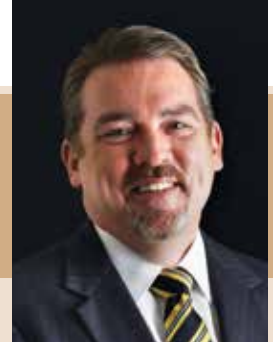


Where Is Our Puck Going— And How Do We Get There First?



Bruce A. Courtade

On a Friday afternoon in June, I was seated among a crowd of roughly 100 Michigan attorneys watching a video lecture presentation to the SBM Bar Leadership Forum by renowned “legal futurist” Richard Susskind, a lawyer and professor. Susskind was providing attendees—all of whom were invited because of their recent or impending assumption of leadership roles in various sections, committees, or affinity organizations—with his vision of where the profession is headed in the face of tough economic times, undercutting traditional law firm business models, technological advances placing more competitive resources in the hands of those who previously needed lawyers to access the information contained in law libraries, and the growing worldwide trend toward “liberalization” of the practice of law.¹

Early in his presentation, Susskind explained to the audience that hockey legend Wayne Gretzky was once asked how he managed to be so successful in his career, to which “The Great Gretzky” replied, “I skate to where the puck is going to be, not where it has been.” The message from this quotation in the context of Susskind’s presentation was clear: if law firms and bar associations want to be successful in the future, they need to be forward-looking and not bound physically or emotionally to “the way it has always been” or “the way we do it now,” especially when the world around us is constantly changing. Stated differently, we cannot become what we need to be tomorrow, as lawyers or bar associations, by remaining what we are today.

Susskind made a compelling case during his roughly 70-minute presentation, enough so that I ordered his most recent book, *Tomorrow’s Lawyers: An Introduction to Your Future*,² a few days later. I’m not the only one to find Susskind’s work

thought-provoking (and scary at the same time): in March 2013, the American Bar Association’s Legal Rebels column included a submission by Paul Lippe titled “Why ‘Tomorrow’s Lawyers’ is Required Reading”³ in which he opined, “If you’re in any kind of management or leadership role in law (or you just care about your own career), I would say it’s a prerequisite to read *Tomorrow’s Lawyers*.”

As I await receipt of my copy of the book, I keep thinking back to the Gretzky quote and how it impacts one particular issue that has faced the SBM for at least as long as I have been in practice and has become more pronounced over the past decade—the fact that the composition of the Bar’s membership and leadership is not as diverse as the general population. With all due respect to Susskind and Gretzky (second only to Steve Yzerman on my list of all-time favorite hockey players), to fully appreciate the complexity of the issue to which I refer, one needs to consider a few snippets from our past and some statistics about where we are today in order to predict where we are going—where we should be “passing the puck” to future generations of Michigan lawyers.

1925: The Ossian Sweet Trial⁴

Dr. Ossian Sweet was a prominent African-American doctor whose medical practice was located in Detroit. The city was hugely

segregated, and the areas inhabited by most of the blacks—many of whom had migrated to Michigan from the South in search of factory jobs in the burgeoning automotive industry—were ramshackle at best. As described by Patricia Zacharias: “Most were packed into a near east side area called Paradise Valley or Black Bottom.”⁵ To be clear, Black Bottom was very far from paradise. “The area was badly overcrowded—seven percent of the city’s population was squeezed into one percent of its housing. Some residents slept on bar pool tables and lived four families to a flat.”⁶ In 1925, the Ku Klux Klan claimed 100,000 members in Detroit and a cross had been burned at the steps of City Hall.⁷

On September 8, 1925, Dr. Sweet and his family moved into a home they had purchased in a predominately white neighborhood at 2905 Garland Avenue on Detroit’s far east side. Sweet arrived at his new home with two small vans of furniture. He also brought along guns and ammunition, and arranged for friends and relatives to stay with him for the first few days. All were black.

His new neighbors were not happy about an African-American family moving into their neighborhood. An organization called the “Water Works Improvement Association” vowed to keep blacks out of the area. Tensions were so high that the Detroit Police Department posted officers at the house around the clock.

