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IMPLEMENTATION OF DECISIONS TAKEN BY THE BOARD OF GOVERNORS



The Hon'ble Chief Justice of Pakistan/Chairman Board of Governors of the Federal Judicial Academy has issued instructions to start the implementation of decisions taken in the 32nd meeting of Board of Governors of the Federal Judicial Academy.

JUDICIAL REFORM PROGRAMS BE "HOME-GROWN", WITH MINOR ROLE FOR DONORS:

**Justice Javed Iqbal
Judge Supreme Court of Pakistan**

"Judicial reform programmes be "home-grown and internally-driven", with a significantly minor role for external donors." Main objective of Judicial Reforms is to improve the quality of Justice and Rule of Law. Hon'ble Mr. Justice Javed Iqbal expressed these views in launching ceremony of a book titled "Searching for Success in Judicial Reform; Voices from the Asia Pacific Experience" technically edited by noted international Judicial Educator Livingston Armytage and

funded and facilitated by the UNDP published by the Oxford University, held here at the Auditorium of the Federal Judicial Academy on 26th September, 2009.

Giving an overview of the problems being faced by the Judiciary in Pakistan, Hon'ble Judge of the Apex Court said, that backlog of cases, lack of resources, selection of Judges on merit, training facilities, monitoring and accountability, elimination of corruption, exhaustive and cumbersome procedure, lack of proper assistance to Courts, lack of interest on the part of different stakeholders, mushroom growth of Law Colleges and poor standard of legal education, lack of proper knowledge on the part of donor agencies are the problems which are to be addressed on the yardstick of criterion as highlighted in the Book. Elaborating the viewpoint of the learned author, Justice Javed Iqbal



Hon'ble Mr. Justice Javed Iqbal, Chief Guest addressing on Book Launching Ceremony

said "reforms have been developed to enhance justice, adopting what he terms a justice-orientated approach. In this approach, justice is seen not in a traditional manner as, for example, the description of a just decision made by a court. **Rather, justice is understood as a standard of human**

existence in which human conduct conforms to acceptable normative standards which comprise freedom, equality, dignity, equity and fairness;

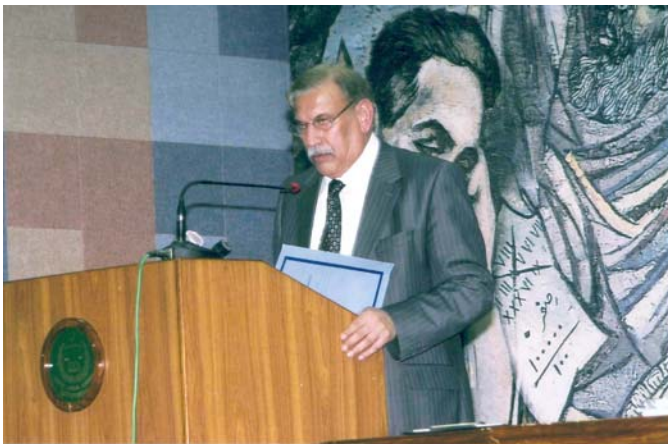
About the purpose of this Book he said it is to promote development of know-how and refinement of understanding of judicial reform through a critical reflection of actual experiences across the Asia Pacific Region.

He further said that the main object of judicial reforms is to improve the quality of justice and rule of law which would promote human rights, good governance and poverty reduction through market liberalization, enterprise privatization and state deregulation which has characterized the approach of the World Bank, IMF and related agencies over recent years.

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He said that the actual experience of practitioners from across the region provides a most timely contribution to refreshing our understanding of judicial reform by creating a bridge between theory and practice, enabling theory to form practice and practice to refine theory;

About the menace of backlog and the mechanism to curb it he said, the Indonesian approach for the backlog of cases can be followed as it achieved tremendous results. The implementation of procedure that manages passage of cases effectively from the outset by taking help from computer added system and information technology. The Microsoft Excel can be used to manage cases information Access to Court does not equate to access of justice for all as experienced by India, Sri Lanka and as remedial measures much attention has been paid to Social Action Litigation.



The Hon'ble Mr. Justice Mian Shakirullah Jan, Judge Supreme Court of Pakistan addressing on Book Launching Ceremony at FJA

Hon'ble Mr. Justice Mian Shakirullah Jan, Judge Supreme Court of Pakistan and Judge Incharge (Administration) Federal Judicial Academy said that it was a privilege of this Academy to have launching ceremony of this research-oriented book and this forum was selected by the Hon'ble Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry, who is also very keenly interested in the judicial

reforms and with the cooperation and collaboration of his colleague judges of the superior judiciary.

