

# **The Court's Role in Preserving Social Harmony**

**By  
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The courts role in preserving social harmony is one that is not taken lightly. What would we do if they always ruled in favor of the rich or famous? Judges need to remember that the livelihood of the area they preside over has entrusted to them to do what is right for all concerned. Take Donald Trump who constantly and consistently finds ways around zoning laws to develop his latest monstrosity. When the people of Manhattan get concerned enough to want to stop him from doing so, they will appeal to the courts to make the sale of the land and the development illegal and try to preserve what is left of the historic integrity of the island. Judges must rule fairly and impartially, taking all opinions and statements into consideration before they rule on anything brought before them. They must make a proper ruling in adoption cases, and not just because the client is rich or has a popularly published name. Judges and the courts must also stick to the law. They must not turn something over simply because they "feel like it". They must be trusted to always do the right thing and stand by the law and behind the law. If the court does not uphold law and order, whom exactly does our social harmony lie with? It is up to not only our elected officials but also those approved by the Senate to uphold our laws as put forth by the Constitution. We have given this to them, trusted them with this, and they have a moral and ethical responsibility to do what is right.

## **Abstract**

The courts role in preserving social harmony is a necessary bond between the courts and the community. The relationship between our courts and the community contributes greatly to the success of the justice system and vice versa. Without the support of our judicial system, criminals would be running amok and no one would feel safe outside of their own homes. At the same time, the judicial system needs to continue to support our communities and continue to do their job as they swore to do so that we in turn will continue to support our judicial system. If the courts stop doing their job, the community will take matters in hand and will vote someone in that will do the job so that the balance of justice is once again in place.

## **A Brief History**

It is probably an unknown fact to most that the Declaration of Independence was not only written by lawyers but also paved the way for our governmental and judicial systems. The Declaration stated that the American people must maintain a fair and impartial court system, and stated by Alexander Hamilton that the independence given to the judges is equally responsible to guard the constitution and the rights of individuals (America's Courts, 2010).

One of the primary reasons why the declaration was written was not only because of the tyranny of King George III but because the King has obstructed the administration of justice by refusing the colonies judicial powers of their own. The King had made his judges dependent on his will alone. Our founding fathers wanted to make sure when they wrote the declaration that it specified that all men were created equal and all had access to equal justice. In order for our society and the people to remain in some type of harmony, they created the checks and balances of the American government to include judicial and executive. Our founders fathers designed our government to make each dependent on the other to make the system work. It is up to those three powers to do their part to maintain this harmony which will maintain equality for all (America's Courts, 2010).

### The Role of the Court - A Judge's Responsibility

Alexander Hamilton stated, "This independence of the judges is equally necessary to guard the constitution and the rights of individuals" (The Federalist, 1788). Judicial freedom has been an important foundation for our way of life. Judges are called upon to apply the law without regard to public opinion or the popularity of the decision. The Federalist #78 is written to the people of New York concerning the Judiciary Department. It says that the judges put in place by the people are not only there to guard against infractions of the Constitution, but that the independence of the judges may be an essential safeguard against the effects of wrongdoing in society. These sometimes go no farther than to the injury of the private rights of particular classes of citizens, by unjust and partial laws. It is also the determination of the judicial magistracy with immense importance in justifying the severity and confining the operation of such laws (The Federalist, 1788).

The motto of the U.S. Supreme Court, "Equal Justice under Law," represents the objectives of the judiciary in a democratic society. Because U.S. courts enjoy a level of influence and respect unique to anywhere else or at any other time in history, it is appropriate to focus on the American judiciary as an example of judicial independence. Article VI of the Constitution binds all judges to recognize the Constitution as "the supreme Law of the Land" (Lagon, 1993). When the Constitution was written in 1787, eight of the thirteen states had included judicial review into their own constitutions, and more than half of the delegates to the Constitutional Convention supported it. If the realization of judicial review is to be effective, judicial independence is necessary. One of the most important aspects of maintaining independence on the federal bench is life tenure. The constitutional provision stating that federal judges shall hold their positions "during good behavior" (Hamilton, 1788) was one of the first items to be agreed upon by the delegates to the U.S. Constitutional Convention. Alexander Hamilton echoed this sentiment in Federalist 78, explaining that because "nothing can contribute so much to [the judiciary's] firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient" (Lagon, 1993).

