



In conjunction with the ABA 2011 Law Day theme,
“The Legacy of John Adams:
From Boston to Guantanamo”

*The Supreme Court of Missouri
and The Missouri Bar
presents a*

Law Day Celebration

*“Defending the
Unpopular Defendant”*

**May 5, 2011
6:00 p.m.**

**Supreme Court Building
207 W. High Street
Jefferson City, MO**



Defending the Unpopular Defendant

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| Welcome & Introduction | Judge Patricia Breckenridge <i>Supreme Court of Missouri</i> |
| Presenting the Colors Pledge of Allegiance | Lincoln University ROTC Color Guard |
| Invocation | Chief Justice William R. Price <i>Supreme Court of Missouri</i> |
| Law Day Proclamation | Chief Justice William R. Price |
| Honored Guests | Judge Patricia Breckenridge |
| History of Law Day & Legacy of John Adams | Millie Aulbur <i>Director of Citizenship Education The Missouri Bar</i> |
| Keynote Introduction | Judge Zel Fischer <i>Supreme Court of Missouri</i> |
| Keynote Address | Timothy Cisar <i>The Cisar Law Firm P.C.</i> |
| Competition Mrs. Rhonda Koppelman's 8 th grade American History class Cuba Middle School | Mary V. Moore Johnson <i>Supreme Court of Missouri Fellow</i> |
| Award Recognition | Judge Patricia Breckenridge Judge Zel Fischer |
| Closing Remarks | Judge Patricia Breckenridge |

Reception to follow – second floor

Building tours – first floor

Defending the Unpopular Defendant

About the Keynote Speaker



Timothy R. Cisar, Attorney at Law

Mr. Timothy R. Cisar received his B.A. degree from Notre Dame in 1979 and his J.D. degree from St. Louis University in 1983. He has been a member of Missouri Bar since September 1983, and been in private practice since then. Mr. Cisar served as Municipal Judge from 1985-89 in Lake Ozark, and from 2003-present in Eldon, Missouri. He is a member of the National Association of Criminal Defense Lawyers; National College for DUI Defense; and the Missouri Association of Criminal Defense Lawyers, serving on the Board of Directors in 1996-2000, as Treasurer in 2001, as Secretary in 2002, as Vice-President in 2003, and as President in 2004. Mr. Cisar is the recipient of the 2005 MACDL Atticus Finch award. He has been certified by the Missouri Sheriffs Association to teach at the P.O.S.T. (Peace Officers Standardized Training) classes for Criminal and Constitutional Law. He has been voted best lawyer at the lake for the last two years. His experience as a defense attorney includes death penalty cases. Recently he was appointed to the commission to review the state's crime labs as the defense bar representative. Mr. Cisar has been married for over 30 years and has six children.

Defending the Unpopular Defendant



*John Adams and His Legacy**

The 2011 ABA Law Day theme “The Legacy of John Adams: From Boston to Guantanamo” provides us with an opportunity to consider John Adams, explore the historical and contemporary role of lawyers in defending the rights of the accused, and renew our understanding of and appreciation for the fundamental principle of the rule of law.

In a question-and-answer format, you will find some key facts and historical examples regarding the Boston Massacre, John Adams, and his legacy.

Q. *Who was John Adams?*

A. Resistance leader and patriot, advocate and diplomat, and constitutional theorist and political activist, John Adams became our nation's first lawyer-president in 1797. He developed one of the largest legal practices in colonial Massachusetts. Born in 1735, Adams died at age 90 on July 4, 1826, the 50th anniversary of the Declaration of Independence. Thomas Jefferson, Adams's fellow revolutionary and later political opponent, died on the same day.

Q. *Who coined the famous phrase “a government of laws, not men”?*

A. Writing the Novanglus essays in 1775, Adams first referred to “a government of laws, not of men.” The phrase expressed his firmly held belief in the rule of law as the foundation for republican government and the basis for political liberty. It was subsequently incorporated into the 1780 Constitution of the Commonwealth of Massachusetts, written principally by Adams and a model for the subsequent U.S. Constitution of 1787. The phrase was also famously quoted in the landmark 1803 U.S. Supreme Court case *Marbury v. Madison*, which established judicial review, the federal courts' power to void executive and legislative acts as unconstitutional.

