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AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON PUBLIC EDUCATION

RECOMMENDATION

RESOLVED, that the American Bar Association encourages all lawyers to consider it part of their fundamental responsibility to ensure that all students experience high quality civic learning, including the study of law, government, and history.

REPORT

Call to Action

On August 1, 2009, retired Supreme Court Associate Justice David Souter delivered the keynote speech at the Opening Assembly of the American Bar Association annual meeting in Chicago. His focus was civic education in the United States. He declared, “I believe civic educational reform is, literally, essential to the continued vitality of American constitutional government as we know it.” Justice Souter’s message came with a call to action: “I will ask the American Bar Association as an organization and each one of you as individuals to take on the job. . . . Civic education has to be raised to a new power and [that is] why every one of us in this room has to see to it that civic understanding becomes a birthright of every American.”¹

In response to Justice Souter, Stephen Zack has written “As president-elect of the American Bar Association, I’m pledging my support, and that of our professional association, to answer [Justice Souter’s] call to action. Moreover, I encourage all lawyers and judges to be personally and actively engaged in civic education in their communities and schools.”

President-elect Zack also has emphasized that this effort will require a “rededication” on the part of all Americans:

*We must rededicate ourselves to learning about our constitutional system—not just the words on parchment, but the fundamental principles and values those words represent. Principles and values such as the separation of powers, checks and balances, judicial review, the rule of law, and constitutional democracy—majority rule that protects minority rights. Such a rededication requires a shared commitment to civic education. This will take a concerted effort. We must begin where the need is most urgent and the impact can be the greatest—in our nation’s schools.*²

To help address this need for civic education in the nation’s schools, President-elect Zack is planning a special initiative to enhance existing Association efforts and highlight the ABA’s national leadership for civic education. Among his plans are developing a new program for high-school students to be known as Civics and Law Academies. They will be conducted nationwide around President’s Day in February 2011 and will be an ongoing annual program. Bar associations are being asked to join the ABA in this effort. Other plans call for a national civics test, based on law-related questions that new Americans must answer to become U.S. citizens, and a ceremonial opening of the legal year to recognize the vital role of courts in our system of justice. Guiding these efforts during 2010-2011 will be a 21-member commission of distinguished national leaders in law, education, government, and civic affairs.

Opportunities to Improve Civic Learning

This is a propitious moment for education in the nation’s schools, especially for civic learning. There clearly is a need to improve civic learning.

¹ Keynote Speech by David Souter, Associate Justice, U.S. Supreme Court, at Opening Assembly, American Bar Association Annual Meeting, Chicago, August 1, 2009, <http://www.abanet.org/publiced/JusticeSouterChallengesABA.pdf>.

² “Future Depends on Civics,” Tallahassee.com, Stephen N. Zack, December 9, 2009.

Leading experts point to the inadequate state of civic learning. A landmark 2003 report on *The Civic Mission of Schools* warned, “School-based civic education is in decline.”³ Commissioned by the Carnegie Corporation and the Center for Information & Research on Civic Learning & Engagement (CIRCLE), the report has had a galvanizing effect, ushering in an ongoing period of concerted national advocacy for civic learning. It reflected a broad consensus among scholars and practitioners that educational institutions need to play a major role to improve the civic understanding of American students. Seeking to implement the report’s recommendations is the Campaign for the Civic Mission of Schools, a nonpartisan, nonprofit coalition of more than 60 organizational partners, including the American Bar Association.

The National Center for Learning and Citizenship is based at the Education Commission of the States (ECS). It maintains an updated report on state statutes and administrative codes. It indicates that 47 states have both state statutes and administrative codes that address “civics, citizenship, citizenship education, or social studies,” two states (Alaska and the District of Columbia) have administrative codes, and 2 states (Missouri and Montana) have neither. A 2004 ECS study noted, however, that only 23 states have testing or assessment systems that include knowledge of civics or government.⁴ This suggests there is certainly room for improvement and reform of civic education in the states and at the local level.