Earlier, Jerome Sauvage, Country Director, UNDP – Pakistan said that the contributors explore many issues, including gender justice, reduction of delays in case disposal, access to justice by marginalized groups, judicial integrity and accountability, judicial education and skills development, prioritizing “home grown” reform, domestic resource



Mr. Jerome Sauvage, Country Director, UNDP Pakistan speaking on Book Launching Ceremony at FJA Auditorium

constraints, and management of foreign donors. “All of them agree that the judiciary itself must play a proactive role if judicial reform is to be achieved, and the goal of economic growth integrated with that of justice for all”, he maintained.



Welcome Address by Mr. Moazzam Hayat, Director General, FJA on Book Launching Ceremony

Earlier, in his welcome speech Mr. Moazzam Hayat, Director General of the Academy, said that the book, for which we have assembled today, shall definitely be of tremendous help in building up the culture of good governance and justice for all. “I am also confident that the judges of all cadres and members of the legal fraternity shall get immense benefit from this resourceful book” he concluded.

That is a good book which is opened with expectation, and closed with delight and profit.

Amos Bronson Alcott

Michael Hryshchyshyn and Gene Gibson called upon Hon'ble Mr. Justice Mian Shakirullah Jan, Judge Incharge (Administration) Federal Judicial Academy

Michael Hryshchyshyn, Director USAID Programme Pakistan and Gene Gibson, Deputy Director USAID Programme called upon Hon'ble Mr. Justice Mian Shakirullah Jan, Judge Incharge (Administration) Federal Judicial Academy on 13th August, 2009 for discussion of starting a Project for Training the Judicial Officers of Pakistan at the level of District & Sessions Judges by mutual Judicial Exchange Programme between USAID Programme Pakistan and Federal Judicial Academy for the strengthening of Judiciary in Pakistan.

Technical Exchange Program between NJI and FJA

The Federal Judicial Academy (FJA) Islamabad and the National Judicial Institute (NJI) Canada are interested in pursuing Technical Exchange Programme between the two institutions. A proposed plan was sent by Mr. George Thomson, Senior Director, International Cooperation Group, National Judicial Institute to FJA. The said plan has been approved by the Board of Governors of the Academy in its meeting held on 6th June, 2009, presided by the Hon'ble Chief Justice of Pakistan.

Judges of the Apex Court take oath

The Hon'ble Mr. Justice Khilji Arif Hussain and Hon'ble Mr. Justice Rehmat Hussain Jafri took oath on 7th September, 2009 as the Judges, Supreme Court of Pakistan. Hon'ble Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan administered the oath.

Earlier Hon'ble Mr. Justice Rehmat Hussain Jafri was the Project Director, Access to Justice Program. During his tenure as Project Director, he had taken keen interest in the affairs of the Academy.

Training Courses /Seminar Conducted by the Academy during July-Sept. 2009

During the third quarter of 2009, the Academy conducted the following programs of judicial education and training:

Two days Seminar on Gender Justice for Senior Civil Judges from all over Pakistan including Gilgit-Baltistan and Azad Jammu & Kashmir from 30th & 31st July, 2009 in collaboration with United Nations Development fund and Women (UNIFEM).

There were 20 participants (Senior Civil Judges) (16 Male and 04 Female) who attended the seminar. The teaching methodology also included through power point presentations and audio visual aids.



View of Lecture Hall during two days Seminar on Gender Justice

The overall objective of this course was to familiarize the participants with the Convention On The Elimination of All Forms of Discrimination Against Women (CEDAW) and to sensitize them of their commitment being representatives of a significant institution of the country to implement the convention. Whereas its 'Specific purpose was to clarify basic gender gap and gender concepts including gender, gender rules, gender gap and gender discrimination, to provide them some concrete examples of discrimination against women in Pakistan, like women in Bonded Labour, Sexual Harassment against women etc; allowing them to come up with suggestions of what kind of action participants can take to contribute to this process; making of a strong convention between their personal lives and their efforts to work against discrimination of women; to gain knowledge about the role of UNIFEM and the Ministry of Women Development. The participants were subjected to brain storming session touching upon the burning questions as to what kind of general discrimination against women was noticed by them in the society and of specific nature prevailing in the courts and what remedial steps they would suggest for eliminating or mitigating the same. In nutshell, it was a unique and result oriented exercise for the participants.

The Director General Mr. Moazzam Hayat and Ms. Alice Shackelford, CPD UNIFEM awarded certificates to the participants and shields among the organizers.