As it stands now, absent truly unusual and unforeseen circumstances, we will not have another SBM president of minority descent until at least 2020.

Overcoming generations of institutional bias, segregation, and overt racism is a daunting challenge, but we are, by and large, up to the challenge.

The day after moving in, Dr. Sweet and his guests went to work. When they returned home at the end of the day, the house was surrounded by a group of whites.⁸ Around 10 p.m., tempers flared. Witnesses testified that rocks were thrown at the house and, eventually, shots rang out from the second floor. One of the white men in the crowd was killed; another was wounded. The police arrested everyone in the house, charging them all with murder.

The NAACP paid to bring in Clarence Darrow as chief counsel for the defense. His assistants included Arthur Garfield Hays and Walter M. Nelson, a Detroit native. Presiding over the trial was a young judge named Frank Murphy, who would go on to become mayor of Detroit, governor of Michigan, United States attorney general, a United States Supreme Court justice, and the person for whom Detroit's Hall of Justice is named.⁹

At a crucial moment in the trial, Dr. Sweet recounted the events just before the shooting. Describing how he felt seeing the mob of white rioters surge toward the house when he opened the door to let his brother and another friend inside, Sweet said: "When I opened the door and saw the mob, I realized I was facing the same mob that had hounded my people throughout its entire history. In my mind I was pretty confident of what I was up against. I had my back against the wall. I was filled with a peculiar fear, the fear of one who knows the history of my race. I knew what mobs had done to my people before."¹⁰ Over the protests of the prosecution, his testimony was admitted as having a bearing on the psychology of the occupants of the Sweet home.¹¹

Darrow's closing argument spoke of the fear the Sweets felt in their home. He spoke of how some felt that blacks were inherently inferior to whites, and he openly questioned whether 12 white men could ever give black

defendants a fair trial. He offered an explanation of the historical significance of the case and of the civil rights movement, still in its infancy: "To me this case is a cross-section of human history. It involves the future and the hope of some of us that the future will be better than the past."¹²

After 46 hours of deliberation, the jury could not reach a decision, and a hung jury was declared. The prosecution chose not to try Dr. Sweet again, instead focusing its efforts on his 21-year-old brother.

Zacharias described what happened at the conclusion of the second trial, when Darrow gave another incredible closing argument:

After reviewing the horrors of the slave ships and the two centuries in bondage in the United States that Black Americans had endured, Darrow declared that they were owed a debt and obligation by the white race.

He went on: "Your verdict means something in this case. It means something more than the fate of this boy. It is not often that a case is submitted to 12 men where the decision may mean a milestone in the history of the human race. But this case does. And I hope and trust that you have a feeling of responsibility that will make you take it and do your duty as citizens of a great nation, and as members of the human family, which is better still."¹³

The jury took less than four hours to find Henry Sweet innocent. No further effort was made to prosecute any of the defendants.¹⁴

Almost 90 years have passed since the Ossian Sweet trial. We have witnessed *Brown v Board of Education*; Thurgood Marshall; the civil rights movement; Dr. Martin Luther King Jr.; Rosa Parks; and Viola Liuzzo and Johnnie Carr, two Michigan women recently honored at the 15th annual Ford Freedom Award Ceremony recognizing their contributions to the civil rights movement.¹⁵

We have seen the Birwood Wall built in Detroit to keep black neighborhoods separate from white developments.¹⁶ We have seen affirmative action in college admissions adopted, challenged, tweaked, and challenged again. Surely the passage of time and the growth of social awareness have brought us to a point where barriers between the races are a thing of the past, right?

