

Judging the Lawyers: A Jury-Box View of the Case against American Lawyers

by Ted Preston



About the Book

Judging the Lawyers explores a paradox: Americans engage in widespread public bashing of lawyers while at the same time we employ them in ever-greater numbers. Most people have heard the jokes and the negative opinions of lawyers, but are they informed? Using a trial format that balances both sides of the argument, the critics' case against lawyers is made in six counts that explore the primary complaints that the public has against lawyers. The trial explores the realities of lawyers' practices, the costs to the public and the vast benefits that lawyers provide, making the point that a critical but balanced assessment of attorneys and the civil justice system is essential.

Judging the Lawyers is written for the general public in a manner designed to promote better understanding of lawyers. It pulls no punches in exploring the charges against lawyers, but counters each such charge with the lawyers' reply. The reader is summoned to stand in the position of a juror, and is thus given an opportunity to actively think through each issue.

The book's web site, www.judgingthelawyers.com, provides an opportunity for each individual to fill out and submit a jury verdict form, organized with reference to each count. For a book group, there is a great opportunity to have a "jury deliberation", and then a vote on each of the issues presented for the jury's verdict.

Discussion Guide

1. Does the case against the lawyers as presented in the book include what you think are the salient criticisms of lawyers? If not, what would you add? In which of the six counts does the critics' argument make the strongest case against the lawyers? In which of the counts does the lawyers' reply do the best job of explaining why the critics are mistaken?

2. The book asks you to assume the position of a juror, in order to "transcend a reader's usual passive role" and "to be active and to think through each issue as a juror does." How did being placed in this position affect your interest in the book? Did the Judge's reminders of the duty of a juror make a difference in your reactions to the arguments or your final conclusions about lawyers?

3. What conclusions does the trial leave you with concerning the possibility of a less partisan national conversation about a public issue such as the role of lawyers in America? Is the juror ideal too idealistic, or can it be held up as a reasonable standard?

4. The author, speaking through the Judge, makes an ending plea for "a greater deliberation that promotes good judgment and good adaptation of the legal system to the needs of the citizens and the republic." What conclusions do you draw concerning the respective roles of individuals and interest groups in the debate about lawyers and the civil legal system? Is it realistic to expect a more energized and less partisan public debate on such issues? Do you expect the Internet to play a helpful role in promoting better deliberation of matters such as tort reform, the asserted problems of medical malpractice litigation, etc.?

5. In asking for verdicts on each of the six counts, is it fair to impose the "preponderance of evidence" standard? What are the advantages and disadvantages of asking you to use this legal standard in your assessment of the issues?

6. For each of the counts you are asked to render your verdict as to whether the Complainants (the lawyer critics) have proven their case against the lawyers. For the counts where your group has a less than unanimous verdict, to what factors do you attribute the different individual verdicts?

7. At the end of the jury verdict form (found at www.judgingthelawyers.com), you are asked to describe the culture of American lawyers. Is there something different about lawyers and their practices that would make their culture different from that of other Americans? If so, identify what factor or factors would cause such a difference.

8. In Count 5 on "Greed", a primary defense is that lawyers are essentially the same as persons from other fields, and shouldn't be criticized more than businesspersons for making good incomes. Critics would hold the lawyers to a higher standard, or ethic. Should they be held to such a higher standard, and who should set that standard, the lawyers themselves or the public? What, if any, role could nonlawyers play in regulating attorney conduct?

9. For each of the following counts, as set forth in **Judging the Lawyers**, do the Complainants prove their case by a preponderance of the evidence?

1. Is the American Legal System too large and too intrusive? Do we have too much law and too many lawyers?

2. Is America too litigious? Do American laws, judges and juries encourage excessive litigation?

3. Is America too litigious? Does attorney abuse in civil litigation promote excessive costs and deny justice?
4. The Lawyers? professional culture: Does zealous advocacy on behalf of clients prevail over public duty?
5. The American lawyer as businessperson: Is the practice of law an ethical profession or one dominated by greed?
6. Justice for all: A realistic stand or an illusion? Does the civil legal system too often deny plain justice?

Author Bio

Ted Preston practiced law for thirty-one years in Philadelphia, where his experiences included trying complex jury patent cases and providing legal services to homeless persons. Now retired in Florida, Preston writes, works with Habitat for Humanity, and tutors high school students. He was a participant in the Amelia Island Book Festival, Amelia Island, Fl., October 4-7, 2007.

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