

The Value of the Legal Profession

The NH Bar Association Board of Governors, at its Jan. 19, 2006 meeting, adopted the following position paper on the value of lawyers to society and the justice system. This position paper will be adapted to address various audiences, as responses from the Bar Association are required. This position paper will be published in the Feb. 3, 2006 Bar News.

The New Hampshire Bar Association (NHBA) exists, in part, according to its constitution, “to improve the administration of justice and to foster and maintain the high standards of conduct, integrity, competence, and public service on the part of those who engage in the practice of law.” The first two purposes of the Bar Association are to improve the administration of justice and to improve the integrity and competence of lawyers because in our adversarial system of justice, the administration of justice cannot exist without trained and professional lawyers.

In an Anglo-American common law system, lawyers adopt adversarial positions and then advance all pertinent arguments for each side of the case, so that the court, hearing the best possible arguments for both sides, is better able to choose the correct result. The court necessarily depends upon the lawyers to utilize their judgment and their training to bring all of the relevant factual and meritorious legal arguments on either side of the case to the court's attention. The burden of research, preparation and presentation rests with the advocates, not with the court system. Indeed, courts in our Anglo-American system cannot function without lawyers.

Our American society places a high value on the rights of individuals and even the harshest critics of our justice system recognize that protection of the minority from the oppression of the majority is an essential role of the court and that lawyers' work in vindicating the rights of the individual, even in the face of a vocal and disapproving majority is, perhaps, the profession's highest calling.

That said, the value of the profession is greater than its role as a component of the adversarial system. The legal profession is the institution which society turns to as the repository of legal knowledge and the history of the development of the law, giving context and meaning to the letter and to the spirit of the rule of law. This larger role of

lawyers is evident when the functioning of our society is examined. Our way of life is dependent upon cooperation and the ability of individuals to work with one another. Our economic system can only function if individuals can work cooperatively, make promises, and rely on the fact that the promises will be enforced.

Structure and order are essential to human dignity, and social and economic progress. From the time humans first realized that greater results could be achieved by cooperative rather than individual effort, understandings needed to be developed so that cooperation could be beneficial to all. History is in many ways a consideration of how humans decided that cooperative efforts could best be facilitated. Progress is impossible without known, settled rules that provide, in the words of the late Chief Justice Kenison, “justice to the humble as well as the powerful, for the poor as well as the rich, for the minority as well as the majority, and for the unpopular as well as the popular.”

Much of the life we take for granted is only possible because of a system of enforceable and reliable rules. Lawyers are an essential part of the justice system, which is the indispensable framework upon which our ability to cooperate, and ultimately our entire way of life, depends. As the world changes, we must change, but we should not remain silent about our fundamental role in the preservation of a safe, free and open society.