The Code of Judicial Conduct was approved by the House of Delegates of the American Bar Association in 1972. This code replaced the Canons of Judicial Ethics, which had been formulated almost 50 years earlier. Although two amendments to the Code have been adopted since 1972, the Code has not been reviewed comprehensively until 2004. A survey conducted by the American Bar Association Standing Committee on Ethics and Professional Responsibility in 1986 led to the conclusion that in general the code had served its purpose well, but that a complete review of the Code was desirable. In the revision process, the Association sought and considered the views of members of the judiciary, the bar, and the public. In the judgment of the Association, this code shows the appropriate ethical obligations of judges (American Bar, 2004).

The Code of Judicial Conduct is intended to set up standards for ethical conduct of judges. It consists of broad statements called Canons, in which specific rules set forth in sections under each canon, a Terminology Section, an Application Section, and Commentary. The Canons and Sections are rules of reason and should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The code is to be interpreted so as not to impose on the essential independence of judges in making judicial decisions. The code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution (American Bar, 2004).

### Society's Responsibility

Knowledge of the judicial systems functions and procedures is essential to a well-rounded education. The people's attitudes and opinions about courts and the law that stands behind them is formed over time by a range of influences such as the media, family, friends, and other social groups (Courts, 2005). Many of us will come into contact with the judicial system at some point in our lives and it would be helpful to know what they do, why they do it, and what we can do to make sure the law is upheld by our magistrates and municipal judges. Children need to learn about our judicial system while they are in school, which will help them as they grow into adults to understand how the system works and how it can work for them, should the opportunity ever come up. According to the Law-Related Act of 1978, Law Related Education (LRE) is an education designed to help those individuals not familiar with or in the legal system with the knowledge and skills pertaining to the law, the legal process, and the legal system, and fundamental principles and values on which these are based (Law Network, 2008).

The Department of Education has a regulation that supports the act and adds that this program will help students "respond effectively to the law and legal issues in our complex and changing society" (Law Network, 2008). This educational opportunity embraces a plentiful and diverse selection of programs for all grade levels. These programs share a common goal of developing the knowledge, skills, and values

students need to function effectively in a society defined by its democratic institutions, pluralism, and the rule of law. The LRE make every effort to help educate our citizens to be fully functional society requires – those who can understand, live in, and contribute positively to the civic communities to which they belong (Law Network, 2008).

Keeping social harmony in today's society is not just about the judicial system. In every culture in the world, the norms and values are constantly changing as new generations come along, and we as a society are certainly no exception. Most people would agree that the family's ethical and moral values in this country have been on a steady decline (State of the Family, 2009). This society has noticeably changed itself from what it used to be just a generation ago. It is more open-minded today of things that back in our grandfather's day would have been considered obscene and immoral. There is no agreement or a single reason for this change, however, but experts agree that America's growing obsession with the media has led to a decline in morals and ethics over the last 50 years. The problem is that those morals and ethics can only be taught in the family setting. If everyone comes from a broken household, the morality is breaking up along with them as well. When an individual is raised in a broken family, the likelihood is that the family that individual raises will be broken, too. The cycle will continue unless society breaks it with the force of its shared principles (State of the Family, 2009).

It is up to the family, first and foremost, to teach their children their civic duties and responsibilities of not only abiding by our Constitution, but our judicial system. Parents need to remember if they disrespect our judicial system, their children will learn to disrespect it also.