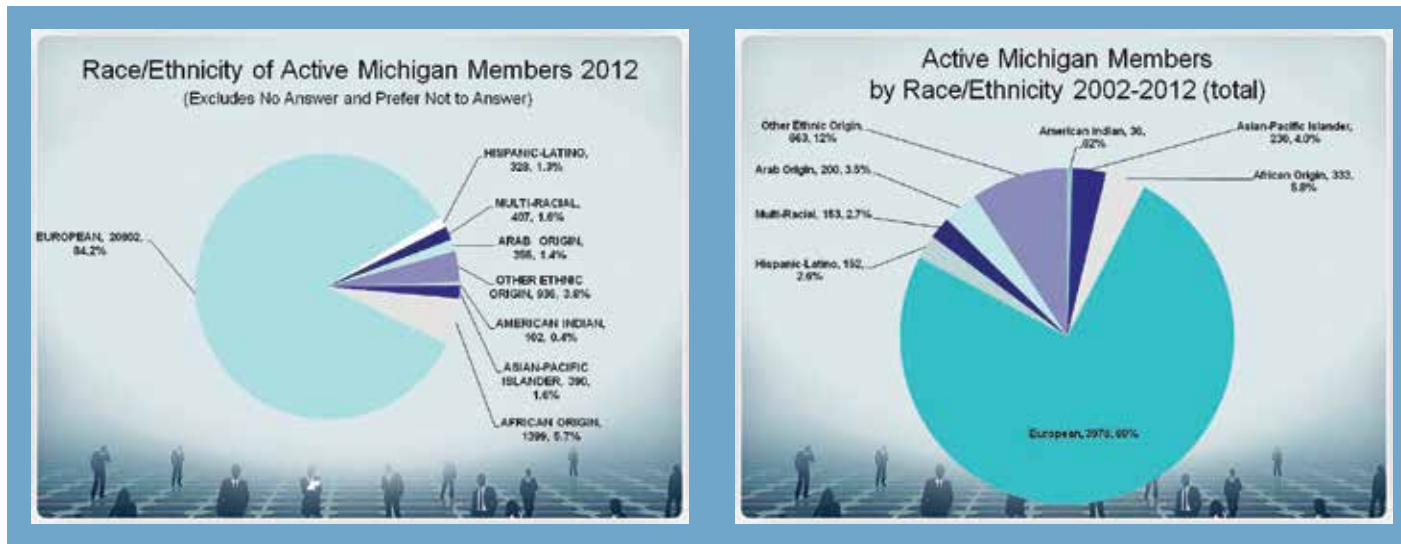
But racial segregation has persisted in our state far longer and more pervasively than any of us wants to admit. In April 2013, *Business Insider* magazine identified Detroit as "[t]he most segregated city in America, Detroit's inner city is almost exclusively black, except for a small Hispanic corner in the southwest called 'Mexicantown.'"¹⁷ The Birwood Wall still stands, some of it tagged with graffiti, while other stretches have been turned into a colorful mural depicting, among other things, Rosa Parks and other civil rights icons. But a scar—even one covered by a tattoo—still remains a scar, and one cannot deny the underlying injury by simply choosing not to acknowledge it.

2012: The State Bar of Michigan

In January 2012, my predecessor in office, Julie Fershtman, wrote a column about the need for greater diversity in our profession:

The 2000 census showed that minority representation among professionals was 20.8 percent for accountants, 18.2 percent for college professors, 24.6 percent for physicians, and only 9.7 percent for lawyers. Among private practitioners, diversity is rarely seen in the ranks of equity partners and managing partners of law firms.¹⁸

Since Julie wrote her article, the 2010 census results were released, revealing that although there is a greater minority representation among lawyers now than there was 10 years ago, the disparity between the number of minorities in our profession and our sister professions continues to grow with the exception of accountants, on whom we have gained some ground. Minority representation among the various professions was 20.5 percent for accountants, 22.3 percent for postsecondary educators, 28.3 percent for physicians, and 11.1 percent for lawyers.¹⁹



More specifically as it relates to the State Bar and its membership, the two graphs shown above reveal that while minorities have made some gains in Michigan's overall attorney population, they are still vastly underrepresented, making up only 15.8 percent of all attorneys licensed and actively practicing law in the state. African Americans accounted for just 5.8 percent of attorneys joining the Bar between 2002 and 2012—nearly the same as the 5.7 percent rate of African Americans in the general attorney population.²⁰ Thus, while we have made strides toward opening doors for other ethnic minorities, Michigan, like other states, is at best treading water with regard to the number of African Americans practicing law.

