

Crisis of Knowledge:

The Importance of Educating the Public About the Role of Fair and Impartial Courts in Our System of Government

by Richard H. Levenstein and Judge Michelle Sisco

The United States is suffering from a significant and widespread adult civics education deficit. This deficit has resulted in a large-scale lack of knowledge and skills on the part of the adult population in the areas of civics and government, and perhaps most importantly, with respect to the existence of, purpose for, and workings of the judicial branch of government.

A July 2014 survey by the Annenberg Public Policy Center showed that only 36 percent of those surveyed could name all three branches of the U.S. government, while an almost equal number at 35 percent could not name even one. Only 27 percent of Americans know that it takes a two-thirds vote of the House and Senate to override a presidential veto, and one-in-five Americans (21 percent) incorrectly thinks that a 5-4 Supreme Court decision is sent back to Congress for reconsideration.¹

Likewise, the American public's perception of their government, including the judicial branch, is in significant decline. While Americans' trust in the judiciary is still higher than that of either the executive or legislative branches of government, two recent polls show that the public's perception of the judicial branch is nonetheless at a record low. According to a September 18, 2015, Gallup poll, Americans' trust in the judiciary has sunk to a new low of 53 percent, down from 76 percent as recently as 2009.² Similarly, pursuant to a July 29, 2015, Pew Research Center poll,³ the unfavorable impression of the Supreme Court is 43 percent, the highest number recorded in 30 years.

In past years, many states have deemphasized the teaching of civics and government in middle schools and high schools. Therefore, students who attended schools where civics and government was deemphasized are necessarily, naturally,

and unfortunately part of the civics education deficit in the U.S. More recently, we have seen advancements in public policy nationwide pertaining to civics and government in the classroom. Presently, Florida serves as a model in such policies. Seventh grade students in Florida's public schools must take a mandatory civics class as well as an end-of-course exam due to passage of middle school reform legislation. Thus, while progress is being made, our country still faces many challenges in securing a civic-minded and educated populace.

In December 2005, The Florida Bar commissioned a Harris Interactive Poll of Florida⁴ adults to test the knowledge of Florida's adult population of their government and how it operates. Some of the results of that poll follow:

- The majority of Florida adults were only aware of some of the basic structures of government.
- Less than six in 10 adult Floridians could correctly identify the three branches of government — 18 percent incorrectly said “local, state, and federal”; 16 percent incorrectly said “Republican, Democrat, and Independent.”
- While a majority said that checks and balances and separation of powers are important principles for democracy, few could accurately define either term.
- More than half of adult Floridians could not define the term “separation of powers.”
- More than one-third of adult Floridians could not define the term “checks and balances.”

In 2009, the National Center for State Courts conducted a national poll that revealed 21 percent of adults polled could correctly name all three branches of government and 40 percent of the adults polled could not name any branches of government. These results reveal a shocking lack of foundational knowledge on the part of the adult population concern-



FLREA Director Annette Boyd Pitts, Circuit Judge Michelle Sisco, and attorney Richard Levenstein discuss adult civics education during an interview with the Legal Talk Network at the 2015 Florida Bar Annual Convention. Photo by Susannah Lyle.

ing what government is, how it works, and their role in government.

The good news is that, nationally, Florida leads the way in attempting to reduce and eliminate the civics education deficit of its citizens. The Florida Bar's Constitutional Judiciary Committee, in response to the Harris Poll, created the Benchmarks Adult Civics Education Program to enable and encourage attorneys and judges to make presentations to adult gatherings, including civic organizations such as Rotary, Lions, and Kiwanis clubs, homeowners and condominium associations, community centers, community colleges, high school extension classes, and adult educational classes at religious institutions and other organizations. The Benchmarks Program has been supported by the Constitutional Judiciary Committee since its inception, and its members and chairs have long been enthusiastic presenters and instructors.

The program provides interactive, online activities that are self-contained and can be downloaded by a judge or attorney for presentation. The Florida Bar's Benchmarks Adult Civics Education Program, www.Floridabar.org/benchmarks, is easy to navigate and contains all of the materials for a

Benchmarks presentation, including a video training session. The program is currently made up of the following 10 activities, divided into three basic categories:

1) Constitution and the Bill of Rights

- *What's Not in the Bill of Rights?* — recounts the first 10 amendments to the U.S. Constitution and the process for amending the Constitution;
- *Is it Unconstitutional? The Case of the Scarlet Tag* — an activity that examines factors to determine whether a hypothetical law violates the U.S. Constitution;
- *Amending Florida's Constitution: The Role of the Courts* — reviews methods of amending the Florida Constitution and the role of the courts in reviewing proposed amendments;
- *Case Study: Is it Reasonable?* — explores the courts and the Constitution through a case study. Participants apply the Fourth Amendment to the U.S. Constitution and case precedent to a set of facts to experience judicial decision-making.