### Examples of Preserving Social Harmony

In 1992, the Massachusetts Supreme Court Chief Justice's Commission on the Future of the Courts published their Reinventing Justice 2022 report (State Courts, 2002). In general, they found that without attention and improvement, the future of the courts was looking grim. In answer to this, a judge and an attorney from Franklin County wanted to work for a better future and believed their community was the place to start. They considered how they might undertake the challenge of reinventing justice and requested permission from the Chief Justice to try a new model in their County, based on the suggestions of the community. The Franklin Court Futures Lab Task Force of Greenfield, MA, was born from their efforts in March 1994. The Task Force's 38 members represented a cross-section of Franklin County's communities, services, courts and citizens (State Courts, 2002).

A progression of town meetings all over Franklin County provided the public with an opportunity to let their concerns be known about the justice system, and make suggestions on how it might be improved. The meetings concluded with a one-day conference to begin the process of setting long-term goals and planning resourceful projects for the judiciary of Franklin County. All interested members of the public were

invited to participate with the Task Force in developing proposals for pilot projects, presented to the state judiciary in the report. The proposals, now in the process of being implemented, include the creation of an Implementation Council to continue the work of the Task Force, as well as a Community Education and Outreach Board as a mechanism for on-going dialogue with the community (State Courts, 2002).

The Neighborhood Environmental Courts in Wichita, Kansas, were designed in answer to increased residential interest in the conditions of their neighborhoods and their wish that the buildings be safe, secure, and attractive. The people believed that by retaining these structures within their neighborhoods, vandalism and other opportunities for illicit activities would decrease, and neighborhood pride and involvement would increase (State Courts, 2002).

Four existing police substations around the city are utilized for Neighborhood Court operations. The court handles environmental, traffic, and nuisance cases such as building, fire and zoning code violations. A judge, prosecutor, and clerk travel the circuit holding court at the different facilities. Court is held in the evening hours to provide contact to those individuals who work during the day. The hours of operation and the locations were selected to be suitable and available for area residents. The goal of the neighborhood courts is to build a partnership between the area residents and the judicial system. The city hopes that with the development of the neighborhood courts it will ensure that environmental violations receive the priority status the residents are demanding. This will also allow for more citizen involvement in the court process as well as providing more visibility and credibility to the court system (State Courts, 2002).

Other than preserving social harmony, the basic question should be “what is the court’s role?” What is their job exactly? In 1971, the Hawaii Judicial System went to the drawing board and came up with an editorial, Comprehensive Planning in the Hawaii Judiciary, which identified five articles of the judiciary, and then set about attending to all five. They provide the basic answer the question, “what is the role of the courts in society?” (Dator, 2000). The role is to fulfill each of the missions identified under each of the five articles. No one such article is more important than the others are. A properly working judicial system, now and in the future, should establish exactly what its mission is, in relation to its own society and culture, on each of these five articles, and not just one or two of them. It is possible, of course, that certain societies and cultures will expect their judicial system to carry out other functions as well (Dator, 2000).

They look at the Judiciary as a branch of the government, as they are to uphold the Constitution. They view the Judiciary as a dispute resolution forum, in that they guarantee the people of the State the highest standard of justice possible under our system of government by assuring a fair and swift resolution of all cases and arguments properly brought to the state courts. The people see the Judiciary and those attached to it as a public agency in that they provide for, promote, and make sure the successful, cost-effective, and resourceful utilization of public resources in the administration of the judicial system. The people utilize the Judiciary as a sub-system of the legal system, to

promote the efficient and quick administration of justice by and among the various subsystems of the legal system. And last, they see the Judiciary as an institution of a changing society, to foresee and respond to the changing needs of the people and the judicial needs of society (Dator, 2000).

