



By Mark A.
Cunningham

The Importance of Speaking Out for the Profession and Rule of Law in Response to Unwarranted Attacks on Louisiana Attorneys and Judicial Independence

This past fall, the *Washington Post* called the Caddo Parish DA's race the "most important local election of 2015." National press coverage started months before the election and focused on race, capital punishment and a case of prosecutorial misconduct dating back decades. Reporters paid little attention to the policy positions of the candidates or their experience. They paid no attention to the critical role assistant district attorneys play in Caddo Parish and elsewhere in preserving public safety or the financial sacrifice many of them make by pursuing a public service career. None considered the impact on the public when the State failed to fund indigent criminal defense fully.

We have all seen this dynamic before. It plays itself out in the media every day. Sometimes the target of ridicule is a district attorney; other times, the spotlight is on the judiciary or trial lawyers. However, no matter what the story, we can always count on two things. First, the media will never acknowledge our commitment and service to the public — attorneys doing good works does not sell papers. Second, the profession will never speak out in its own defense. The irony should not be lost on anyone — the profession with the greatest number of blowhards (myself included) per capita has nothing to say when its own members are unjustly attacked.



Louisiana State Bar Association President Mark A. Cunningham, third from left, attended a dinner meeting with members of the Plaquemines Parish Bar Association. Among the attendees were Plaquemines Bar officers, including President S. Jacob Braud, Treasurer Adrian A. Colon, Jr. and Secretary Dominick Scandurro, Jr.; Judge Michael E. Kirby and Judge Joy Cossich Lobrano; and members Stephen C. Braud, Valeria M. Sercovich, Francis J. Lobrano, W. Allen Schafer, George Pivach II, Mark A. Pivach, Corey E. Dunbar, Joel P. Loeffelholz and Leo J. Palazzo.

Please do not misunderstand my concern. With the prominent position we hold in public policy debates and the administration of justice, scrutiny of our profession should not only be expected but welcomed. We want to know when our profession falls short. Our self-regulating status demands that we embrace criticism and address our shortcomings. Nor should we publicly defend attorneys or judges who disgrace the profession by failing to meet the standards of ethical conduct and professionalism that we have established for ourselves.

On the other hand, if we do nothing

to defend attorneys and judges when they are unjustly attacked, public respect for our profession will continue to wane and our self-regulating status will come under attack. Further, when a particular segment of our profession is attacked without cause, we cannot expect that group to mount an effective defense without support from the rest of the bar. Defense lawyers must speak out for plaintiff lawyers and vice versa. Prosecutors must speak out for criminal defense lawyers and vice versa. All Louisiana attorneys must speak out for judges when those purporting to speak for Louisiana and economic



Louisiana State Bar Association President Mark A. Cunningham, second from left, attended a dinner meeting with members of the Inn on the Teche American Inn of Court. From left, M. Boffill (Bo) Duhe, district attorney, 16th Judicial District; Cunningham; Judge Curtis Sigur, 16th JDC; Judge Vincent J. Borne, 16th JDC; Judge Keith R.J. Comeaux, 16th JDC; attorney Adolph B. Curet III; and Anthony J. (Tony) Saleme, Jr., assistant district attorney, St. Mary Parish.

development tear the state down by characterizing our court system as a “judicial hell hole.”

I recognize that many attorneys and their clients believe in the reforms espoused by interest groups that sometimes attack attorneys and judges unfairly. I am not suggesting that our members should pull their punches on important public policy issues. There is often plenty of room for debate when it comes to deciding issues related to the administration of justice. But debate and effective advocacy can happen without us tacitly endorsing media and public information campaigns intended to demean and sideline our colleagues through our silence. I find guidance in the poem by Protestant Cleric Martin Niemöller:

*First they came for the Socialists, and I did not speak out—
Because I was not a Socialist.*

*Then they came for the Trade Unionists, and I did not speak out—
Because I was not a Trade Unionist.*

*Then they came for the Jews, and I did not speak out—
Because I was not a Jew.*

Then they came for me—and there was no one left to speak for me.

Lack of courage has consequences. The public pays attention when lawyers do not stand up for each other and fail to live up to their own standards. As public respect for our profession declines, our ability to stave off efforts to open up the practice of law to non-lawyers diminishes. Lawyers in Washington State are already seeing these effects firsthand. There, over the strenuous objections of the state bar, the Washington Supreme Court authorized a special class of non-lawyers to practice law and, in some instances, serve as courtroom advocates in practice areas historically served by solo and small-firm practitioners. The educational requirements and ethical obligations for these so-called “limited license

practitioners” are substantially less rigorous than those imposed on attorneys, yet they can practice without attorney supervision and can even open their own businesses. Our profession should not make it easier for their advocates by letting attacks on Louisiana attorneys and judges go unanswered. There could be no worse fate for the administration of justice and rule of law in Louisiana than limited license practitioners.

Recently, I had dinner in St. Mary Parish with the attorneys and judges of the Inn on the Teche American Inn of Court and, before that, with members of the Plaquemines Parish Bar Association. At both dinners, there was clear consensus that unwarranted attacks on the legal profession and judiciary in the media undermine public confidence in the administration of justice and the rule of law and that the LSBA should respond to these attacks in a timely, effective and responsible manner. We will be working toward that goal.

In the meantime, I encourage all members to speak out for the profession and judiciary whenever they are unjustly attacked and to let me or the LSBA staff know when they see any group target lawyers or judges unfairly, particularly when the attack is motivated by political interests. In the long run, we can provide no greater service to the public than to combat misinformation intended to undermine and politicize the administration of justice and rule of law.

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In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive.



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