Administered by the National Center for Education Statistics, the National Assessment of Educational Progress (NAEP), known as the Nation’s Report Card, “is the only nationally representative and continuing assessment of what America’s students know and can do in various subject areas. Assessments are conducted periodically in mathematics, reading, science, writing, the arts, civics, economics, geography, and U.S. history.” The most recent NAEP Civics Assessment was conducted in 2006. Among its findings: Only 27% of 12th graders are *proficient* in civics and government. Only 5% attained an *advanced* achievement level, although 66% scored at least at a *basic* level. Comparable figures for eighth graders: 22% proficient, 2% advanced, 70% basic. For fourth graders: 24% proficient, 1% advanced, 73% basic.⁵

In addition to measures of student achievement, there are also measures of the general American public’s knowledge, which point to inadequate understanding of subject matter, including law, government, and history, essential to civic learning. To cite one example, a Harris Interactive Survey conducted for the American Bar Association in July 2005 showed that nearly half (45%) of Americans were unable to correctly identify the three branches of government as “legislative,

3 “The Civic Mission of Schools: A Report from Carnegie Corporation of New York and CIRCLE: Center for Information & Research on Civic Learning & Engagement, 2003,
http://civicmissionofschools.org/site/campaign/cms_report.html

4 “State Citizenship Education Policies,” ECS State Notes, Education Commission of the States National Center for Learning and Citizenship, April 2004. Updated information on the State Policies for Citizenship Education Database at http://www.ecs.org/ecsmain.asp?page=/html/ProjectsPartners/nclc/nclc_main.htm.

5 The NAEP website, administered by the National Center for Education Statistics, is at nces.ed.gov/nationsreportcard. 2006 National Assessment of Educational Progress (NAEP) for Civics: The Nation’s Report Card. Definitions of achievement levels: basic = “partial mastery,” proficient = “competency over challenging subject matter,” and advanced = “superior performance.” To attain the “proficient” level, 8th grade-students, for instance, are able to “explain the importance of the rule of law and the separation of the legislative, executive, and judicial powers.”

executive and judicial.”⁶

Retired Supreme Court Justice Sandra Day O’Connor, who has taken on the mission to advance the cause of civic education in recent years, has cautioned, “I don’t know how long we can survive as a nation if we don’t teach every generation how our government is structured and works. I regard that as a very important thing for our public schools to teach. It’s critical for every generation to learn it. You don’t inherit that knowledge through the gene pool.”⁷

Utah Supreme Court Chief Justice Christine Durham has also stated, “By teaching civics to every student, our future citizens will acquire the knowledge and dispositions that self-government demands....Civic education helps students engage with others of differing views. Debates in the classroom demand that students consider the arguments on both sides of an issue. The process of civil deliberation that leads to reasoned conclusions is not only a vital skill for students’ own development, but is at the heart of the process of self-government.”⁸

The Nation’s Schools and the Legal Community

More generally, our nation’s schools are at a critical juncture. Due to the impact of the nationwide economic downturn, many public schools across the country are facing significant funding crises. Many school districts are being compelled to make substantial cutbacks in services, including layoffs of classroom teachers.

At the same time, long-term trends already pointed to the challenges that confront our nation’s K-12 schools. Summarizing the views of many educational policy experts, George Wood, executive director of The Forum for Education and Democracy, a group “committed to the public, democratic role of public education” commented in April 2010: “The over-reliance upon high-stakes standardized measures of achievement has had deleterious effects upon our schools, including narrowing curricula and teaching practices, teaching to the test, and an actual decline in student achievement as measured by international assessments.”⁹

Writing in the introduction to “A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act,” released in March 2010 by the U.S. Department of Education, President Obama has also pointed to this general decline in America students’ achievement and has linked it to our educational institutions: “America was once the best educated nation in the world. A generation ago, we led all nations in college completion, but today, 10 countries have passed us. It is not that their students are smarter than ours. It is that these countries are smarter about how to educate their students.”¹⁰

6 “Civics Education” national public opinion poll conducted by Harris Interactive on behalf of the American Bar Association, July 2005, http://www.justiceteaching.org/resource_material/ABASurvey.pdf.

7 “Retired Justice Stumps for Civics,” Education Week, April 26, 2006.

8 “Stronger civics education work aid American citizens and democracy,” Christine Durham, Chief Justice, Utah Supreme Court, The Salt Lake Tribune, September 15, 2008.

