

Part 2 of RESPECT IS THE ANSWER, ISN'T IT?

by Peter C. John

The public will never totally appreciate our role as trial lawyers because, as we know, there is almost always a dissatisfied party at the end of litigation. Many times both are dissatisfied, and worse, they usually have had to pay us something for reaching the dissatisfied result. Even given those problems there are things we can do in my judgment to stem the decline in respect for us and the system. First, we better start becoming more bipartisan on the issues which fundamentally affect our system, and educate the public and the press, or we will continue the respect slide.

Let me read to you -what The Chicago Tribune wrote on February 13, 1999 on the front page about the participants in the Clinton impeachment, almost all lawyers:

"A profile in courage, it was not. No Republican stood tall to say that the case against President Clinton was not the stuff of impeachment when it would have mattered, before the outcome was so clear. None criticized the Republican prosecutors or Independent Counsel Kenneth Starr. No Democrat took the bold step of saying that Clinton should be removed, the polls be damned. No member of Clinton's cabinet resigned in protest. "Impartial justice," apparently, wears a partisan robe. The only politicians who came through the historic trial with their reputations enhanced were the ones who wrote the Constitution more than 210 years ago."

What this press article tells me is the press does not understand the adversarial judicial process. The impeachment of Clinton was a trial, and lawyers' roles involved were advocates trying to reach a just result. What this article also tells me was the press remembered other lawyers in past years who did stand up with courage for their principles, for their word, and for the values of our profession. Maybe the Tribune was remembering the lawyers in the Nixon era: What a difference in the 25 years between those participants in the Clinton administration and those in the Nixon administration.

Remember Attorney General Elliot Richardson who committed to Archibald Cox and the Senate that Cox would only be discharged due to extraordinary improprieties. On October 20, 1973 after President Nixon insisted Richardson fire Cox for his continued efforts to obtain the Watergate tapes, Richardson resigned rather than break his word. So did William French Smith, the Deputy Attorney General.

Where are our legal heroes of courage to the press and public today who are defending the values of the system as we know it?

As Senator Bill Bradley once said, we do not predict or foresee major changes 20 years hence very well in this country, but when they occur, we must deal with the new reality. The new reality today is not a positive one for our jury trial system and its participants--us.

The great problem we face as trial lawyers in this society is to create a balance between criticism and respect for what we do and what we accomplish as trial lawyers. Currently there is great criticism and negativism and little in the public sector to counterbalance it. Only the exceptions are focused upon. We must work to make sure the exceptions don't swallow the system by our silence.

A recent editorial in the Chicago Tribune stated as follows:

"The Mississippi lawyers, members of 13 firms, argued they made "unique and substantial contributions to society" by being the first to bring a case under the novel theory that the state was due compensation from the cigarette companies for the Medicaid costs of treating sick smokers.

Big Tobacco's pockets are deep indeed and the bright-eyed lawyers spotted it early on. Anyone who believes these law firms agreed to help the states sue the cigarette companies because they wanted to protect children from the evils of smoking is inhaling something a lot stronger than nicotine.

This is far from the end of it. Still to be arbitrated are the lawyers' fees stemming from the \$206 billion settlement that covered the rest of the states.

To liken this spectacle of lawyers gorging on their tobacco jackpot to pigs feeding at a trough is to do a disservice to the pork family. After all, the pigs are just doing what comes naturally."

This was the lead editorial and indicts us all. I for one am tired of the one-sided focus.

Nowhere was there any unified public accolade for the trial lawyers who started the tobacco cases against great odds at great personal expense and caused, solely by their efforts, billions of dollars to be contributed to the health care of those whose illnesses were caused by smoking cigarettes. Nowhere was the contingent fee system, its great benefits defended and explained as an integral and necessary part of the jury system to give everyone access to the Courts. The only focus of this editorial and most others today is the perceived self-interest of trial lawyers.

Where is the balance? Who is telling the other side of each story? Our problem is we are mostly advocates amongst ourselves. The bar associations talk to each other; we write articles addressed to each other; we give each other lectures — like this one. Unfortunately, we need to be advocates to audiences outside ourselves. We need advocates for the system who are outside the realm of our self-interest. We need judges to champion the role of trial lawyers in our system as we should champion judges. We need respected heroes to the public to speak out for the jury system. We need citizen groups, who obtain the benefits of what we accomplish, to speak out. If we continue to only talk to ourselves, we will worsen the current situation.