE. SOME LAWYERS, HOWEVER, THINK THIS RULE SHOULD BE CHANGED AND THAT THEY SHOULD BE ABLE TO ADVERTISE
13. Do you think that lawyers should be able to advertise?
1. 63.2 Yes
 2. 34.6 No
(2.2 No Answer)
14. If a lawyer wants to limit his practice to one area of law (for example, family law in which he would primarily handle divorce and child custody cases) do you think he should indicate that in the telephone book?
1. 83.5 Yes
 2. 14.3 No
(2.2 No Answer)
15. Do you think that a lawyer who specializes would charge a higher fee than one who was in general practice?
1. 57.1 Yes
 2. 41.2 No
(1.6 No Answer)
16. Do you think a lawyer should be paid even if he loses his client's case?
1. 72.5 Yes
 2. 22.0 No
(5.5 No Answer)
17. Do you think that lawyers charge too much for their services?
1. 73.6 Yes
 2. 16.5 No
(9.9 No Answer)

18. Do you think people should be able to purchase insurance to defray legal expenses in the same way we have medical insurance to defray hospital and doctor bills?
1. 48.9 Yes
 2. 48.9 No
 - (2.2 No Answer)
19. If legal insurance was available, do you think you would purchase it?
1. 33.0 Yes
 2. 61.0 No
 - (6.0 No Answer)
20. Suppose you went to a lawyer and, after telling him about a problem you were having, he explained that it was not a problem for which you needed legal help and that there was nothing he could do. What would you expect to pay for that advice?
1. 32.4 Nothing
 2. 46.7 Whatever the lawyer thought was fair
 3. 19.2 Other, please explain
 - (1.6 No Answer)
21. What do you think would be a fair amount to pay in that situation if you had talked with the lawyer for 30 minutes?
1. 11.0 Nothing
 2. 24.2 \$5.00
 3. 29.1 \$10.00
 4. 9.9 \$15.00
 5. 18.1 Whatever the lawyer thought was fair
 6. 5.5 Other, please explain
 - (2.2 No Answer)
22. Would you use a legal center that you could call and that would only charge a small fee to tell you whether or not you needed further legal advice?
1. 76.9 Yes
 2. 20.3 No
 - (2.7 No Answer)
23. You fell and hurt yourself while you were at someone else's home.
1. 40.1 I probably would not talk to a lawyer about it
 2. 6.6 I probably would talk to a lawyer about it first
 3. 53.3 I probably would only talk to a lawyer about it as a last resort
 - (0.0 No Answer)
24. Your neighbor continually insulted you and finally painted his fence that adjoins your property an ugly color just to make you mad.
1. 41.2 I probably would not talk to a lawyer about it
 2. 11.0 I probably would talk to a lawyer about it first
 3. 46.2 I probably would only talk to a lawyer about it as a last resort
 - (1.6 No Answer)
25. Your lawn mower exploded while you were starting it
1. 36.8 I probably would not talk to a lawyer about it
 2. 14.8 I probably would talk to a lawyer about it first
 3. 47.8 I probably would only talk to a lawyer about it as a last resort

(0.5 No Answer)

26. Your lease states that the landlord will make repairs; your roof leaks and you have complained three times but he has not done anything about it.

1. 16.5 I probably would not talk to a lawyer about it
2. 27.5 I probably would talk to a lawyer about it first
3. 54.9 I probably would only talk to a lawyer about it as a last resort

(1.1 No Answer)

27. You are 60 years old and do not have a will, but your only relative is your daughter who lives with you.

1. 14.8 I probably would not talk to a lawyer about it
2. 76.4 I probably would talk to a lawyer about it first
3. 6.0 I probably would only talk to a lawyer about it as a last resort

(2.7 No Answer)

28. You received a bill for merchandise that you did not purchase; you did not pay the bill but sent a letter explaining that the company had made an error; the company sent you a nasty letter.

1. 24.2 I probably would not talk to a lawyer about it
2. 18.1 I probably would talk to a lawyer about it first
3. 56.6 I probably would only talk to a lawyer about it as a last resort

(1.1 No Answer)

29. You want to save your nephew some money so you sell your brand new car to him for \$200.00

1. 68.7 I probably would not talk to a lawyer about it
2. 18.7 I probably would talk to a lawyer about it first
3. 9.9 I probably would only talk to a lawyer about it as a last resort

(2.7 No Answer)

30. Would you seek legal advice before you began to *build* a new home?

1. 55.5 Yes
2. 42.3 No

(2.2 No Answer)

31. Would you seek legal advice before you *buy* a house?

1. 61.5 Yes
2. 35.2 No

(3.3 No Answer)

32. How do you think lawyers should attract clients?

1. 73.6 They should do a good job and build their reputation in the community.
2. 6.0 They should be active in community affairs
3. 12.6 They should advertise
4. 2.7 Lawyers should not make an attempt to attract clients

(4.9 No Answer)

THERE HAVE BEEN A LOT OF NEWSPAPER AND MAGAZINE STORIES LATELY ABOUT LAWYERS AND THE LAW, AND PEOPLE HAVE VOICED MANY DIFFERENT OPINIONS ABOUT THEM. WOULD YOU