9 Published letter from George Wood, Executive Director, The Forum for Education and Democracy, Letter to U.S. Senators Tom Harkin and Mike Enzi, transmitting “Creating a National Culture of Learning” regarding recommendations on reauthorizing the Elementary and Secondary Education Act, April 21, 2010, http://forumforeducation.org/files/u48/Help_comm_042710.pdf.

10 Introduction by President Barack Obama to “A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act,” U.S. Department of Education, March 2010, page 1, <http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>.

The Elementary and Secondary Education Act (ESEA) is the primary legislation shaping federal policy—and funding—for the nation’s schools. When it was reauthorized in 2002, it was renamed No Child Left Behind (NCLB). Although its effects have been controversial, few deny that it has had a significant impact on schooling and education in the United States. There is also now a general consensus that it is time to reassess federal education policy as Congress is now very likely to reauthorize ESEA later in 2010.

The Obama Administration’s “A Blueprint for Reform” sets out its recommendations for reauthorizing ESEA. In framing these recommendations, President Obama wrote, “Reforming our schools to deliver a world-class education is a shared responsibility—the task cannot be shouldered by our nation’s teachers and principals alone.... We must recognize the importance of communities and families in supporting their children’s education.”¹¹

The legal community must do its part to recognize its role and accept its “shared responsibility” for improving our nation’s schools, especially in the area that, ultimately, most directly affects our justice system: civic learning. As the Preamble to the Model Rules of Professional Conduct states, a lawyer, “should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”¹² Public legal understanding depends upon an active program of civic education.

ABA’s Longstanding Support for Civic Education

The American Bar Association has a long history of support, in policy and direct programs, for law-related civic education. Early efforts date back to the 1920s and have been ongoing since the early 1970s.

In 1971, then-ABA President Leon Jaworski established the Special Committee on Youth Education for Citizenship, the genesis for what became, in 1983, the Division for Public Education. Today, the ABA Division for Public Education¹³ provides national leadership for law-related and civic education efforts in the United States, conducts educational programs, develops resources, provides technical assistance and information clearinghouse services, presents awards, and fosters partnerships among bar associations, educational institutions, civic organizations and others. Civic education programs and resources of the Division currently include Law Day, Constitution Day, summer institute for teachers on federal trials in U.S. history, the National Law-Related Education Leadership Conference, National Online Youth Summit, Dialogue program series, *Insights on Law & Society* magazine for teachers, “Looking at the Law” features in *Social Education* magazine, and a curriculum developed in association with the Anti-Trust Law Section.

At the policy level, the House of Delegates urged support for law-related citizenship education and including understanding of the U.S. Constitution as a secondary school graduation requirement in the 1970s and 1980s. In the 1990s, ABA policy positions urged Association support for citizenship education, including constitutional studies, in elementary and secondary schools; called on judges and courts to support and actively participate in public education

¹¹ Ibid.

¹² ABA Model Rules of Professional Conduct: Preamble and Scope, www.abanet.org/cpr/mrpc/preamble.html.

¹³ The mission of the ABA Division for Public Education is to promote public understanding of law and its role in society. Its extensive website is at www.abanet.org/publiced.

programs about the law and justice system; urged bar support for public education about the Constitution and the rights and responsibilities of citizenship through implementation of the national education goals and standards for civics education; and called on the Association to take the lead in developing long-term educational programs to improve public understanding of our system of justice.

A decade ago, the House approved a February 2000 policy that resolves:

*That the American Bar Association encourages every lawyer to consider it part of his or her fundamental professional responsibility to further the public's understanding of and confidence in the rule of law and the American system of justice.*¹⁴

In August 2006 the House approved Resolution 06A-102, which resolves:

*That the American Bar Association encourages all lawyers and judges to be personally and actively engaged in civic education in their communities and schools...and further resolved that the American Bar Association urges policymakers at all levels of government to ensure that: all students experience high quality civic learning—including study of law, government, and history; students' civic learning is regularly and appropriately assessed; and civic learning is accorded national educational priority on a par with reading and mathematics.*¹⁵

Following up on the 2006 resolution, the House subsequently passed resolutions in 2007 and 2009 directed to policymakers that presented specific action steps to implement the 2006 resolution. These included “[urging] the amendment of the No Child Left Behind Act if reauthorized, or the adoption of other legislation, to ensure that all students experience high quality civic learning” and [establishing] a Coordinating Office of Civic Education in the U.S. Department of Education to enhance students’ civic learning by offering competitive grant programs,” among other steps.¹⁶

Preserving the civic mission of schools is vital to the continued success of American constitutional democracy. It is imperative that the American Bar Association continue to assume a leadership role in the national effort to promote high quality civic learning for all of the nation’s students. This must be done not only through actions directed to policymakers, but also through a call to action to the nation’s lawyers.

