

Saving Our Profession: What Is Required of Us?

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Middle District of North Carolina Chapter
of the Federal Bar Association*

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First I must issue a disclaimer: While I was invited here to participate as a U.S. magistrate from the Middle District of North Carolina, I want to make it clear that my comments and my opinions expressed today are solely those of Joe Webster and Joe Webster alone.

So what do I mean by saving our profession? I suspect that there may be some in the audience that believe the legal profession is just fine as it is. There may be some among you who haven't heard or have just been out of touch with what I see are some disturbing realities that affect our profession and criminal and civil justice system negatively.

A number of years ago, a man told me he had been charged with a crime. I asked him how his case was going. With all sincerity and with an honest demeanor, he said, "Well, I've had to spend a lot of money to help me get out of trouble. I had to pay my lawyer a large attorney fee, and then I had to give him some money for the district attorney and the judge also." I was not completely stunned by his response, because earlier in my career I had heard similar comments by those charged with crimes. Well, as sincere as he came across, I suspect that the man was repeating to me what his attorney told him to justify a large and perhaps excessive attorney fee, not that any money was ever paid to the district attorney or the judge. But if that is what happened, it was inappropriate and unethical for whatever reason it was said.

Another example of bad conduct of lawyers in this district and in others involved a number of lawyers who violated the rules of professional conduct by using various tactics to obtain business from people who had gotten speeding tickets or other traffic violations. One of the attorneys sanctioned had a website named "tixfixer.

com." One would think that this lawyer would have known that the use of the word "tixfixer," which gives the impression that he could fix tickets, would only cast a negative light on lawyers and the legal profession in general.

Last, the number of our fellow lawyers stealing from their clients' trust account funds does not seem to be decreasing if you look at the quarterly *State Bar Journal* report of attorney disbarments or other disciplines. These few examples have caused our profession to be brought into serious disrepute. I read online about a poll which rated 22 professions regarding honesty and ethical standards. The polling showed lawyers to be rated 16th out the 22 professions, listed just above lobbyists, members of Congress, state officer holders, advertising practitioners, and TV reporters. Even judges were rated ninth out the 22 professions listed. Even day-care providers were rated higher than judges. So you see the problem we face with respect to our reputations for honesty and trustworthiness—two of the most important character traits members of our profession can possess.

In the area of criminal law, I believe that part of the problem is that, as a profession, we have not even figured out a way to clearly explain to laypersons how it is that attorneys can and indeed should represent those charged with the most heinous crimes, even when the defendants have told the attorney that he or she did the crime. Nor have we adequately explained to laypersons the distinction between being found "not guilty" and being "innocent" of the crimes for which a person is charged.

What is required of us as lawyers and judges in these few examples I have just given and in general?

I doubt that many of us take advantage of the teachable moments we often have with our fellow members of the bar. I also know that we need to do a better job of explaining the role of an attorney and, most importantly, in policing our fellow members of the legal profession in complying with the rules of professional conduct. If we don't adequately police ourselves, then others outside our profession may be called upon to do so.

Access to Justice

I could spend a lot of time today speaking about how the lack of professionalism among and between lawyers has hurt the reputation of lawyers; surely that needs to change. However, I want to devote most of my time today addressing what I believe we all must seek to participate in—that is access to justice. The very first words of the preamble to the American Bar Association's rules of professional conduct states, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility of the quality of justice." Paragraph 6 of those rules, in part, states that, as a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession. "A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal counsel ..." And finally, in the 13th paragraph of the preamble to the American Bar Association's model rules, it states that "lawyers play a vital role in the preservation of society."

If we as a profession could do just a couple of things that would change the perception of the legal profession and our system of justice, it would be to provide access to justice for all who had business before our courts and also to allow our voices to be heard in the many injustices we see manifested in our society. All of us present here today, including we judges, must do a better job of providing access to justice as relating to our courts. I was on the indigent appointment list for most of my career. One of the most difficult cases I ever had was one in which I had been appointed to represent the defendant.

