

# Legal Summit

HELPING YOU REACH THE PEAK OF YOUR PRACTICE

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## ASSIGNMENT: YOUR REPUTATION

by  
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You will not find it listed on the balance sheet form in your personal or business finance software, but your reputation is an asset – or a liability. In the next few editions of Legal Summit, we will discuss how to build a positive reputation as a lawyer among other lawyers.

But before we do, let's make sure we agree on what a reputation is and how our reputation as a lawyer impacts us professionally.

Reputation is broadly defined as “the beliefs or opinions that are generally held about someone or something.” So, when a lawyer says “Sarah is a great lawyer” or “Joe is the best real estate lawyer in town,” he or she is offering an opinion on the lawyer's reputation as a lawyer.

The statement by one person of another's reputation is almost always an opinion. That is, it is impossible to prove that “Joe is the best real estate lawyer in town” unless, of course, Joe is the only real estate lawyer in town. And the opinion may or may not have any positive weight. That is, if the speaker routinely says that every lawyer is a “great lawyer” the fact that he says “Sarah is a great lawyer” only means, at best, he thinks Sarah has the same qualities as other lawyers. Only in Lake Wobegon are all children above average.

The same is true regarding negative opinions. Some lawyers find it impossible to recognize positive attributes in other members of the Bar. Those lawyers then develop a reputation for that attitude – and their professed negative opinions of other lawyers are then discounted by other members of the Bar.

### IN THIS EDITION

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Assignment: Your Reputation

So, the weight to be given to the opinion offered by one person of another person's reputation is based on – you guessed it – the reputation of the person offering the opinion. Other things being equal, the opinion of a forty-year law professor who has been rated as “professor of the year” by her peers for the last thirty consecutive years who says “Mary has the best mind of any law student I have ever taught” will have more weight than the same opinion offered by a first-year professor.

As lawyers and therefore critical thinkers, you quickly recognize the huge potential for error here. For instance, one's reputation may be impacted by the opinions of those whom do not have first-hand knowledge of the person, or his or her conduct, but whose opinions carry more weight than those offered by those with first-hand knowledge. And, the speaker may be influenced by bias or prejudice. Thus, your reputation may be impacted by those who have no real idea of what they are talking about or have some motivation – expressed or not – to do your reputation harm.

This is scary - your reputation is not in your total control. It is at least partially based on your conduct, but it will be impacted by how others view and process your conduct, how they report it to others, and how those people report it to others.

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What comes next will scare you even more – good reputations are hard to build but relatively easy to harm or even destroy. I will leave it to others to explain why this is so, but it seems to me that people are more likely to remember and put more weight on the bad about a person than the good. Depending on the “bad” event, this is often unfair. People are complex creatures, and virtually every person has made or is fully capable of making an error in judgment or other error, even if just accused of such, that will impact their reputation. Time will pass, but the negative event never totally disappears from the reputation discussion.

Take Pete Rose. Pete Rose was a heckuva baseball player. Over 4200 hits. A batting average over .300. Three World Series rings. Two Golden Gloves. “Charlie Hustle.” Later managed the Cincinnati Reds. And when he dies, the second or third line of his obituary will read something like this: “Rose was permanently banned from baseball and not inducted into the Hall of Fame because he was found to have gambled on baseball games, including those involving his own team, in violation of league rules.”

Now, please do not grab the phone to tell me that it is unfair for Pete Rose to be banned from the Hall of Fame. Do not tell me other players and coaches are known to have gambled on baseball and still made it into the Hall. Do not tell me there is no evidence that he bet against his own team or that his gambling impacted his performance or the results of any game. I am talking about how his conduct affected his reputation, not whether the impact to his reputation was fair. The impact, fair or unfair, was real. And, the same thing happens with lawyers.

Here is a dirty little non-secret folks, your reputation is a topic of discussion. Judges talk about lawyers. They talk about whether a lawyer is prepared. They talk about whether a lawyer is willing to try a case. They talk about whether a lawyer tells the truth.

And lawyers talk about lawyers. On the same subjects mentioned above and even more. “Sally never does anything on time.” “Watch Bill - he sends emails confirming conversations that bear no relation to what was discussed.” “Nancy doesn’t prepare her clients for depositions.” “George plays games during discovery.”

Or, “Sally is on the ball – she is diligent, and you can count on her.” “You can take Bill at his word.” “Nancy really cares about her clients and spends the time necessary to get them ready for a deposition.” “George plays by the rules during discovery – and doesn’t let his clients play games during the process.”

These or similar conversations take place every day in every judge’s lounge and every docket call. They are part of the talk at bar association meetings and judicial conferences. They can arise in a phone call (“Hey Joe. Mary just appeared in my case. How is she to work against?”) or over a drink after work.

We know all of this to be true. So, when our name comes up, what can we do to increase the likelihood that the things said are truly reflective of the reputation we want to have? First, we need to discuss what qualities give rise to a good reputation.

## CHARACTERISTICS OF A GOOD REPUTATION AS A LAWYER

Let’s get something out of the way right off the bat: there will not be universal agreement on the characteristics that give rise to a good reputation as a lawyer. There are some characteristics on which there will be (or should be) no dispute. On others, there will be some difference of opinion.