2013: State Bar Elections

Nowhere is the lack of minorities within our profession felt more obviously, and importantly, than in communities of color where there are few or no lawyers of color. But as president of the State Bar, I keenly feel the absence of lawyers of color in the organization's leadership. At the beginning of my term, there were *no* commissioners of color who had been elected by their respective districts; the only commissioners of color were on the Board by virtue of a slot allocated for representatives of the State Bar's Young Lawyers Section or the Representative Assembly. Further, by the time this article goes to press, I can predict with

absolute confidence that not a single candidate of color will have been selected in the 2013 Board elections. How can I be so sure? *Because no attorneys of color submitted petitions seeking office.*

This is particularly troubling to me because I made a concerted effort during my visits to various bar associations around the state to encourage minority attorneys to seek out these spots so our Bar leadership can better reflect the membership's composition—and so the next generation of Michigan attorneys will have role models like former SBM presidents Tony Jenkins, Reggie Turner, Victoria Roberts, and Dennis Archer, or former Board of Commissioners members with whom I had the pleasure to serve, like Elias Escobedo, Francisco Villarruel, Hon. Cynthia Stephens, and Kathy Kakish. As it stands now, absent truly unusual and unforeseen circumstances, we will not have another SBM president of minority descent until *at least 2020*—a gap of 10 years since Tony Jenkins served as our 76th president in 2010–2011.

2014 and Forward: Follow the Bouncing Puck

By nature, I am an optimist. Where others see difficulties, I try to see opportunities—and I heard some time ago that opportunities are rarely labeled. Therefore, when I look at the second of the State Bar demographic charts shown above, I see that we have more women and, to a more limited

degree, more minorities than ever coming into our profession. Even though I was a history major, I understand that mathematically the influx of more women and attorneys of color into the profession ought to increase the likelihood of finding minority attorneys in leadership positions as new attorneys work their way up through the ranks.

However, even Gretzky's plan to "go to where the puck is going to be" fails if he doesn't have someone passing the puck to him. Therefore, it is imperative that the State Bar continue its efforts to promote diversity within the profession through its Diversity and Inclusion Advisory Committee. It is also important for the SBM to continue to work with and support law firms and affinity bar associations as they seek to promote and maintain diversity initiatives.

But the most important hope for progress lies within every single member of the State Bar. If you are an attorney of color, I realize you are pulled in many directions, and likely already give back to the community through various volunteer efforts, but now more than ever, your profession needs you to step to the plate and assume a leadership role within our ranks. And if, like me, you are not an attorney of color, you still have a vitally important role to play by identifying and encouraging attorneys of color to join your local and State Bar committees and sections and, once a member of those groups, urge them to seek leadership roles. Only then can the legal profession truly reflect the diversity in our society and benefit

from the skills, abilities, and perspectives that these lawyers have to offer.

As Professor Susskind made clear, we cannot continue to do things in the same way and expect a different result. And when the world in which we conduct business is constantly changing, we need to be able to adjust our course lest we as a profession go to where the puck has been, only to discover it has passed us by and is going in an entirely unplanned and unpleasant direction.

Winston Churchill once opined that difficulties mastered are opportunities won. It is undeniable that overcoming generations of institutional bias, segregation, and overt racism is a daunting challenge. But one thing I have learned as I've traversed the state and met with hundreds of fellow lawyers over the past year is that we are, by and large, up to the challenge, if only we keep our eyes on where we are going as a profession and not just where we have been. ■