One Week Skill Based Alternate Dispute Resolution (ADR) Training Course for Civil Judges from all over Pakistan including Northern Areas and Azad Jammu & Kashmir (14-19 September, 2009)

Hon'ble Mr. Justice Mian Shakirullah Jan, Judge, Supreme Court of Pakistan and Judge Incharge (Administration) of the Federal Judicial Academy was the chief guest of the inaugural ceremony of one week skill based ADR Training Course for 24 Civil Judges from all over Pakistan including AJ&K and Gilgit-Baltistan. The Chief Guest lauded the efforts of the Academy in imparting training to judicial offices of Pakistan. His Lordship emphasized the importance of ADR in reducing

the pendency and also promoting the culture of reconciliation. According to His Lordship in ADR there was no winner and no loser and it was a very fine way of achieving the ultimate goal of justice. The Hon'ble Judge paid tributes to Hon'ble Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry for his efforts for bringing about a Revolutionary change in the entire system of justice and impressing upon judges to impart justice, expeditiously and fairly without fear or favour.



Participants of Skill Based ADR Training Course for Civil Judges

This course was organized to apprise and sensitize the judicial officers about ADR. Mediation in fact existed even in pre Islamic period. Much emphasis is laid on "Sullah" in Quran. Furthermore concept of mediation is ingrained in our culture and society. Pakistan is unfortunately a conflict riddled society. There is no speedy way of resolution of these disputes. Mediation is a cheap and fast procedure of dispute resolution thereby providing most efficacious and speedy process to reduce the back-log of cases and also to reduce the costs. Judges were impressed upon to keep themselves abreast of mediation skills and its techniques as they were conducting the trials at the lower level where about 90% of litigation is dealt. It is well said "A reasonable settlement is preferable to a good case, because one can always lose a good case."

"As a litigant, I should dread a lawsuit beyond almost anything else short of sickness and death". There is Voltaire's voice of experience: "I was never ruined but twice-once when I lost a lawsuit and once when I won one."

Lectures were delivered by many eminent resource persons besides FJA faculty.

During the course the participants visited Abbottabad on a study tour in collaboration with Gender Justice through Musalihat Anjuman (MA) Project. During study tour, Mr. Arif Majid Mohmand, Provincial Project Manager, GJTMAP, NWFP briefed the participant on GJTMAP, NWFP, sharing of selected case studies by MA/MJ members at District Council Hall, Abbottabad. The participants also visited MJ office.



Hon'ble Mr. Justice Sardar Muhammad Raza Khan, Judge Supreme Court of Pakistan, The Chief Guest on concluding ceremony of Skill Based ADR Training Course for Civil Judges at FJA

Honorable Mr. Justice Sardar Muhammad Raza Khan, Judge Supreme Court of Pakistan awarded the certificates at the concluding ceremony. In his speech the Hon'ble Judge advised the participants to work with dedication and commitment to reduce the heavy pendency and to establish the rule of law. Lauding the efforts of Hon'ble Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry, he asked the Civil Judges to work hard and try to bring about amicable settlement between parties, groups and communities to end hostilities from passing on to the generations. The efforts being made by the Federal Judicial Academy in imparting training to judicial officers were appreciated by the Hon'ble Judge.

Mr. Aamir Ali Shah, Administrative Officer, Federal Judicial Academy has assumed the charge of his post after expiry of deputation period at USAID.

Mr. Saleem Ahmad, Librarian, Federal Judicial Academy has been deputed as Librarian in Supreme Court of Pakistan.



Hon'ble Mr. Justice Sardar Muhammad Raza Khan, Judge Supreme Court of Pakistan with the participants of Skill Based ADR Training Course for Civil Judges at FJA

Mr. Evan Wallach

Evan Wallach is an Article III Federal Judge for the United States Court of International Trade. He joined the Court in 1995 after being nominated by President Bill Clinton.

Early Life and Education

Born in Superior, Arizona, Wallach was a Sergeant in the United States Army (<http://www.army.mil>) from 1969 to 1971. Wallach graduated from University of Arizona with his Bachelor's degree in 1973 and received his Juris Doctor degree from University of California Berkeley Boalt Hall School of Law in 1976. Wallach also obtained a LL.B, Bachelor of Laws, degree from Cambridge University in England in 1981.

Legal Career

Wallach was a private practice attorney in Nevada from 1976 to 1995 and also taught as a Political Science Instructor at University of Nevada-Reno from 1981 to 1982. Wallach was General Counsel and Public Policy Advisor for Nevada Senator and Senate Majority Leader Harry Reid from 1986 to 1987.

