

Things That Go Bump in the Night

This year, Halloween and national and state elections share more than just proximity on the calendar. The election rhetoric and the haunted house hype share substantive similarities, and they are pretty scary.

Both use fear to shape our actions and reactions. Both trot out monsters that are described in deliberately frightening terms to convince us whom to vote for to keep these shapeless terrors at bay. But neither provides specifics or cause-and-effect reasoning.

Halloween doesn't have to reveal that it's make-believe. Even as we screamed in the theatres, we knew that *Freddie I* through *XXX* were just Hollywood at work—and, it turns out, less alarming than Mel Gibson, Lindsay Lohan or Tom Cruise.

Halloween legitimately asks us to suspend reason and intellect for the temporary thrill of an orchestrated holiday. But the selling of fear for purposes of the elections has a different orchestration; this faux fear is designed to keep us uninformed, unthinking and uncritical.

And that should be especially upsetting to us as attorneys. After all, lawyers are trained to appreciate that what we do not know, and do not investigate, will hurt our clients and ourselves. We can even lose our right to remain in the profession if we fail to gather all the facts, ask the hard questions and not rest until we have answers.

Our larger responsibility to apply these skills to elections has multiple roots. Lawyers historically play a key role in the election process. No other profession produces so many candidates who run and win. We make up the vast majority of staff positions supporting elected officials and shaping policy. We own the lobbying industry. You can't even be considered for state or federal judge or attorney general unless you are a licensed attorney. And most important, we are the "go to" profession for commentary for all matters relating to elections and the law.

The trouble is these "official" legal spokespersons are usually lawyers whose comments about candidates and issues have been bought and paid for. The rest of us simply meld into the rank and file, taking no greater role than any other citizen in demanding content and facts.

Acting like ordinary, indifferent citizens strikes me as especially wrong this year, when so many fundamentals in the law seem to be up for grabs. In spite of the very special education we all enjoy, we just have not done a good job at educating our fellow citizens and voters about key aspects of our Constitution. I am not talking partisan politics. All lawyers' professional lives depend upon recognizing and using certain bedrock legal principles because they define us as a nation. They are our core. Four come immediately to mind:


- Our three branches of government exist equally through a system of checks and balances.
- No state action is above the law.

- People are presumed innocent until the state proves otherwise.
- Government cannot legally lie to its people, and there is accountability if it does.

We may have done our *jobs* (performing the legal tasks that our clients request) but I think we have not practiced our *profession* (considering and advancing the rule of law) as much as we need and should. The results of an apathetic legal community show in the free-for-all that candidates are engaging in over matters that should be beyond dispute.

How in the world did we allow our fellow citizens, who do not have our unique schooling in jurisprudence, think that separation of church and state is a constitutional option, or that the independence of the judiciary is subject to popular vote, or that the right to speak out against or for government policies is not the crux of our democracy?

We have lots of platforms to spread what we know, so lack of forum is no excuse. When is the last time you volunteered to speak at a school, or a civics group, or write a newsletter that went beyond the marketing of your practice to address more important issues? When is the last time you engaged even family and friends in a conversation that actually opened a dialogue about the law?

There are many opportunities to teach what a "nation of laws" really means, and how and why we must fight attacks on it, especially by those who want to hold elected office. Our apathy in taking on this bigger professional responsibility, as advocates for the role of law in a free society, has certainly played a part in making this election season one in which fake terrors and smoke and mirrors dominate. If we don't spread this particular, secular word, we deserve what we get: all tricks and no treats. 



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