Q. *What was the Boston Massacre?*

A. On the evening of March 5, 1770, British soldiers fired into a crowd of protesters who had gathered near the Customs House on King Street in Boston. The soldiers were under the command of Captain Thomas Preston. Five colonists died, including Crispus Attucks, a man of Native American and African descent. The term massacre quickly became associated with the event, which others characterized as a riot – depending on their point of view as to what happened and why. Some argued the soldiers were provoked with hurled insults, snowballs, oyster shells, and other objects. Others claimed the soldiers violently overreacted. Captain Preston and eight of his men were arrested and indicted for murder.

Q. *What was the historical context?*

A. American colonies were under British rule. Massachusetts colonists had actively resisted what they considered unfair taxes imposed by the British Parliament with the 1767 passage of the Townshend Acts. Protests ranged from the halls of the Massachusetts House of Representatives to the shipyards of Boston Harbor to city streets. Beginning in 1768, British troops began arriving in Boston to enforce order. By 1770, they numbered 4,000. Boston then had just 20,000 residents. The Boston Massacre took place five years before the American Revolutionary War began.

Q. What happened at the trials?

A. Although a prominent leader in the American colonial resistance to British parliamentary authority, Adams agreed to take on the cases, as he felt Captain Preston and the British soldiers deserved effective defense. Preston's trial began in October 1770. After he was ably defended by Adams who cast doubt as to whether Preston gave orders to shoot, the jury acquitted the British captain. The trial of the eight soldiers began in December. Adams argued that the soldiers had fired in self-defense and that the protesters were an unruly mob. The jury acquitted six of the soldiers and found the other two, who had been proven to have fired their weapons, guilty of manslaughter. Their punishment was to have their thumbs branded.

Q. What did John Adams think about his role in defending the accused at the Boston Massacre trials?

A. Writing in his diary three years after the event, Adams remarked: "The Part I took in Defense of Cptn. Preston and the Soldiers, procured me Anxiety, and Obloquy enough. It was, however, one of the most gallant, generous, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently. As the Evidence was, the Verdict of the Jury was exactly right."

Q. Why is John Adams's role in the Boston Massacre trial significant today?

A. His role in the 1770 Boston Massacre trials has come to be seen as a lawyerly exemplar of adherence to the rule of law and defense of the rights of the accused, even in cases when advocates may represent unpopular clients and become involved in matters that generate public controversy. For a contemporary illustration, in March 2010, nineteen prominent lawyers signed an open letter supporting the role of lawyers in defending Guantanamo detainees by declaring, "The American tradition of zealous representation of unpopular clients is at least as old as John Adams's representation of the British soldiers charged in the Boston Massacre."

Q. What are some other famous cases in American history in which lawyers have engaged in principled representation of unpopular clients?

A. Although each is unique in circumstance and significance, these highlighted cases are noteworthy in American history.

1846

William Seward's Defense of William Freeman

In the face of public threats, William Seward, who would go on to become President Lincoln's secretary of state, took on the highly unpopular defense of William Freeman, a mentally ill man of African-American and Native American descent. Freeman was accused of breaking into a home and killing its four occupants. Seward argued against executing Freeman, who had been badly abused in prison, on the grounds of the relatively new defense of insanity.

1886

Sigmund Ziesler, William Foster, and William Perkins Black Represent the Haymarket 8



After a bomb was thrown at police officers dispersing a union rally, headlines in the Chicago papers demanded revenge against the mostly immigrant workers accused of inspiring a riot and killing police officers. Zeisler, Foster, and Black defended their unpopular clients with appeals to a jury, packed by supporters of the prosecution, to remember their duty to apply the law without prejudice. Their appeals were in vain. All eight defendants were convicted on circumstantial evidence often obtained without proper warrants. In 1893, the three surviving defendants (four were hanged; one committed suicide in jail) were pardoned by Illinois governor John P. Altgeld. A lawyer himself, Altgeld wrote a more-than-16,000-word pardon for these men in which he painstakingly argued the injustice of their trial on five key points. By doing so, Altgeld knowingly sacrificed his promising political career to correct what he saw as a miscarriage of justice.

