



How Coloradans View Attorneys

BY MICHAEL CONKLIN

This article analyzes the results of a 2018 survey conducted with Colorado residents regarding their perceptions of attorneys. The ages of the respondents ranged from 18 to 69. The mean age was 37 and the median age was 31. Three versions of the survey, each with slight differences, were used to see how variations in the questions affected responses.

Defense/Prosecution Perceptions

When asked about their overall impression of defense attorneys and prosecutors, respondents viewed prosecutors slightly more positively. However, more significant findings were discovered when considering respondents' backgrounds.

Younger respondents (aged 18 to 29) viewed defense attorneys more favorably than they viewed prosecutors. Liberal respondents were significantly more likely to have a positive view of defense attorneys, while conservatives were significantly more likely to have a positive view of prosecutors. There was no significant difference between males and females or between those who had served on a jury and those who had not. Respondents with a law degree were no different from the overall average, showing the same slight preference for prosecutors over defense attorneys.

Respondents who reported they "frequently watch legal dramas on TV" had a more positive view of both defense attorneys and prosecutors. Studies show that while lawyers are dispro-

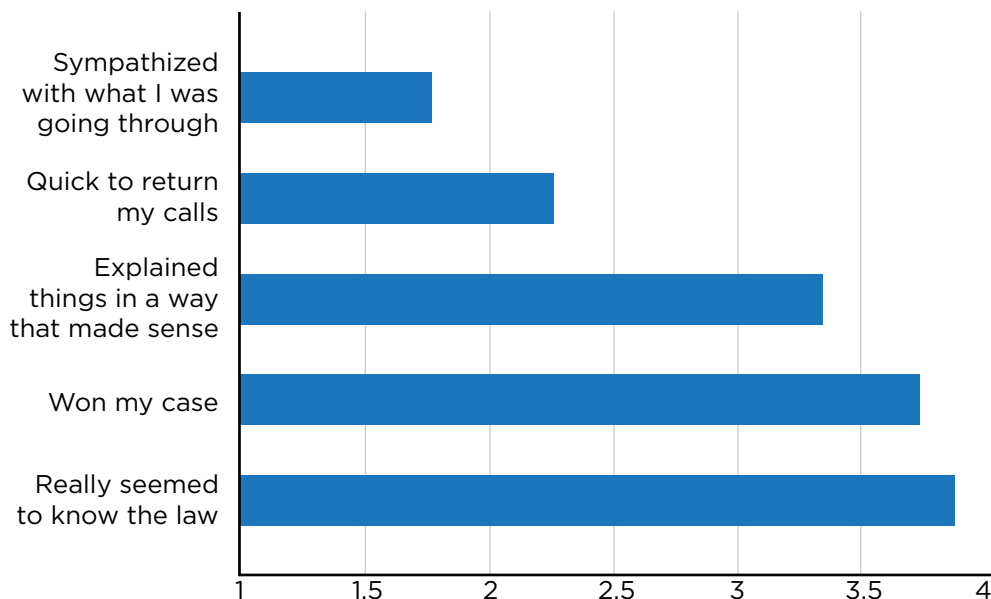
tionately portrayed negatively in movies, they are generally portrayed positively in television.¹ These studies echo the same findings here: people who consume television legal dramas have a more positive view of attorneys than the general public. While the positive outlook on *both* prosecution and defense attorneys may seem odd, given their extremely adversarial nature, it illustrates both sides of the alleged "CSI Effect." One side is that the show has resulted in juries being more demanding of prosecutors, requiring extensive DNA evidence from the state in even minor cases. The other side is that the show has resulted in great deference to the prosecution, treating any scientific evidence they produce as virtually infallible.²