Federal Judicial Career

Wallach was nominated to the United States Court of International Trade by President Bill Clinton on June 27, 1995 to a seat vacated by Edward Re as Re assumed senior status. Wallach was confirmed by the U.S. Senate on August 11, 1995 on a Senate voice vote and received commission on August 11, 1995.

Rule of Law: A U.S. Federal Judge's View By Mr. Evan Wallach, Judge U.S. Court of International Trade, New York

I Rule of Law

John Adams, the second President of the United States, and one of the co-drafters of its Declaration of Independence, also drafted the 1780 Constitution of Massachusetts. Article Thirty of the "Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts" in that document is a nice summary of the rule of law:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men.

<http://www.nhinetorg/ccs/docs/ma-1780.htm> (Emphasis added)

Those words were not new¹, but they were revolutionary. The American colonies had revolted largely because they perceived they were being denied the "rights of Englishmen" against arbitrary state action which had been articulated by Camden, LJ. in *Entick v. Carrington*, Court of Common Pleas (1765)².

The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. ... By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him.

Pitt the Elder, speaking in Parliament about the facts underlying the case in 1763 put the situation in words which appealed even more to American sensibilities:

The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail--its roof may shake--the wind may blow through it--the storm may enter, the rain may enter--but the King of England cannot enter--all his force dares not cross the threshold of the ruined tenement.³

Thus, a few years later, when revolutionary ferment began to roil Boston, Sam Adams, John's cousin, could confidently declare that "the first fundamental, positive law... is establishing the legislative power," that the legislature "has no right to absolute, arbitrary power over the lives and fortunes of the people. . ." and that it "cannot justly assume to itself a power to rule by extempore arbitrary decrees; but it is bound to see that justice is dispensed, and that the rights of the subjects be decided by promulgated, standing, and known laws, and authorized independent judges...."⁴

Accordingly, in 1776, when the Colonists articulated their grievances against George III in a Declaration of Independence, they listed, *inter alia*, that:

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers. He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries. He has kept among us, in times of peace, standing armies, without the consent of our legislatures. ... He has affected to render the military independent of, and superior to, the civil power.

That Declaration, the resulting war and eventual Constitution of 1787, led inexorably to Chief Justice John Marshall's opinion in *Marbury v Madison*, 5 U.S. (1 Cranch) 137 (1803), that the United States Supreme Court could review and overrule as unconstitutional a law passed by the Congress. The decision was vital⁵ in the American constitutional scheme,⁶ largely because it supported the concept that the superior law of the Constitution could be relied upon to protect rights

³ Speech on the Excise Bill, House of Commons (March 1763).

⁴ Samuel Adams, The Rights of the Colonists, The Report of the Committee of Correspondence to the Boston Town Meeting, Nov. 20, 1772.

⁵ Along with *Martin v. Hunter's Lessee*, cite

⁶ Although by no means novel; James Madison had taken judicial review as a given in *The Federalist No. _____*.

¹ The idea of rule of law had been articulated....

² 19 Howell's State Trials 1030 (1765).

imperiled by legislative or executive acts. That governance by law, and its interpretation and application by neutral judges, has been the core tenet of American political philosophy since those earliest days; under the rubric "Rule of Law," it continues so to this day. But what has that phrase come to mean over these past two hundred years?

II

What Does Rule of Law Mean From A Judicial Perspective?

From the bench, rule of law translates into certain standards reasonably expected by all litigants. While they are not synonymous with judicial efficiency, in practice, they certainly contribute to the efficient delivery of justice. These standards often overlap with each other, and they include predictability, uniformity, transparency, neutrality, and enforcement of superior law and final court decisions in all cases. Most importantly, as Canon 1 of the Rules of Conduct for Federal Judges notes:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor.

That public confidence is also largely based on the predictability that principled decision making and decision makers give to civil life in all its aspects. That opportunity to regulate one's affairs with reasonable expectation of fair decision making by the government and protection against arbitrary exercise of power is what makes businesses, families and societies flourish; its absence is what often causes their decline and fall.

A

Predictability

Predictability is the essence of law.⁷ Justice Holmes wrote in 1897 that:

The object of our study [of law] is prediction, the prediction of the incidence of the public force through the instrumentality of the courts. The means of study are a body of reports, of treatises, and of statutes...[in which] are gathered the scattered prophecies of the past... These are what properly have been called the oracles of the law. For the most important and pretty nearly the whole meaning of every new effort of legal thought is to make these prophecies more precise, and to generalize them into a thoroughly connected system.

Oliver Wendell Holmes, Jr, *The Path Of The Law*, 10 Harvard Law Review 457 (1897).