### How we can work together

It is not just up to us as citizens of the United States to make this work amongst ourselves, even though that is the place to start. Other countries are seeing new leadership being elected and they all have the same thing in mind – how to get their country's social and judicial harmony back on track. On April 2010, H.E. Ellen Johnson Sirleaf, President of the Republic of Liberia gave a press conference to the public during the Opening Session of the National Conference on Enhancing Access to Justice (The Carter Center, 2010). She spoke about how important it is to her that all Liberians have access to free, fair, and timely justice. She told the public she understood how the judicial system went into decay in the past decade and it felt it her responsibility to work side-by-side with their police, justice officials, and the population to get the system back where it needed to be. She spoke about educating and training attorneys and public defenders so that the people under her care can get the best judicial system her country can offer (The Carter Center, 2010).

This concern should not just be in Liberia – this concern should be in every state within our United States and all U.S. territories. On June 8, 2009, Chief Justice Margaret H. Marshall (MA) and Chief Justice Robert A. Mulligan (MA) announced that the Honorable Dina E. Fein, First Justice, and Sandra E. Lundy, Esq., were appointed as Special Advisor and Deputy Advisor to the Trial Court for Access to Justice Initiatives, respectively. In January 2010, Ms Fein and Ms Lundy released the Interim Report on Access to Justice Initiatives in the Trial Court (Fein, 2010). They stated their mission is to guide and coordinate resources within the trial court to broaden access to civil justice to all of those individuals involved in a lawsuit, including those individuals of modest means, people who are limited in or no English proficiency, and individuals with mental or physical disabilities. They mean to utilize their resources at hand, such as using foreign language college students as interpreters outside the courtroom; they will work in partnership with various public and non-profit agencies through the Interagency Council on House and Homeless. They will be working closely with the Department of Children and Families on a program that include data exchange to enhance child welfare (Fein, 2010).

### Conclusion

Legal education and knowledge should not just be afforded to those that are working in that environment. Knowledge should be readily available to all of those in the United States, and not limited to a select few. It is our right as citizens of America to legal counsel and it should be given to us to the best of their ability. These types of programs should not be limited to a few states; all our elected officials should be grabbing the reins on this and making it happen all around the country. So many of our professionals

are so anxious to make a buck; and what ever happened to pro bono work or people paying when they could? It is not as if they are looking for a lawyer every day. Why have legal services only become available to the highest bidder? The courts need to go back to its roots. They need to remember why courts were brought about to begin with. It was not so that judges and legal counsel could get rich; they were brought about so that all men could receive legal counsel when they needed it. As stated in the Declarations, all men were created equal and all had access to equal justice. We can only hope these neighborhood courts projects will get others convinced to do get on the same page and perhaps American's views of the judicial system will show pride once again.

## References

America's Courts: Providing Access to Justice and Accountability as our Founding Fathers Intended, State Bar of Georgia, 2010. Retrieved July 2010 from <http://www.gabar.org>

Dator, Jim, When Courts are Overgrown with Grass: The Role of Courts in the 21st Century, 2000, <http://www.futures.hawaii.edu>

Fein, Dina E., and Lundy, Sandra E., Interim Report on Access to Justice Initiatives in the Trial Court, January 2010, <http://www.mass.gov>

Hamilton, Alexander, The Federalist #78, Independent Journal, June 1788 <http://www.constitution.org>

Kahn, M. Riaz, Ph.D., The State of the Family in America, September 2009 <http://www.icna.org>

Lagon, Susan S., Freedom Paper #4, Institute for Contemporary Studies, 1993 <http://www.usa.usembassy.de>

Law Related Education, Law Related Education Network, ABA Division for Publication, 2008. Retrieved August 2010 from <http://www.abanet.org>

Model Code of Judicial Conduct, American Bar Association, Center for Professional Responsibility, 2004. Retrieved July 2010 from <http://www.abanet.org>

National Center for State Courts, Courts & Community Collaboration, 2002. Retrieved July 2010 from <http://www.ncsconline.org>

Sirleaf, H.E. Ellen Johnson, National Conference on Enhancing Access to Justice, April 2010 <http://www.cartercenter.org>