PLEASE READ EACH OF THE FOLLOWING AND TELL US WHETHER YOU AGREE OR DISAGREE WITH THE OPINION EXPRESSED

33. It is just as important to have a family lawyer as a family doctor or dentist.
1. 23.1 I strongly agree
 2. 50.5 I agree
 3. 14.8 I disagree
 4. 0.0 I strongly disagree
 5. 8.8 I have no opinion
- (2.7 No Answer)
34. A lawyer is a hired gun, willing to argue any side of any question as long as he gets paid for it.
1. 24.2 I strongly agree
 2. 28.6 I agree
 3. 28.6 I disagree
 4. 8.8 I strongly disagree
 5. 8.2 I have no opinion
- (1.6 No Answer)
35. For the typical kinds of legal problems (like automobile accidents, for example) one lawyer is as good as another.
1. 2.7 I strongly agree
 2. 11.5 I agree
 3. 64.3 I disagree
 4. 14.3 I strongly disagree
 5. 5.5 I have no opinion
- (1.6 No Answer)
36. When people are not sure whether or not they have a legal problem, they generally do not seek legal advice because it would be a waste of time and money.
1. 8.2 I strongly agree
 2. 61.0 I agree
 3. 22.0 I disagree
 4. 3.3 I strongly disagree
 5. 4.9 I have no opinion
- (0.5 No Answer)
37. Since a lawyer always receives a fee for handling a law suit, he should go to court and earn his money at trial instead of settling the case out of court.
1. 1.6 I strongly agree
 2. 8.8 I agree
 3. 63.2 I disagree
 4. 17.0 I strongly disagree
 5. 6.0 I have no opinion
- (3.3 No Answer)
38. I am less willing to seek a lawyer's advice since Watergate than I was before because so many lawyers were involved.
1. 3.3 I strongly agree
 2. 9.9 I agree
 3. 53.3 I disagree
 4. 20.9 I strongly disagree
 5. 11.0 I have no opinion
- (1.6 No Answer)

39. It would be almost impossible to sue a lawyer because no other lawyer would take a case against another attorney.
 1. 6.0 I strongly agree
 2. 16.5 I agree
 3. 46.7 I disagree
 4. 9.3 I strongly disagree
 5. 19.8 I have no opinion
 - (1.6 No Answer)
40. Most lawyers will take any case offered to them, no matter how they feel about the case.
 1. 3.3 I strongly agree
 2. 24.7 I agree
 3. 55.5 I disagree
 4. 3.8 I strongly disagree
 5. 12.6 I have no opinion
 - (0.0 No Answer)
41. Lawyers seem to do a good job of keeping each other honest.
 1. 2.2 I strongly agree
 2. 22.5 I agree
 3. 39.6 I disagree
 4. 7.7 I strongly disagree
 5. 26.4 I have no opinion
 - (1.6 No Answer)
42. A judge's political ambitions often influence his decisions.
 1. 9.3 I strongly agree
 2. 34.1 I agree
 3. 33.5 I disagree
 4. 3.8 I strongly disagree
 5. 18.1 I have no opinion
 - (1.1 No Answer)
43. If he gets paid enough, a lawyer will represent a client even though he thinks his client is wrong.
 1. 10.4 I strongly agree
 2. 52.2 I agree
 3. 25.8 I disagree
 4. 0.5 I strongly disagree
 5. 9.9 I have no opinion
 - (1.1 No Answer)
45. Lawyers do not tell other people about their client's legal problems.
 1. 7.7 I strongly agree
 2. 56.0 I agree
 3. 18.1 I disagree
 4. 1.1 I strongly disagree
 5. 15.9 I have no opinion
 - (1.1 No Answer)
45. A lawyer should not accept a case if he thinks there is no chance to win it.
 1. 7.1 I strongly agree
 2. 35.7 I agree
 3. 46.7 I disagree
 4. 6.6 I strongly disagree

5. 3.3 I have no opinion
(0.5 No Answer)
46. If everyone deserves his day in court, then lawyers should be willing to accept cases they do not agree with.
 1. 6.6 I strongly agree
 2. 45.1 I agree
 3. 33.0 I disagree
 4. 3.3 I strongly disagree
 5. 8.8 I have no opinion
(3.3 No Answer)
47. A good lawyer will not bother his client with decisions that have to be made, but will make all of the major decisions himself, in the best interest of his client.
 1. 2.7 I strongly agree
 2. 15.9 I agree
 3. 54.9 I disagree
 4. 23.6 I strongly disagree
 5. 1.6 I have no opinion
(1.1 No Answer)
48. Most lawyers will represent any client, even though they think that client is wrong.
 1. 4.4 I strongly agree
 2. 34.1 I agree
 3. 43.4 I disagree
 4. 2.7 I strongly disagree
 5. 12.6 I have no opinion
(2.7 No Answer)
49. Lawyers pay more attention to the problems of wealthy and influential people than they do to others.
 1. 18.7 I strongly agree
 2. 47.8 I agree
 3. 19.8 I disagree
 4. 3.8 I strongly disagree
 5. 6.6 I have no opinion
(3.3 No Answer)
50. Even though many lawyers were involved in Watergate, I think most lawyers are honest.
 1. 6.6 I strongly agree
 2. 62.1 I agree
 3. 13.2 I disagree
 4. 4.4 I strongly disagree
 5. 9.3 I have no opinion
(4.4 No Answer)
51. How would you go about selecting a lawyer? (Or, if you have consulted a lawyer in the past, how did you choose that particular lawyer?)
 1. 0.5 Choose one from the telephone book
 2. 26.4 Ask friends, relatives who to go to
 3. 19.8 Choose a lawyer who has an outstanding reputation in the community

4. 4.4 Call a Legal Referral Service and ask them to recommend a lawyer
 5. 6.6 Ask a lawyer you know personally to recommend someone
 6. 30.2 Go to a lawyer you know personally
 7. 5.5 Consult several lawyers, then select one
 8. 2.2 Ask employer to recommend a lawyer
(4.4 No Answer)
52. Would you hire a female lawyer?
1. 80.8 Yes
 2. 14.3 No
(4.9 No Answer)