

We Can Do Better

Lawyers as "Town Criers" for Civic Education and the Rule of Law



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Whether you are a person of faith or not, December is a wonderful time for personal reflection on the rapidly closing year. It is a time to consider the good and bad times you have experienced over the past 12 months: your successes and failures, what went well, and things you want to do better in the coming year.

In that vein, as your State Bar president, I am pleased to report that as stated in the October *Bar Journal*, the State Bar is doing incredibly well despite the economy's slower-than-expected recovery. The SBM is offering more programs to more lawyers and doing it with fewer staff members and without raising dues since 2004—not too bad considering our projected dues cycle called for an increase after seven years (in 2011), and that was *before* the "Great Recession"!¹

Among the Bar's newer programs a few merit special recognition:

- In response to an overwhelming 69 percent favorable response rate when our members were surveyed about their interest in some form of mentoring program, the SBM recently rolled out its State Bar of Michigan Mentoring Center, <http://mentorboard.jobtarget.com/sbm>, which seeks to pair experienced attorneys with new lawyers to help them build their practices and give them a sounding board in the form of a veteran lawyer seeking to give back to our profession.
- Together with our sections, the Bar is actively involved with the Michigan Supreme Court's Solutions on Self-Help Task Force. The task force recently launched its new interactive website at <http://www.michiganlegalhelp.org> to help the poorest of our neighbors—those who cannot afford to pay *anything* to obtain legal assistance and, because of budget cuts

that have gutted most of the legal aid programs in Michigan, do not have access to free representation—obtain simple, Michigan Supreme Court-approved forms and advice on how to protect their basic yet essential rights in our justice system. We know it is vital that lawyers be involved in this initiative to ensure that the public understands the critical value of what lawyers do.

- Meaningful reforms to our indigent criminal defense system are finally within reach—a sweet irony as we acknowledge the 80th anniversary of the Scottsboro Boys case² and approach the 50th anniversary of the decision in *Gideon v. Wainwright*.³ As I write this column, we are anxiously awaiting what I hope will be a successful vote authorizing the creation of a Criminal Indigent Defense Commission in Michigan, the dire need for which was pointed out in a recent study showing Michigan's appointed counsel system was rated among the worst in the United States.
- The Practice Management Resource Center, <http://www.michbar.org/pmrc/content.cfm>, recently unveiled its online digital library, allowing members to download e-books and audio books to office computers, laptops, smartphones, and tablets. The downloadable library items are *free to members* and automati-

cally delete after the designated lending period expires.

Yes, the SBM has greatly expanded its services and programming and provides benefits to the public and its members that far exceed what was available just a few short years ago, for lower costs to members than ever.

With all these programs, though, there is one overriding thing that we, as lawyers, can do better. There is one thing that we, as lawyers, *must* do better. And it is something that every State Bar member can do without much difficulty.

Those who know me know that ever since 9/11, I have made a point to carry a copy of the United States Constitution in the pocket of every one of my suits and sport coats. I am no constitutional scholar, I am neither a strict constructionist nor do I favor judicial activism, and (as I had to explain in response to a pointed question while touring the Upper Peninsula in mid-October) I am most assuredly not a member of the Tea Party.

Rather, I am a lawyer, and I carry the Constitution to remind me why we lawyers do what we do: uphold and defend the justice system that is the envy of the world; that allows for the orderly conduct of business, even when parties have a dispute that might otherwise lead to disruption, interference, or violence; and protects and sustains the

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individual liberties of all, whether they be paupers or kings. We lawyers stand in the breach, advocating not only for our clients but for the American justice system and the rule of law on which it is based.

Too often today that lesson is lost, not only on those in our profession who lose their way, but more significantly, on a society in which, according to recent studies:

- two-thirds of Americans cannot name the three branches of government;
- according to a recent survey conducted by Findlaw.com and reported in the *ABA Journal* on August 20, 2012, *only one in three Americans can name a sitting justice on the United States Supreme Court*;⁴
- most Americans cannot tell you how many senators or representatives we have or what they do (OK, maybe *that* confusion is understandable);
- Jay Leno’s “Jay Walking” skit routinely features “average Americans” who think Ben Franklin was a great president; and
- just 40.5 percent of Michigan high school juniors tested on the Michigan Merit Examination were considered proficient in social studies.⁵ Stated another way, nearly 60 percent of Michigan high school juniors are not proficient in social studies.

We can do better. We *must* do better.

When 60 percent of our high school students do not understand our history and how our system of government works and two-thirds of Americans cannot name the three branches of our government, how can they possibly understand the importance of maintaining the separated powers of those branches or the need for assuring judicial independence? How can they understand that it is often a judge’s role to do that which

is not popular, but which is right? How can they understand that judges are required to stand up for the rights of unpopular people—to support unpopular causes—to fulfill their constitutional duties and protect *all* of our constitutional rights?

“We the People” need “We the *Lawyers*” to stand up for the principles established by the Almighty and reduced to writing by the Founding Fathers. But how? Clearly, some may say (and indeed have already said) that this is too big a problem for us to handle so we should not waste time on it. Some may say that a State Bar president should not commit the State Bar to such an ambitious undertaking when his or her term lasts but one year, and this problem cannot possibly be solved in such a limited time.

To them, I say, “If not us, who? If not now, when?”

I recall a poem by a German anti-Nazi theologian and Lutheran pastor named Friedrich Gustav Emil Martin Niemöller, who wrote:

When the Nazis came for the communists,
I remained silent;
I was not a communist.

When they locked up the social democrats,
I remained silent;
I was not a social democrat.

When they came for the trade unionists,
I did not speak out;
I was not a trade unionist.