ENDNOTES

- In this regard, Professor Susskind was referring not to any particular political bent within the profession, but rather, the loosening by regulatory authorities in the U.K. and elsewhere of the rules that for centuries had forbidden nonlawyer ownership of law firms. He pointed out that in the wake of the U.K.'s "liberalization" of the rules, it is now possible for nonlawyers (mostly large corporations) to own their own law firms, and hypothesized that within the next 10 years, American law firms would find themselves at extreme competitive disadvantages with their European counterparts for the business of multinational corporations, who could access much less expensive legal representation through the use of their own law firms.
- Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013).
- Lippe, *Why 'Tomorrow's Lawyers' is required reading*, ABA J (2013), available at <http://www.abajournal.com/legalrebels/article/running_susskind_in_reverse>. All websites cited in this article were accessed June 23, 2013.
- The Ossian Sweet story and trial were the subject of Kevin Boyle's award-winning book, *Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age*, published by the Henry Holt Company in 2004. Although my good friend Court of Appeals Judge Cynthia Stephens can tell you of several inaccuracies, I found it an incredibly educational and fascinating book, and one which I have recommended to untold numbers of friends and acquaintances, lawyers and nonlawyers alike. In addition, an article by Patricia Zacharias from the February 11, 2001 *Detroit News* titled "I have to die a man or live a coward"—the saga of Dr. Ossian Sweet," which can be found online at <<http://blogs.detroitnews.com/history/2001/02/11/i-have-to-die-a-man-or-live-a-coward-the-saga-of-dr-ossian-sweet/>> (later referred to as "Zacharias"), is an excellent summary of the events leading up to Dr. Sweet's arrest, as well as his subsequent trial and the tragedy that followed the good doctor until his suicide in 1944. I have relied extensively on these two sources—as well as the State Bar's Michigan Legal Milestone marker commemorating the Sweet trial (which was the first Michigan Legal Milestone, placed in 1986) in preparing this column.
- Zacharias*, n 4 *supra*.
- Id.*
- Id.*
- During the trial, the prosecution called witnesses who swore that there were never more than 25 or 30 people in front of the home, but *Detroit News* reporter Philip A. Adler testified for the defense. He was at the scene of the shooting and told of a "considerable mob" of between "400 and 500," and stones hitting the house "like hail." *Id.*
- After the trial, Murphy said, "This was the greatest experience of my life. This was Clarence Darrow at his best. I will never see anything like it again. He is the most Christlike man I have ever known." *Id.*
- Id.*
- Id.*
- Id.*
- Id.*
- Id.*
- Ms. Carr helped organize the Montgomery bus boycott with her childhood friend, Rosa Parks. Ms. Liuzzo was a homemaker and mother of five children when, at age 39, she suddenly told her husband that she was taking their car and driving to Selma, Alabama to help register black southerners to vote. While in Alabama, she was murdered by members of the Ku Klux Klan. For more information, see Latner, *Ford Freedom Award honors two women as 'quiet heroes' in civil rights struggle*, *Detroit Free Press*, May 10, 2013, available at <<http://www.freep.com/article/20130510/NEWS06/305100132/1285/>>.
- For those unfamiliar with the Birwood Wall or its history, I recommend reading the essay "The Birwood Wall" written by Rachael Button and published in the December 2011 issue of the online journal *The Collagist*, found at <<http://www.dzancbooks.org/the-collagist/2011/12/13/the-birwood-wall.html>>. In the interest of full disclosure and with great pride, I will advise you that Ms. Button is my cousin's daughter, a wonderfully creative and kind young woman whose story of self-discovery while searching for the six-foot, half-mile wall that was built roughly 20 years after the Sweet trial but remains standing as a visible reminder of explicit government-approved segregation in our midst is educational, moving, and thought-provoking.
- Baird-Remba, *21 Maps of Highly Segregated Cities in America*, *Business Insider*, available at <<http://www.businessinsider.com/most-segregated-cities-census-maps-2013-4?op=1#ixzz2Wc3CJSgp>>.
- Fershtman, *Diversity: A little more conversation, a little more action*, 91 Mich B J 14 (January 2012), available at <<http://www.michbar.org/journal/pdf/pdf4article1963.pdf>>.
- United States Bureau of the Census, *Employed Civilians by Occupation, Sex, Race, and Hispanic Origin: 2010* (Washington, DC: United States Government Printing Office, 2012), available at <<http://www.census.gov/compendia/statab/2012/tables/12s0616.pdf>>.
- Anne Vrooman, State Bar of Michigan Office of Research and Development, State Bar membership survey statistics (2013).