

Preserving a Fair and Impartial Judiciary

By H. Thomas Wells Jr.

The protection and advancement of human rights depends on strong, independent judiciaries. As I witnessed firsthand in the South, fair and impartial judges are the ultimate check on powerful individuals and institutions that would undermine individual rights and freedoms. I commend the American Bar Association (ABA) Section of Individual Rights and Responsibilities for publishing this special issue of *Human Rights* and raising awareness of this important topic.

The Universal Declaration of Human Rights, which the United Nations adopted sixty years ago, contains several articles that recognize the role of effective courts in promoting human rights. Among them is Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

American lawyers conducting rule of law programs in fledgling democracies abroad have heard stories of “telephone justice,” where judges rule not according to the law, but according to how political party bosses instruct them to rule during private phone conversations. Such judicial corruption, of course, denies justice for dissidents and other powerless parties.

As we learned during America’s own civil rights struggles, and continuing today, we do not need far-flung examples of telephone justice to underscore the need for fair and impartial courts in the United States. A primary, ongoing challenge involves judicial elections. When judges are elected, voters can be swayed by well-funded appeals to hot-button issues or popular notions of law and order. Commitments to upholding individual rights and freedoms under law, especially when such causes are unpopular, are not as persuasive. This was disturbingly demonstrated in a recent Wisconsin Supreme Court race. The successful challenger, fueled by a large campaign fund from special interest business donors, pilloried the incumbent for his previous (and by all other accounts legitimate) work as a public defender.

Other examples abound. South Dakota recently defeated a ballot initiative that would have exposed judges to criminal liability for their judicial decisions. In another state, a prominent interest group reportedly threatened to revise its assessment of the state as “business friendly” in light of court decisions it determined were unfavorable.

Another frequent target is judicial merit selection. The ABA has long held that the best way to ensure access to justice is to choose judges through nonpartisan appointment with input from citizen commissions. This open process removes the excesses of campaign rhetoric and cash from the selection equation, enabling judges to uphold the Constitution without fear of political retribution.

The worsening economy has undermined the courts’ ability to ensure justice for all. Justice system budget cuts, especially in public defender offices, risk weakening due process and other constitutional rights. The bar and judiciary must work with the legislative and executive branches of government to ensure that our courts can operate effectively and provide justice for all who appear before them.

Judicial independence is an inseparable element of human rights. With this issue of *Human Rights*, the ABA Section of Individual Rights and Responsibilities is providing a valuable service to the legal and human rights communities.

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