

Where Do We Go from Here?

By Janet K. Welch

I have been the happy owner of a GPS (global positioning system) navigation device for six months. Gone are the days of wandering around the side streets of Detroit or the logging trails of the Upper Peninsula clueless about where I am. Gone are the days of wrestling with a map on my lap while listening to directions from a cell phone wedged between my ear and shoulder. Gone are the days of trying to keep one eye on the road and one eye on a set of directions while barreling down the highway.

The voice of the GPS system is a disembodied personality who, according to the manufacturer, is named Jill. Jill's clear, flat Midwestern intonation exudes such competence and authority that I can almost entirely forgive the slight whiff of disgust in her voice when I deviate from her prescribed route. "Recalculating," she says, with the same tone of resignation and martyrdom that tired mothers use to upbraid careless, milk-spilling children who are too young to adequately clean up by themselves. If my car's sound system were just a little better I'm sure I could hear Jill sighing following her announcement.

Jill is far more knowledgeable than I about how to get to where I want to go. Her plastic head is stuffed with detailed maps and business locations. As if that were not enough, she also has a nearly omniscient satellite whispering the latest topographical gossip in her ear at all times. But despite her PhD in all things navigational, she sometimes sends me on routes that I know are inferior—slower, more dangerous, or less direct, for instance—to my own choices.

I've been thinking about Jill as I've been reading about the stunningly stupid collective choices that our financial wizards have apparently been making for several years now, bringing us to a point that everyone

agrees is properly described, with no exaggeration, as a "financial meltdown."

Like many lawyers, I have tended to think of investment bankers as our professional cousins—earnest, whip-smart folks with a work ethic in hyper drive. I've viewed them as ambitious people who came to the fork in the road that said "law school" or "MBA" and, for whatever reason, chose the latter (or both). Now I wonder, were their heads so stuffed with complicated data that there was no room left for judgment? Was the "quick buck" destination so firmly fixed that they were unable to see the need to recalculate as the cliff of insolvency loomed ever closer ahead?

But every Greek tragedy I've ever read cautions me not to feel morally superior. In the course of empathizing with the upended professionals of the investment community (okay, mostly just gnashing my teeth over their colossal misjudgments), I've found myself wondering what an equivalent meltdown in the legal world might look like and whether we are in a position to recognize the signs should one start to develop.

I'm not so sure. Our professional duty as guardians of the legal system seems in many ways profoundly more difficult than that of investment advisors and economists. For one thing, the metrics of the law are far less obvious than economic metrics (no legal stock market, no gross domestic justice product). For another, there is no consensus even about what a particular out-

come represents: one man's legal travesty is another man's triumph of justice.

Without a daily ticker tape of justice, to what can we look to ascertain the health of our legal system? Certainly not every deviance from a standard of perfection should trigger alarm bells. Just as the economy has ups and downs and winners and losers even when it is not in crisis, the legal system is imperfect even when it is operating relatively well. Guilty people go free, innocent people are convicted, valid grievances find no redress, serious wrongs are not righted, and even the smoothest and most successful pursuit of justice through the legal system is neither quick nor free. But if a healthy legal system has its unavoidable failures, what would the hallmarks of a true freefall be?

Having lived for a while in my twenties in a communist dictatorship, I have a feel for what a *truly* dysfunctional legal system looks like: law enforcement and judicial decisions motivated by fear or self-interest; bribery as an accepted cost of doing business in court and in the bureaucracies; token due process; law and judicial office as low-prestige occupations.

The first signs that we are on our way to an impending legal meltdown, I think, would be two-pronged: lawyers abandoning their duty to challenge unethical conduct and corruption, and public apathy. On that front, I think the news is good. Michigan lawyers, although they do not always agree on what constitutes unethical conduct,

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are anything but indifferent and disengaged on the subject. And the public adulation that greeted Wayne County Prosecutor Kym Worthy's impassioned sermon about the corrosive effects of perjury on the justice system is reassuring that the public, too, understands the importance of a justice system that works.

But there are serious reasons to believe that we need to be both more vigilant and more aggressive about protecting our legal system. Michigan has gone from being the first state in the union to provide free legal counsel for low-income people accused of crimes to nearly dead last in state expenditures for public defense. In an underfunded patchwork of public defense, too many people are falling between the cracks, in violation of basic principles of justice and clear constitutional mandates. On the civil side, increasing numbers of citizens and businesses cannot afford or are unable to pursue legitimate civil grievances or to defend themselves adequately against unjust claims. Judicial salaries have stagnated for nearly a decade, with no hope for improvement in the near future. Meanwhile, we select our judges in a bare-knuckle, elective free-for-all in which candidates can be made to look spectacularly incompetent or venal, regardless of the truth, thereby eroding public respect for the office and the court system.

These are all difficult problems, tricky to fix even in good economic times. And alongside these challenges, the practice of law itself is undergoing dramatic change. Day by day, technological advances blur the traditional boundaries between lawyers and clients, transform service delivery methods, globalize legal services, present new ethical questions, facilitate the unauthorized practice of law, and encourage, often inappropriately, pro se activity.

In his January President's Page column, SBM President Ed Pappas reminded us that the challenges we are facing actually present new opportunities for Michigan lawyers, and he outlined many of the programs that the State Bar offers to help position Michigan lawyers to survive and thrive.

As we strive to help our members cope with the growing uncertainties and challenges unfolding every day, the State Bar has recognized that business law doesn't stop at Michigan's borders. In fact, increasingly it crosses international borders. To help our members interact more effectively with the state's biggest international trading partner, we have cultivated a relationship with the Ontario Bar. We also realize that the well-being of our members is tied to the economic well-being of the state, and that self-interest as well as public obligation drives us to assist in the state's economic recovery. Evidence is beginning to emerge that good relations between foreign bar associations can lead to business development in both jurisdictions, a phenomenon that, when you think about it, makes sense. As business advisors, lawyers often play a key role in business decisions, and their familiarity and comfort with a foreign legal climate can tip the balance in favor of that jurisdiction.

With this in mind, the State Bar and International Law Section were pleased to be asked to send a small delegation to parallel the governor's investment mission to Israel and Jordan last November. In a short whirlwind trip, we met with representatives of the Israeli Bar, law professors, and Israeli lawyers with ties to Michigan. The goal of such parallel efforts is to help ensure that Michigan and Michigan's lawyers are at the center of whatever globalized economy emerges from the current turmoil, and our

experience in November encouraged us that we are headed in the right direction.

There is no GPS to rely on to chart the path ahead. Perhaps that's just as well. In the world of economics, confidence is the coin of the realm, and value the touchstone. We are now witnessing how the system becomes unhinged when the financial world relies on exotic and incomprehensible financial instruments and formulae rather than these basic principles. For lawyers, trust is the coin of the realm, and truth the underlying value. Unlike our counterparts in the financial world who eschew collective responsibility and instead trust the "invisible hand" of individual self-interest to heal imperfections in the economic body, lawyers voluntarily shoulder the ethical responsibility for tending to the health of the justice system.

We must not fail in that responsibility. We may need to be adept at calculating and recalculating the route as circumstances require, but the destination is always the same: justice for all. ■