Public Defender Perceptions

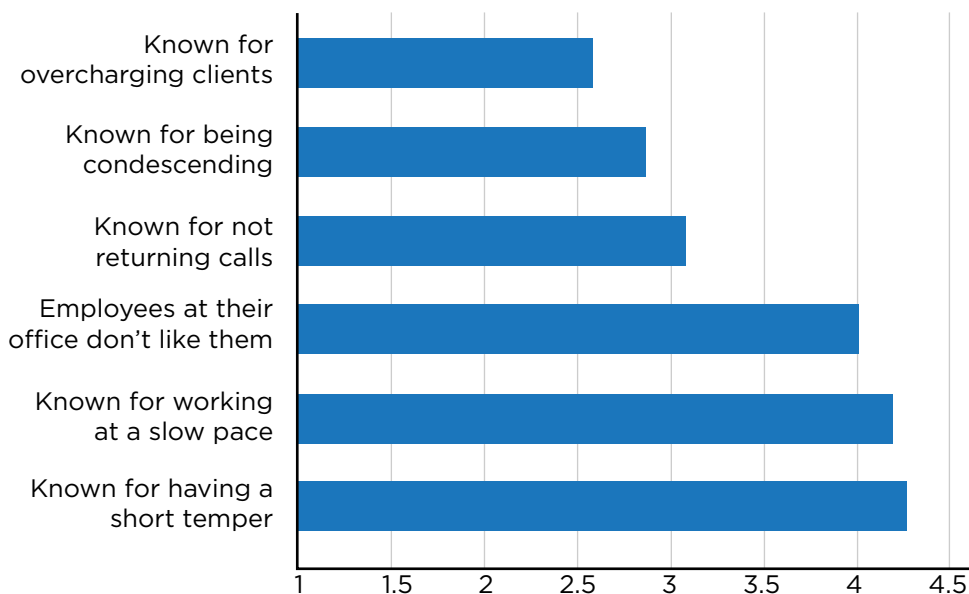
Respondents were asked two questions regarding whether they would choose a free public defender or pay for a private attorney. The first question involved an offense with a one-year minimum sentence and the other, a five-year minimum. To analyze price sensitivity, different versions of the survey contained different dollar amounts for how much the private attorney would cost. Overall, respondents chose the private attorney 84% of the time. There was no significant correlation between the cost of the attorney and a defendant's willingness to pay. Note, however, that this analysis only gave respondents the binary option of choosing either the public defender or a private attorney at a given price. It did not analyze how consumers would respond to different prices when choosing between multiple private attorneys at different price points.

While there was no difference between willingness to pay for a private attorney at various prices, there was an almost unanimous willingness to pay 50% more to hire a private attorney for the trial involving a five-year minimum sentence compared to the trial involving the one-year minimum sentence. While 78% of respondents would hire a private attorney for the one-year minimum trial, 91% were willing to pay 50% more for an attorney in the five-year minimum trial. It is unclear whether this is a function of the longer potential prison term,

POSITIVE TRAITS



NEGATIVE TRAITS



if respondents assumed the latter trial would take more work, or some combination thereof.

These results were almost unanimous among all demographic groups. No significant differences emerge when controlling for political affiliation, gender, and age (this study did not

control for level of income). The one exception is that those who report they “frequently watch legal dramas on TV,” while still more likely to hire a private attorney, were significantly more likely to choose the public defender than the overall population. This is perhaps due to

legal dramas portraying the practice of law as unrealistically objective. Episodes generally end with a clear outcome, contrary to the real practice of law where a verdict often leaves many unanswered questions as to what actually happened. It’s possible that frequent consumers of legal television shows view the practice of law in this more simplistic, objective way. If these respondents are assuming that they are innocent of the hypothetical crime they are accused of, their overexposure to legal dramas may cause them to assume their objective innocence could easily be made clear by either a public defender or a private attorney. Further research should be conducted to determine how watching legal dramas influences other perceptions about the law. Do these shows cause their viewers to think most trials are concluded in a week, that surprise witnesses are the norm, that attorneys are always very well prepared, and that trials routinely take sensational surprise turns?

Attorney Traits

The survey contained two questions that gave respondents a list of reviews (one set good, the other bad) for fictional defense attorneys. Respondents were told they needed to hire a criminal defense attorney and were asked to rank the traits from most preferable to least. There was surprising uniformity in these responses when controlling for demographic differences, with respondents placing a high value on an attorney’s win-loss record and placing little value on a criminal defense attorney’s ability to sympathize with their plight. It would be interesting to see if that result would change in a more “real world” study where people had to actually deal with an unsympathetic attorney at such a difficult time in their lives.

The accompanying charts show the results of these two questions. The greater the number, the higher that trait was preferred in relation to the alternatives.

Law School, Record, Ethical Violations, and Experience

The last set of questions analyzed the relationship between attorney experience and the following three factors: law school attended, win-loss record, and ethical violations. Overall,

respondents preferred an attorney with eight to 15 years' experience from either a mid-level or below-average-level law school to an attorney from a top-level law school with only three years' experience. Respondents who were law school graduates were more likely than other respondents to value experience over law school alma mater. These results are consistent with research that has analyzed the effects that law school and experience have on courtroom success. A 2007 study found that a public defender with 10 years' experience reduced the average length of incarceration 17% when compared to a public defender with one year of experience.³ This same study found no correlation between public defender law school attended and trial outcomes.