While I was practicing law down in Pittsboro, I was in court one day, and there was an assistant public defender who stood before the judge making a motion to withdraw from one of her client's cases. I was busy making final preparations to argue my case, and so I wasn't paying much attention to what was going on. I did see a tall, pony-tailed, tattooed man standing beside her. I heard the judge say, "Yes, I'll allow you to withdraw." And then the judge, Hon. Leon Stanback, started looking in the direction of the lawyers seated beyond the bar. And then I heard him say, "I think I'll appoint attorney Webster. Are you still on the appointment list?" At that point in my career, I had my hands full with the many cases, both criminal and civil I was handling, so I hesitated and then said, "Yes, your honor, I'm still on the appointment list." But immediately the assistant public defender addressed Judge Stanback and said, "I don't think it would do any good to appoint Mr. Webster." Judge Stanback said, "Why not?" and asked the public defender and me to approach the bench. The judge leaned forward and said, "Why not?" and the public defender responded, "My client is a member of the Ku Klux Klan." The judge then turned to me and asked, "Will that give you

any problems?" I won't go into the entire sidebar conversations, but I agreed to be appointed to represent the defendant.

I did so because I believe each and every one charged with a serious crime ought to have a lawyer—not only any lawyer, but one who will fight zealously for their client and a lawyer who cares about him or her and their plight. It turns out that one case may have been the most difficult criminal case I have ever had in all of my years of practice. For one thing, the defendant made threats to me about what he would do to whoever came forward to testify. There came a time when all of my meetings with him took place in the courthouse rather than my office, because frankly I had some fear, and I owed it to my wife and my children to be cautious.

It was the only time in my career when I had to consult with the state Bar on what I was allowed or required to do. I pondered whether I should attempt to withdraw or report the threats to do bodily harm to law enforcement or the court. However, I know that I made the right decision to remain in the case because this man needed compassionate, zealous representation. My personal abhorrence to what my client and the KKK has stood for over the years took a back seat to my belief that one is innocent until proven guilty and that even individuals charged with the most heinous crimes imaginable deserve competent representation. And I strongly believe there is no doubt that our system of justice works best when there is zealous advocacy on both sides of the aisle. And so I said yes when asked to take on this case.

While practicing as a solo practitioner for most of my career sometimes I struggled to make ends meet, and my family had necessities unmet. While practicing down in Pittsboro, one day a client, Ms. Beasley from Sanford, brought me some "poke salad" and a piece of pork and a piece of cornbread. And that night at dinner, sitting around the table with my wife and three children, I told my wife about Ms. Beasley's kind gesture. My wife instantly said to our children, "Lord, children, your Daddy's clients paying him with poke salad."

I tell you about these personal memories of my days as a practicing lawyer because of the need today for our profession to be even more generous with our time and treasure than ever in the past. We have even more financially poor among us than 35 years ago when I began to practice law. Of the 1,173 civil filings in the Middle District during the 2013 calendar year, 680, or approximately 58 percent, were pro se. If you have not heard, I'm happy to announce that our federal Middle District judges have just implemented a pilot program involving the appointments of attorneys to represent pro se litigants in appropriate civil cases. My research shows that there is no shortage of lawyers in the Middle District. Just in Durham, Guilford, and Forsyth counties alone there are approximately 4,000 active lawyers. What is required of us? Many of those 4,000 active lawyers who practice before the federal court or who have experience in the federal court ought to take up my challenge to volunteer for the pro bono panel of attorneys who can help breathe life into the words "equal justice under law." I encourage those present to do so and help get the word out to others who are not present today. The success of our system of justice in part depends on your response to this call.

As you know, in contrast to most serious criminal cases, there is no civil Gideon in most cases that entitles a civil litigant to a lawyer. While I sat as an administrative law judge for six years, just prior to taking on the responsibilities as a U.S. magistrate judge two years ago, I used to look out from the bench and sometimes see two assistant attorney generals on one side of the aisle and a desperate-

looking elderly lady or man on the other side who didn't know even one rule of civil procedure or rule of evidence. In my mind, I often said to myself, there is something wrong with this picture. How can this be anything close to equal justice under law? Often, I felt helpless sitting there as the judge and jury!

Over and over again, those of us who sit in civil cases involving pro se litigants find ourselves compelled to follow the rules of civil procedure and rules of evidence but, at the same time, struggling to provide a venue that looks just a little bit like a venue where justice might be found. The words "equal justice under law" must be more than the four words that appear on the western façade of the U.S. Supreme Court building there in Washington, D.C. Yes, we as practicing lawyers and judges must breathe life and give meaning to those four words. This means that more attorneys may have to be paid with poke salad or paid nothing at all to provide access to justice. More excellent experienced advocates, like one of the most decent men many of us in the audience have ever known, J. Donald Cowan, did some years ago when he, as civil trial lawyer, took up the challenge to represent a man faced with a capital murder charge and made himself available in other serious felony cases where justice might have slipped away if a good lawyer had not been present.