When they came for the Jews,
I remained silent;
I wasn’t a Jew.

When they came for me,
there was no one left to speak out.

In an ideal world, we lawyers could sit in our offices, meet with our clients, argue their cases before the courts when necessary, get the results of those hearings right

away, and our bills would get paid by return mail. We would not have to worry about civic education because our society would be well-educated about our judicial branch and its vital importance in preserving our way of life.

But this is not an ideal world, and as the result of a variety of factors, most of which are out of our control, our court system is failing to live up to the ideals set forth in our Constitution. We can blame others—politicians, teachers, parents, the economy. We can claim that it is not our fault, or that it is too big a problem. But if we really look at it, we as a profession bear some of the blame and must accept some of the responsibility for remaining silent and allowing our society to treat our courts like the ugly stepchild of our other two branches of government when we know better.

So what can we do? Where do we start? And how can we preserve our Constitution and protect the rule of law when so many in our society understand neither?

In this regard, Abraham Lincoln suggested we must “[t]each the children so it will not be necessary to teach the adults.” In 2009, approximately 150 years later, retired Supreme Court Justice David H. Souter spoke to the American Bar Association at its annual meeting, challenging the ABA to “take on the job of making American civic education real again.” He quoted former United States District Judge Richard Arnold, who he said summed up the reason for heightened civic education and understanding of the need for judicial independence in just seven words: “There has to be a safe place.”

Justice Souter continued:

That is why citizens must be instructed in their government: to be able to understand why that place has to be preserved and passed along. That is why civic education has to be raised to a new power, and why every one of us in this room has to see to it that civic understanding becomes a birthright of every American. That is why we have to get to work, because there has to be a safe place.⁶

We can do better—we *must* do better—to assure that people throughout our state have that safe place and know it is there to protect them from any person or thing that

threatens their life, liberty, and property. Regardless of economic status, race, gender, age, political affiliation, religion, or sexual preference, lawyers must be the foot soldiers for justice, fighting to make sure “liberty and justice for all” are more than five words that look good on a bumper sticker or are legislatively required to be uttered every morning, but a sacred promise etched in the hearts, minds, and souls of every man, woman, and child throughout our state.

This mission is entirely consistent with (and explicitly stated in) the State Bar's Strategic Plan, which provides that the Bar should “support effective educational efforts that increase public knowledge of the legal system and the rule of law, and of the role of lawyers, judges, and citizens within our system of government.” To that end, the SBM Law-Related Education & Public Outreach Committee was formed and is specifically devoted to this mission. It has developed an extensive list of resources, available at <http://www.michbar.org/generalinfo/lawlinks.cfm>, which are intended to help our members and the public understand and explain the rule of law in a variety of contexts.

Please review this website. Print the materials you find there. Link to them from your website. Share them with your PTA, youth group, clients, and the nonprofit boards on which you serve. And use them to speak about the rule of law and our justice system to your Rotary Club, your Toastmaster group, and any other organization to which you are able to present.

This can be done—and one need look no further than the Patriot Week project co-created in 2009 by Oakland County Circuit Court Judge Michael Warren and his then 10-year-old daughter Leah.⁷ In a fairly short time, this organization has compiled documents, curricula, educational resources, and excerpts from key speeches in American history, which the organization uses in meetings with K–12 schools, universities, law schools, student groups, and community organizations to spread the word about the foundations of our American justice system. I recently met with Judge Warren, former State Bar President Ed Pappas, and SBM Executive Director Janet Welch about the Patriot Week program and was very impressed with what the judge and his volunteers have been able to accomplish—all

spawned by the inquisitive mind of a 10-year-old girl who wanted to know and share more about the U.S. Constitution.

Therein lies the lesson for us all: A single voice, no matter how strong and no matter how beautiful its message, can quickly be drowned out by the hubbub of daily life. But when you have 10 voices, or 100, or 1,000—or all 42,500 voices of the State Bar of Michigan members—talking about our Constitution and the importance of the rule of law in American society, that is a chorus that cannot be ignored and a message that cannot be denied.

With that in mind, I urge you to join in the grassroots efforts of people like Judge Warren and his daughter, the members of the State Bar Law-Related Education & Public Outreach Committee, and lawyers throughout Michigan who are making and taking the opportunity to talk to their friends, neighbors, schools, and other organizations about the Constitution and the rule of law set forth therein which are the keys to assuring that our “more perfect Union” remains ever more perfect. Let us never forget that we are uniquely situated to be the town criers for civic education, and let us never fail to protect the liberties set forth in our Constitution.

Finally, as the holidays draw near, please allow me to wish you and yours a joyous and wondrous holiday season and a safe, happy, healthy, and prosperous new year. ■

FOOTNOTES

1. Indeed, you may have noted that the portion of your dues devoted to the disciplinary system actually decreased by \$10 this year.
2. *Powell v Alabama*, 287 US 45; 53 S Ct 55; 77 L Ed 158 (1932).
3. *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963).
4. ABA Journal, *Two-Thirds of Americans Can't Name a Single US Supreme Court Justice, Survey Shows*, available at <http://www.abajournal.com/news/article/two-thirds_of_americans_cant_name_a_single_u.s._supreme_court_justice_survey>. All websites cited in this article were accessed November 18, 2012.
5. State of Michigan, *Education and Children* <<http://www.michigan.gov/som/0,4669,7-192-29939-281431-00.html>>.
6. David H. Souter, Associate Justice, United States Supreme Court (Ret), Remarks on Civic Education at the American Bar Association Opening Assembly (August 1, 2009).
7. You can find out more about this group by visiting its website at <<http://patriotweek.org>>.