Many defense attorneys say that the first question they are often asked by potential clients is also the least relevant: "What's your win-loss record?" As trial attorneys are well aware, every case is unique; past performance is no indication of future results. Furthermore, much like a world-renowned surgeon, an accomplished attorney may be more likely to be called upon for the most difficult cases. Therefore, an argument could be made that a high win-loss record might even indicate that the attorney is not that great. Some may claim this effect is offset by the practice of law firms assigning "weak" cases to underperforming attorneys and "strong" cases to exceptional attorneys. This theory raises the difficult self-fulfilling prophecy question of whether partners who engage in this practice have arbitrarily determined who is and isn't exceptional, and their case assignments based on this assumption is what causes the disparate win-loss records, thus producing a self-fulfilling prophecy.

The Colorado Rules of Professional Conduct do not explicitly address the practice of using win-loss records in advertisements. However, Rule 7.1(a)(3) states, "A lawyer shall not make a false or misleading communication about [their] services. A communication is false or misleading if it . . . is likely to create an unjustified expectation about the results the lawyer can achieve." Comment 5 to this rule states,

Equally problematic are factually unsubstantiated characterizations of the results

that a lawyer has in the past obtained. Such statements often imply that the lawyer will be able to obtain the same or similar results in the future. This type of statement, due to the inevitable factual and legal differences between different representations, is likely to mislead prospective clients.

There are an alarming number of online attorney-ranking websites that use win-loss records to help potential clients decide who to hire (e.g., justicetoolbox.com, legalist.com, premonition.ai, and lexmachina.com). This is a troubling trend because some clients might incorrectly assume that hiring an attorney with an 80% win rate gives them an 80% chance of winning their case. Moreover, attorneys who focus on their win-loss record might do so to the detriment of their clients. For example, an attorney with a very strong case might improperly counsel her client not to take an attractive settlement/plea because the attorney needs another win in court to boost her win-loss record.

While it's easy to see why the general public places such emphasis on win-loss records (legal television dramas often display the star attorney saying, with dramatic music in the background, "I've never lost a case!"), this survey found that law school graduates succumb to this same fallacy. They preferred an attorney with eight years' experience who won four of his last five cases to an attorney with 15 years' experience who won three of his last five cases (experience and record were the only two variables).

Out of the three categories (law school attended, win-loss record, and ethical violations), ethical violations had the most significant impact on the decision of which attorney to hire. Respondents preferred an attorney with only three years' experience and no ethical violations over an attorney with eight years' experience and one ethical violation in the last three years. And both of those options were preferred over an attorney with 15 years' experience and two ethical violations in the last three years. This same preference hierarchy was even more prevalent among law school graduates. The limits of the survey did not allow for probing the psyche of respondents to see exactly why they placed such a high significance on ethical violations. Quantitative surveys like this are limited in their

ability to determine ultimately why respondents answer the way they do. It would be interesting to see a qualitative study addressing to what extent respondents weighed the probability of unethical actions by a defense attorney being detrimental rather than beneficial to their case.

Conclusion

The results of this survey provide a better understanding of the mind-set of clients and jury members. Factors such as age, political affiliation, and television legal drama consumption correspond to dramatic differences in perceptions of the practice of law. Additionally, as with many consumer decisions, the criteria used to select a defense attorney are not entirely rational. Attorneys should be prepared to dispel the notion that win-loss records are important. A more positive finding of the survey is how important prospective clients rank ethical behavior in their attorney. This illustrates that ethical behavior is not only necessary to avoid sanctions, but also can be used as a selling point to attract clients. CL



Michael Conklin is a business law instructor at Colorado Mesa University. After eight years in the oil and gas industry, he entered academia where his primary areas of scholarship include media coverage of the judiciary and predictive markets for Supreme Court decisions—mconklin@coloradomesa.edu.

NOTES

1. Asimow, "Bad Lawyers in the Movies," 24 *Nova L.Rev.* 533 (2000).
2. Podlas, "'The CSI Effect': Exposing the Media Myth," 16 *Fordham Intell. Prop. Media & Ent. L.J.* 429 (2006).
3. Abrams and Yoon, "The Luck of the Draw: Using Random Case Assignment to Investigate Attorney Ability," 74 *U. Chi. L.Rev.* 1145 (2007).

The SideBar is an informal space where members can share their thoughts, advice, and perspectives on issues impacting Colorado lawyers. Send your SideBar submissions to Susie Klein at sklein@cobar.org.