In recent years, DNA has proven in numerous cases that our system of determining guilt is not perfect, and many innocent people serve lengthy prison sentences before being exonerated by DNA or other evidence. The Oct. 17 edition headlines of the *Raleigh News and Observer Today* read, "After 38 years, judges exonerate Durham man convicted of first-degree murder."

So having a competent lawyer is an important element of gaining access to justice. However, even those in the middle class are finding it very difficult to hire a lawyer. For someone who makes \$15 or \$20 an hour, an attorney informing them that his or her services are billed at \$250 or \$300 per hour is not even comprehensible, let alone affordable. If our profession puts such a high dollar value on its services, then who will be able to afford our help? Even without a lawyer, in the simplest of speeding tickets in state court, the cost of court is at least \$185. The cost of filing a civil lawsuit in federal court is \$400. Some families don't have that much income per month. Fortunately we have in America laws that allow indigent parties to at least file a lawsuit without paying the filing fee, if he or she qualifies.

Access to justice is much broader than a person's ability to get into court with a lawyer. Access to justice begins long before a lawsuit is filed and in many instances involves no lawsuit at all. Lately, the television and other news have been filled with headlines about all that is going on in Ferguson, Missouri, and a number of other places around the nation. A recent article in The Huffington Post indicated, according to a ProPublica analysis of federally collected data on fatal police shootings, that young black men are 21 times at a greater risk than their white counterparts to be shot dead by police officers. I have a 6-foot, 2-inch, 25-year-old, brown-skinned son who is one of the most respectful, hard-working, talented young persons I have ever met. My family, my wife, and two daughters worry about what could happen to him, especially if he happens to be at the wrong place at the wrong time. The wrong place at the wrong time could be lawfully driving on his way to work or in a store shopping or any other place else in America where he has a lawful right to be. This same concern is on the mind of many persons of color around the nation.

What does this have to do with you in this audience and what is required of us in the legal profession? First, we must recognize that

racial profiling is real, and lawyers and others of goodwill should speak out against it. As the number of shootings have increased, it is more difficult to defend some among law enforcement that seems to shoot first and ask questions later. I have concluded that unless fair-minded and forward-thinking people of goodwill of all colors and professions, and especially people who have something to lose, don't open our mouths and speak the truth, then our system of justice and all that we've been hearing about on the news won't get any better.

Our legal profession has long been considered a beacon of hope, a bastion of protecting our constitutional rights and freedoms that we hold dear. But we also have been the first to stand up for what is just and right. Here is what is at stake: Unless we as a profession speak up, then those who have less to lose will lose confidence in us as a profession. Not only are these young, mostly men of color entitled to equal justice under law, but they are also entitled to equal dignity under law. Law enforcement officers have a very difficult job. Guns and violence seem to be everywhere around the world, no less so here in America. But even those who are in the wrong have a right to be brought to justice to have their day in court. They can't be brought to justice if they are gunned down in the street. This is what is on the minds of persons of color around the nation, and all of us should be equally concerned and seek to remedy it.

I doubt that most of you present today know how difficult it is for every African-American judge in the nation to see the disproportionate number of minority defendants standing before us in criminal court. I have read that one-third of the black men in America are involved in the criminal justice system, whether in prison, probation, or parole. In recent years, more and more people have recognized that our sentencing guidelines are too tough in some cases, and Congress and the Supreme Court have softened the guidelines impacts.

What is required of us? Let me first say that, compared to how I grew up in rural North Carolina here in the Middle District, I hardly recognize the world of some of those that come before me. Recently one young man before me had seven children by seven different women, none of which he'd been married to. He was accused of selling drugs and somehow had not worked in over 20 years. Most of those we see in criminal court don't have a father at home and, increasingly, some don't even know who their father is. Many of them are angry. No one will offer them a job. Many believe that that society doesn't value their lives, and many standing before the court don't value their own lives. Over the years I've learned that the human spirit needs to be validated in order for a person to have self-worth. And so many of our youth have all but given up on living since some say they don't believe they will live long anyway.

What is required of us? First every one of should become a mentor to some young girl or boy outside of our own families. We must fight to keep them in school and give them hope. We must go into the public schools and put our arms around some young boy or girl whose father is in prison, [whose] mother is strung-out on drugs, and who often cannot read well and [is] struggling with a lack of self-esteem. Those of us who can afford to do so must contribute our money to colleges and universities for scholarships for those of our young men and women who cannot afford some college or training beyond high school. Only then will they be able to compete for a job that at least pays a living wage. As judges, when these young men and women come before us, we must treat them with as much dignity and respect as we would the most respected person in society. And as judge, we must also seek to offer them hope as they go off to prison. I have

found that in order to be respected, you must give respect, no matter what a person's station is in life. This is what I meant when I said that all are entitled to equal dignity under law. Even though in my court most are not successful in being released pending trial or further proceedings in their cases, nevertheless I try to give them hope. I encourage them not to give up. I sense that for many of them, I may be the first grown man that has ever tried to encourage and give them hope, even if I have ruled that I cannot release them pending trial because I find they are a danger to the community or because they are a flight risk.