Let’s begin with what should be an easy one – **honesty**. Honesty to one’s clients. Honesty to opposing counsel and adversaries. Honesty to the court.

Being known as being honest is the cornerstone of your reputation as a lawyer. Without it, little else matters. By

### QUOTES FOR TRIAL LAWYERS

"Ethics is knowing the difference between what you have a right to do and what is right to do."

- Potter Stewart

that I mean, if everyone agrees that you have all the skills of being, say, a great trial lawyer, but you are known to withhold opinions from expert witness disclosures or routinely, knowingly violate the law of trial, you will not have a good reputation. If you have a great knowledge of contract law, but you slip-in undisclosed provisions into the last drafts of a contract, you will be known as someone who cannot be trusted.

**Legal knowledge** is also at the core of one's reputation as a lawyer and should be the subject of little disagreement about its role. If you are a family lawyer, you need to know family law, civil procedure, and evidence. You need to have some knowledge of tax law and know what fact situations may have tax implications beyond your working knowledge (so you can seek tax advice or have your client do so).

If you are a criminal defense lawyer you need to understand criminal law, criminal procedure, and the law of evidence. You need to have a working knowledge of the law of sentencing and those principles of constitutional law that impact the defense of criminal cases. You do not need to know all criminal law – you may choose to handle only DUI cases or only misdemeanors and still have a great reputation for handling such matters even though you know little about felonies.

The bottom line on knowledge is this: if you accept a case involving a particular type of law, your work on that matter will be evaluated by other lawyers (and, if applicable, the judge) against those who routinely do that work. If your demonstrated knowledge on that matter equals or exceeds that of others in the field, your reputation will be enhanced. If it is perceived that it does not, it will be harmed.

**Knowledge of the facts** is key to one's reputation as a lawyer. Lawyers are expected to know the facts. When lawyers mis-state the facts, they are at best assumed to be ill-prepared and, at worst, telling a falsehood.

One's level of **preparation** is also important. There is an overlap here between the concepts of the knowledge of the law and the facts, but preparation is often spoken of separately. A person will be heard to say "Frank was so unprepared for the hearing." That is not necessarily a comment on Frank's knowledge of the facts or the law – he may know both generally, but failed to put sufficient time into gathering and processing the necessary information so that it could be effectively presented at the hearing. The same could be said of lawyer's lack of preparedness at closings of business transactions.

Another related issue is working with **timely diligence**. Diligence means careful and persistent work effort. It means returning phone calls. It means answering emails. It means responding to discovery requests on time. It means making yourself reasonably available for depositions. It means not undertaking more work that you can do well in a timely fashion.

The goal of timely diligence does not mean that you can never be late. You can. But your reputation will be enhanced (or at least not harmed) if you ask permission, not seek forgiveness. And, if you ask permission too often, you will harm your reputation, because the assumption will be that you have overloaded your schedule or you cannot manage your time.

**Courtesy** counts. Courtesy to your adverse counsel, your clients, adverse clients, the judge, courtroom personnel, witnesses, court reporters, and your co-workers. Maya Angelou told us "I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."

It is also important to be **reasonable**. Being reasonable includes granting other lawyers appropriate extensions of time when doing so will not materially harm your client's interests. It means taking positions that are consistent with the law and the facts. It means not taking unfair advantage of one's adversary. It means working with your opponent to set realistic times for discovery and case resolution.

**Judgment** is given lots of weight in the reputation formula. Judgment is of course tied to knowledge of the law and the facts, but also takes into consideration one's knowledge of the "lay of the land" when the decision must be made.

A lawyer's reputation will be impacted by others perceptions of her **confidence**. Knowing the facts and the law

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## TIPS FOR TRIAL LAWYERS - KNOW YOUR JUDGE

Each judge has a slightly different view of the law and how it should be applied. If you are appearing before a judge for the first time, reach out to other lawyers to learn the judge's standard operating procedures. Read the local rules and chamber rules. If it is feasible to do so, watch the judge preside on a motion day, or for a portion of a trial. Taking these steps will reduce your anxiety and increase the likelihood of prevailing on those calls within the trial judge's discretion.

and adequate preparation should enhance one's confidence, but a lawyer must also have confidence in her decision-making ability to articulate her client's position and to advocate for it. Wishy-washy lawyers may have a good general reputation but will never be viewed at the top of their specialty in their locale, much less their region or state.

A lawyer will obtain a positive impact on his reputation if he is viewed as **creative**. Of course, the creativity cannot be dishonest, but it is fair to say that lawyers tend to appreciate lawyers who think outside of the box – who are willing to push the envelope in an honorable way.

A lawyer seeking a good reputation must be **articulate** and able to communicate (persuasively, if appropriate) her client's position, whether asked to do so orally or in writing.

Finally, part of the reputation mix for a lawyer in the legal community is the perception of the lawyer's **persistence**. A lawyer will be judged on his or her ability to work through challenging problems and come back from actual or perceived set-backs.

In the next edition, I will begin to address how one builds a positive reputation – one day at a time.

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