To accomplish this—and to meet Justice Souter’s call to action and support President-elect Zack’s civic education initiative—the proposed recommendation to the House of Delegates resolves that the American Bar Association encourages all lawyers to consider it part of their fundamental responsibility to ensure that all students experience high quality civic learning, including the study of law, government, and history.

Civic Education is a Responsibility of Lawyers

¹⁴ The 2000 ABA resolution and accompanying report are at <http://www.abapubliceducation.org/publiced/resolution00.html>

¹⁵ ABA House of Delegates Resolution 06A-102.

¹⁶ ABA House of Delegates Resolutions 07A-114 and 09A-122.

Ensuring civic learning in the nation's schools should be a responsibility of and a matter of professional interest to every American lawyer. The report accompanying the House's 2000 policy resolution concerning lawyers' responsibilities to foster public legal understanding outlined a number of possible ways this goal could be accomplished:

*Lawyers and judges can fulfill their public and professional responsibilities to foster public understanding of the law and justice system by becoming involved in and supporting public education efforts. They can become involved in lawyer in the classroom or mock trial activities as part of law-related education programs for young people. They can participate in community forums or on an ask-a-lawyer program on issues of practical law or public policy. They can take part in organized public education efforts to commemorate Law Day. They can serve on public education committees or task forces. They can foster public understanding of the law through client relations. They can support public education efforts by the organized bar and bench, in partnership with educators and others committed to furthering public understanding.*¹⁷

Given the state of American education today and the need to improve civic learning, some of these efforts, such as client relations, while laudatory and necessary, are not sufficient to fulfill lawyers' responsibilities to foster public understanding of the law and justice system. A further step is needed. Such an aim now requires that lawyers consider it part of their responsibility to ensure that all students in the nation's schools experience high-quality civic learning. While an individual responsibility, this could be met by direct involvement in the classroom or through support for policy or resources that enhance the civic education of students.

Our Legal Institutions Depend on our Educational Institutions

Accordingly, the proposed policy resolution builds upon the aforementioned 2000 and 2006 policies approved by the House of Delegates to forge new and significant policy for the Association. Implicit in this recommendation is the premise that our legal institutions and justice system depend upon the effectiveness of our educational institutions to make sure Americans are educated and acculturated to maintain their commitment to the rule of law and sustain their trust and confidence in the institutions of constitutional democracy, including the jury and other components of our system of law and justice. No other institution in American society can accomplish this civic mission as well as our schools, especially as we welcome new Americans to our land, during an era of historic immigration levels.

¹⁷ The 2000 ABA resolution and accompanying report are at <http://www.abapubliceducation.org/publiced/resolution00.html>

At a key moment in American education—and hence, in American law and society—the legal community should answer the call to action to participate, as appropriate, in the education of American youth. As stated eloquently by the authors of the recent report, “Creating a National Culture of Learning”:

From Thomas Jefferson’s first proposals for public education to the current debates over school quality, we have always looked to our schools as a tool for making democracy possible through educating the next generation of citizens. How we conduct those schools, and how equitable and excellent we make all of our schools, says as much about us as a nation as anything else we do.¹⁸

For the reasons cited in this report, the Standing Committee on Public Education urges the House of Delegates to approve the proposed recommendation regarding lawyers’ responsibility for civic learning in the nation’s schools.

Respectfully submitted,

Eduardo Roberto Rodriguez, Chair
Standing Committee on Public Education

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¹⁸ “Creating a National Culture of Learning: The Forum for Education & Democracy’s Recommendations for the Reauthorization of ESEA,” April 2010.