2) Courts and the Judicial Branch

- *What the Law Means* — reviews the

role of the judge in the judicial branch and how this branch/officials are different from other branches of government and other elected officials;

- *Judge for Yourself* — has participants analyze the role of appellate judges and evaluate the conditions under which they should be retained or removed from the bench;
- *Six Ordinary People* — provides an overview of the jury system and the critical role of jurors in our justice system;
- *How to Judge Judicial Candidates* — asks participants to identify the qualities and characteristics that are most important in selecting judges.

3) Special Topics

- *Could you Pass the Test?* — an interactive program that uses questions from the U.S. naturalization/citizenship test as the basis of the activity;
- *Who Has the Right?* — addresses voting practices historically and currently in the U.S. and explores present-day challenges and dilemmas;
- *Constitutional Revision: The Florida Constitutional Revision Commission* — addresses what the Constitutional Revision Commission is, how it is selected, and how it operates.

This fluid development process incorporates new activities throughout the year and incorporates training for attorneys and judges. The objective was to make the usage of these materials so simple that one could literally view the materials, download them, and be ready to lead a session. Hundreds of lawyers and judges have been trained to use the materials. As an added bonus, lawyers who conduct Benchmarks presentations can receive up to three hours of ethics continuing legal education credits per three-year reporting cycle and up to two hours credit for participating in the training sessions.

The Florida Benchmarks Program serves as a model for adult civics education programs in other states. New Jersey, New Hampshire, Wisconsin, Arizona, Vermont, and North Carolina have all created adult civics education programs for judges and/or attorneys to educate citizens about the importance of a fair and impartial judiciary. Additionally, Colorado created its own program, Our Courts Colorado, which

is a program similar in nature to the Benchmarks program; however, its activities are designed exclusively for use by judges.

The response from audiences to these presentations has been uniformly excellent and has generated many expressions of appreciation and gratitude who either never learned or forgotten the importance of knowledge of their government and the courts and their importance to the preservation of our democracy and way of life.

Florida has also been actively involved in the Informed Voters — Fair Judges Project (IVP) established by the National Association of Women Judges. The Florida Bar has a separate page devoted to the educational materials developed for the Informed Voters — Fair Judges Project. The National Association of Women Judges website is another resource for information, focusing on educating the public about the selection and retention of judges and the important role of the judiciary in our form of government. The Informed Voters — Fair Judges Project information and materials can be found on the Bar's website under Fair and Impartial Courts.

In the 2012 election cycle, when three Florida Supreme Court judges were the subject of retention elections, together with 16 district court judges, The Florida Bar created the Vote is in Your Court Program to educate Florida voters about the nature, operation, and mechanics of judicial retention elections. This was a critical moment in recognizing the importance of non-partisan educational materials to help the public better understand the role of judges and how they are selected.

Florida attorneys gave presentations in their communities to adult audiences about a topic that prior to that time was rarely discussed in any forum. The judges subject to those retention elections were retained by an average vote of 68 percent.

We as lawyers and judges need to be vigilant of the issues facing our government and especially the judicial branch. A knowledgeable population is the best protector of democracy, and we must do everything we can to increase the level of that knowledge. An independent, fair, and impartial judiciary is the protector of that democracy and the republic, and the protector of the minority from the tyranny of the majority. Chief Justice Arthur Vanderbilt of the New Jersey Supreme Court said it best in 1937 when he said: "If citizens have respect for the work of their [c]ourts, their respect for law will survive the shortcomings of every other branch of government; but, if they lose their respect for the work of the courts, their respect for law and order will vanish with it."

There are over one million lawyers and judges in the U.S. If even 10 percent of those lawyers and judges became involved in adult civics education in their communities, a critical mass of people could soon be reached and a huge and significant difference in educating the adult population could result.

Now is the time for both lawyers and judges to become involved in an adult civics education program in our communities. A Benchmarks or Informed Voters Project presentation gives lawyers and judges an opportunity to render a significant educational service; to increase trust and confidence in the courts; and protect and preserve a fair,

impartial, and independent judiciary. Please spend some time on the Benchmarks website, especially the Toolkit, which provides all of the information necessary to become a Benchmarks presenter. □

¹ Annenberg Public Policy Survey, *Americans Know Surprisingly Little About Their Government, Survey Finds* (2014), available at <http://www.annenbergpublicpolicycenter.org/americans-know-surprisingly-little-about-their-government-survey-finds/>.

² Gallup Poll, *Trust in U.S. Judicial Branch Sinks to New Low of 53%* (Sep. 18, 2015), available at <http://www.gallup.com/poll/185528/trust-judicial-branch-sinks-new-low.aspx>.

³ Pew Research Center Poll, *Negative Views of Supreme Court at Record High, Driven by Republican Dissatisfaction* (2015), available at <http://www.people-press.org/2015/07/29/negative-views-of-supreme-court-at-record-high-driven-by-republican-dissatisfaction/>.

⁴ Harris Interactive Poll, *Telephone Survey Conducted on Behalf of The Florida Bar between December 27 and 29 Among Adult Floridians* (2005).

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