1930s

Samuel Liebowitz Defends the Scottsboro Boys



In 1931, nine young black men were accused of raping two white women on a Southern Railroad freight train. They were arrested, tried, convicted, and sentenced to death in April of that year. Trials and appeals would go on for more than seven years. Twice the case went to the U.S. Supreme Court, which overturned the convictions on constitutional grounds, resulting in retrials. In 1933 Samuel Liebowitz, a rising legal talent in New York, began serving as counsel for the defendants. In Alabama Liebowitz encountered threats to his personal safety and vicious Anti-Semitism. Trial judge James Horton, who came to regard the case against the defendants as weak and suspect, set aside defendant Heywood Patterson's guilty verdict. Due to his courageous and principled ruling, he lost his judgeship in the next election. Prosecutors succeeded in assigning a new judge, William Callahan, to the retrial. Callahan antagonized Liebowitz and virtually assured that defendants Patterson and Norris were convicted and sentenced to death. The racially charged trial attracted national attention. Thousands marched in support of the defendants in Washington, DC. Ultimately, after years in prison, four of the defendants were released and three were paroled or pardoned. In 1936 Haywood Patterson was convicted for a fourth time. Although appealed, the conviction was upheld. The trial of Tom Robinson in *To Kill a Mockingbird* is widely believed to have been inspired by those of the Scottsboro Boys.

1999 – 2004

Michael Tigar and Brian Hermanson Represent Terry Nichols

In 1995 explosives ripped through the Murrah Federal Building in Oklahoma City, killing 168 in what was, at the time, the worst terrorist attack on U.S. soil. Timothy McVeigh was tried and convicted for executing the attack. His Army buddy, Terry Nichols, was charged with advanced knowledge of the bombing and participation in the plot. Michael Tigar defended Nichols in his federal trial. Brian Hermanson, at the expense of his private practice, assembled the team for Nichols's defense when the state of Oklahoma prosecuted. "We had a defendant who was hated by most Oklahomans, and we would be trying it after many years of negative publicity. ... Death penalty work is always hard on the lawyer and his or her family. ... My family readily accepted my role in leading the defense of Terry. They... really believed that he needed the assistance of dedicated counsel." In both federal and state trials, juries deadlocked on whether to impose the death penalty. Nichols is serving a life sentence without possibility of parole.

2002 – Present

Legal Defense of Guantanamo Detainees

In 2002 the Bush Administration established a detainment facility for "unlawful enemy combatants" at the U.S. naval base at Guantanamo Bay, Cuba. Approximately 800 detainees have been imprisoned at this facility. Fewer than 200 currently remain. Lawyers sought to represent the detainees almost from the beginning. The legal status of the detainees has significantly been determined through a series of key Supreme Court cases since 2004, from *Rasul v. Bush* to *Boumediene v. Bush*. The Court has held that the U.S. federal court system has authority to decide whether foreign nationals detained at Guantanamo were wrongfully imprisoned and that these detainees have a habeas corpus right to challenge their detention. These rulings have made possible the active legal representation of those held in Guantanamo. Initially, lawyers were unable to visit or talk to the detainees. To date, hundreds of lawyers have committed their time, principally on a pro bono basis, to the detainees' legal defense. Among these lawyers are Erwin Chemerinsky, Candace Gorman, Joseph Margulies, Thomas Sullivan, Charles Swift, and Steven Wax.

*Source: American Bar Association

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Acknowledgements

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The Missouri Bar

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The Board of Law Examiners

Missouri Association of Criminal Defense Lawyers

American Bar Association

Cuba Middle School

Lincoln University ROTC Color Guard