What else is required of us? Our profession must recognize that there is strength in numbers, and so we must seek to partner with other groups, especially those that are already in the trenches working to right this ship of despair in the communities that is about to sink. I have written and stated before that, in my opinion, lawyers have not been good stewards of our profession. We must begin to mend our profession by increasing our efforts to do "good" toward our fellow man, whether it is with our lawyer or judge hat on or in our individual capacities. I know that I am speaking mostly to the choir today. But if you can take this message beyond these walls, I'd appreciate it greatly.

I have been blessed to get to the federal bench because I went back to my hometown 35 years ago. In 1985 I was awarded the North Carolina Bar Association's Pro Bono Service Award for doing good in my hometown and Rockingham County. Before that time, I suspect that hardly anyone knew who I was—just six years into my legal career. Three years later I was asked to serve on the North Carolina Board of Law Examiners and later became chair of that board. And after six years as an administrative law judge I was sworn in as a federal magistrate judge just two years ago. Before assuming my position as federal magistrate judge, there was a lot of hard work and disappointment along the way. I tell you how I got here not because I'm being boastful, because I'm not that kind of person—but I tell you so that I might convince at least some of you there is a reward for doing good in our profession. But the real reward is not in being recognized but the joy that comes from knowing you have tried to help someone along the way.

I am about to conclude, but I am of the opinion that the legal profession has a role to play in promoting racial and ethnic reconciliation. One of the great privileges of serving as magistrate judge so far is presiding at a number of naturalization ceremonies where usually 25 or 30 countries are represented by the newly made citizens. Looking out among the audience, I tell them that there is a great need for Americans of all nationalities and creeds to come together and get to know one another. Notwithstanding the painting of America as red and blue states by politicians and others, we are, as indicated in our pledge of allegiance, one nation under God, indivisible, with liberty and justice for all. I also tell them of the African proverb that says, if you want to walk fast, go alone, but if you want to walk far, go together. If we as a profession walk together with others, this will undoubtedly help mend the fractured communities we have in America today and will also help save our profession.

I want to end by showing you a short video about a program we initiated in the federal court there in Durham. My clerks and I invite Durham middle school students to our court and

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chambers once per month during the school year.

We encourage them to stay on the right side of the law, to be respectful of each other and their teachers and other school officials. We make every effort to show them that we, the court system, cares about them. We introduce them to the federal court by conducting a mock criminal trial and allow them to act as jurors and allow them to decide the guilt of the defendant. We then discuss with them fundamental principles of our system of justice, such as one charged with a crime is presumed innocent until proven guilty beyond a reasonable doubt and that a defendant has the right to remain silent. And last we invite a guest speaker from the community each month. Among our guest speakers have been an airline pilot, a scientist, retired college head football coach, actress, police chief, drug-sniffing dog and his handler, and convicted drug dealer who is now a successful businessman.

Thank you for inviting me here today, and I am confident that we, all of us—both lawyers and judges—will rise to the occasion and continue to play a vital role in the preservation of society, and also in making this a better world. ☺



Judge Webster, a native North Carolinian, earned his bachelor's and law degrees from Howard University. He is presently pursuing a Master of Judicial Studies degree at Duke University School of Law. Upon graduating from law school, he was a Reginald Heber Smith fellow and staff attorney at Legal Services of the Southern Piedmont in Charlotte, North Carolina. A year later he hung his shingle in his hometown of Madison, North Carolina, and for most of the next 25 years, was engaged in the general practice of law there and in other small towns in the state. During this period, he also served as general counsel of the Mid-Eastern Athletic Conference and as a town attorney. In 2006, Webster was appointed as an administrative law judge in the Office of Administrative Hearings for the State of North Carolina, and on Nov. 7, 2012, was sworn in as a magistrate judge for the U.S. District Court for the Middle District of North Carolina. He has also served as an adjunct professor of law at the Norman Adrian Wiggins School of Law at Campbell University. Webster has dedicated his life's work to community and public service. Webster has been married for nearly 35 years to Diane Ramsey Webster, and are the parents of three adult children. © 2015 Hon. Joe L. Webster. All rights reserved.