



## Constitution Day helps us remember our rights

### GUEST OPINION

RICHARD D. MCLELLAN  
Special to The Oakland Press

Today is "Constitution Day," the 220th anniversary of our nation's founding legal document. This presents us with an opportunity to re-examine the rights and privileges it guarantees.

Each presidential election inevitably brings debate about the extent and value of the protections like the Second Amendment's right to bear arms or the ability of the government to monitor terrorists in light of the Constitution's prohibition of unreasonable government searches.

We debate these issues because we care about the Constitution and the rights it defends. Our responsibility as citizens is to stand up for our each of our liberties and those of all our citizens.

The rights we count on to protect us in difficult situations must always be extended to others. But for the grace of God, the problems they face could be our own. As a result, we cannot and must not pick and choose which parts of the Constitution we wish to support.

During my time as the Co-Chair of the Justice Initiatives Committee of the State Bar of Michigan, one issue quickly jumped out as a critical failure of the state to meet its constitutional duties in enforcing the criminal law.

There is a massive failure of the state government to ensure the every accused, even the indigent, has "the assistance of counsel for his or her defense."

This a fundamental duty of the state -- imposed by both the U.S. and Michigan Constitutions -- and it cannot be ignored by our government leaders.

Inadequate assistance of defense counsel leads to false convictions with innocent men and women in prison. But the damage does not stop there. When an innocent person goes to jail for a crime he or she did not commit, the real criminal goes free, victims lack the reassuring knowledge that the perpetrators are behind bars and our streets are less safe.

Further, a broken defense system ultimately costs taxpayers more money. With a state budget bleeding red ink, we cannot afford to throw away tax dollars on a defective and constitutionally deficient system.

The National Legal Aid and Defender Association spent a year conducting an in-depth study in Michigan, examining the ways those who cannot afford an attorney fail to receive constitutionally guaranteed legal representation. They found a system where an effective defense is far too often out of reach.

Michigan is one of only a few states that currently provide zero standards or monitoring for trial level public defense. We also invest nothing as a state, leaving the burden squarely on the shoulders of county governments.

NLADA's extensive report, originally requested by the the state with an opportunity to both protect the rights of citizens and use taxpayer dollars more efficiently.

We currently spend \$2 billion a year on prisons. By taking common sense steps to provide residents with an adequate legal defense, we can not only keep innocent men and women out of jail, we can avoid wasting millions.

But more than immediate financial savings and a reduced risk of tax hikes, the Constitutional rights we each count on require our action.

Let us use Constitution Day to commit ourselves and our state to fully embracing both the benefits and the obligations our law provides.

Richard D. McLellan of Lansing is chairman of the Michigan Law Revision Commission, is a member of the Public Policy committee of the State Bar of Michigan and is second chair of the Advocates Guild of the Michigan Supreme Court Historical Society.

Click here to return to story:

[http://www.theoaklandpress.com/stories/091708/opi\\_20080917366.shtml](http://www.theoaklandpress.com/stories/091708/opi_20080917366.shtml)