

LAW DAY – CELEBRATE JUDICIAL INDEPENDENCE

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Judicial independence is the bulwark of America's legal system.

This time of year, our country is reminded of the importance of our judicial system to our way of life. We celebrate Law Day, a day that reminds us, as retired judges, of the importance of judges in how our country has operated for 250 years and, even now, upholds the best of our traditions and values.

But we also acknowledge that judges, from our earliest times, have been subject to comments and criticism from other facets of public life. For our democracy to not only survive but thrive, we need a conscious and respectful dialogue among all of our branches of government with an understanding that constructive criticism makes our government, in all its forms, better.

Public criticism of judges is as old as the Old Testament. In Deuteronomy 16:19, the Israelites are commanded, "Do not deny justice or show partiality. Do not accept a bribe, for a bribe blinds the eyes of the wise and twists the words of the righteous." This command underscores the expectation that judges should be impartial and incorruptible.

Controversy between judges and the public came early to New York. In New Amsterdam before it became New York, the Dutch governor Peter Stuyvesant fought with the schepens – judicial magistrates -- who staffed the local court system, in perhaps the New World's first tussle between the executive and judicial branches of government.

Importantly, right at the start of a new colony, the settlers realized that judges – who could decide personal and commercial disputes – were indispensable to orderly government.

A century later, during the Constitutional debates, Antifederalists expressed early skepticism about the federal judiciary. They feared that federal judges, as interpreters of the Constitution, could erode state rights, undermine jury trials in civil cases, and expand federal power at the expense of the states.

The new republic saw continued tussles between the executive branch and the courts, personified in the alleged quote from President Andrew Jackson in response to Supreme Court Chief Justice John Marshall's decision in the Cherokee land dispute: "John Marshall has made his decision, now let him enforce it."

The mid-century decision in Dred Scott that declared the enslaved were not citizens unleashed bitter complaints, resulting eventually in the Civil War.

In the 20th Century, complaints about a Supreme Court that refused to embrace the New Deal led President Roosevelt to suggest a packing of the court to suit his political objectives.

In the early stages of the civil rights movement, signs of “Impeach Earl Warren,” then the chief justice of the Supreme Court, proliferated across the country as the Court expanded civil rights, and struck down segregation and restrictions on voting and access to public facilities.

Recently, New York’s chief Court of Appeals judge was criticized by state office holders when he called the state’s current sentencing laws – passed by the state legislature -- “stupid” and encouraged people to vote out judges they didn’t like, comments which led to the filing of an ethics complaint against him with the state Commission on Judicial Conduct.

In other cases across the country, judges of all stripes have been criticized for enforcing laws and upholding Constitutional principles that the broader public may not understand or support.

As retired judges, we are not afraid of a robust public debate over the role of judges in our system of law and order. We know, from first hand experience, that judges, weighing difficult choices in complex legal and criminal justice matters, may make controversial decisions and the public can justifiably question those difficult choices and their public consequences.

But the tenor of the debate needs to reflect our shared sense of community values.

As part of the debate over judicial decision-making, we would urge that the public and its officials use the criticism of judges to drive public support for changes in underlying laws and regulations, which are the source of any judges’ power.

The debate over our justice system requires an engaged public to evaluate all its facets: law enforcement, the role of the prosecution and defense bar and yes, the decisions of those who hold a gavel and wear a robe. Judges, as part of that system, are not immune from criticism. But all parts of the system – law enforcement, prosecution, defense, judges and public officials who pay all their salaries – need to ensure that justice in New York is even-handed and fair to all.

On this Law Day, we ask that all parts of our justice system dedicate themselves to make our system of justice better for all who come into contact with it and who seek to be protected by it.