In a perfect judicial world all opinions would effectively write themselves, for there would be no knotty questions of statutory interpretation with which to wrestle, no blind alleys of conflicting case authority up which to hare astray, and no appellate courts (at least not in our precedential pecking order) composed entirely of judges stupider than ourselves.⁸ It would

⁷ I know this is a quote. Need cite.

⁸ After one of my first jury trials, when I shook hands with the departing jurors, one of them said "I really enjoyed this. I didn't know federal judges were so funny." I replied, "It's probably always a mistake."

also, of course, be a perfectly boring place.

What then can society ask of us as blind Delphics astride the legal chasm? All we can do is articulate, and follow as best we can, a fixed set of constellations based upon that which has gone before and those who have been its interpreters. Legislative enactments and the rules for their interpretation are a good place to begin. As my dear law school professor Stefan Riesenfeld used to say, "Always read the statute. You may be surprised."

Certainly, as interpreters of the law in a system with Locke's separation of powers, the norm of which is that the legislature enacts and the executive applies, absent a constitutional failing we are bound to carry out legislative intent.⁹ When that intent is unclear we must often venture into a thicket of intellectual brambles which may unpleasantly prick both court and litigants, but we are not without tools to guide our path. Among the best of those are standard canons of interpretation which, while they may be fiction (the legislature is always presumed to have acted rationally)¹⁰, are at least nourishing fiction; for if everyone enters the briar patch using the same misaligned compass, at least we may confidently predict where it will all lead in the end.

As we travel down that path to predictable results then, in addition to other tools it is also a valuable guide if we, as the judicial guides, strive for logical consistency with other courts; that is, for an unfoolish consistency.¹¹

B

Uniformity

From a judge's view, by uniformity, I mean similarity in the decision making process, and in the written results of that process, rather than a pure result orientation.

There are any number of approaches to a rational decision making process. In Germany, for example use the "Subsumtionstechnik" method.¹² It contains four steps: 1) State the conditions that the applicable rule of law contains. 2) Define the conditions. 3) Identify whether the facts meet the conditions, and 4) draw a legal conclusion. In the United States judges often follow the "IRAC"¹³ method: define the

⁹ *Lanza, Inc. v. U.S.*, 21 C.I.T. 304, 960 F.Supp. 374 CIT, 1997.

¹⁰ Cite from Sutherland, *Statutory Construction* and find a case (an Irish one would be nice).

¹¹ For, if as Emerson says, "a foolish consistency is the hobgoblin of little minds," [cite], than the more fools we to seek foolish nonconformity, *for* its own sake and to merely confuse the law and litigants.

¹² This summary was written with the assistance of one of my former students, Julia Reiks, currently a PhD candidate at the University of Muenster.

¹³ Issue, Rule, Application and Conclusion. IRAC or its equivalent is also used in other common law countries. See, e.g. Australia, <http://www.canberra.edu.au/library/researchgateway/guides/law2/background-info/problem-solving>, Ireland, c.f. Justice Nicholas Kearns, *Some thoughts on judgment writing*, The Irish Times, Monday, November 10, 2008 <http://www.irishtimes.com/newspaper/ireland/2008/1110/1225>

Issue, identify the Rule of law which governs the issue, apply the rule to the facts to analyze the problem, and reach a Conclusion whether the rule governs those facts.

In our federal trial courts, a judge is pretty much free to do stylistically as she or he wishes, subject of course, our oath¹⁴ and judicial review.¹⁵ Despite that freedom, there is a certain desire for uniformity in any common law system for purposes of stare decisis, because it increases precedential value, and because it makes it easier for litigants and the general public to understand the exact results of what has transpired in their courts. The ease of understanding and the openness to public view which it implies is yet another aspect of the rule of law. We often refer to it as "transparency."

C Transparency

The United States and its courts place a very high value on the right and opportunity of public access to judicial proceedings. Once again, we may look to the Declaration of Independence for a philosophical explanation of why that right exists:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That, to secure these rights, Governments are instituted among Men-- deriving their just Powers from the consent of the governed...

As a lawyer representing a newspaper seeking to obtain access to discovery proceedings in a private lawsuit by current and former government officials, I successfully argued to a federal court that the founding fathers were common law lawyers who suckled the milk of Blackstone. They knew perfectly well that when they referred to "consent of the governed," the only valid consent was "informed consent," and that the role of the press as the "fourth estate" is to provide information to the people about what their government is doing with the powers they delegate. The same general need for openness holds true for the courts:

The public nature of lawsuits and the public interest inherent in the rights vindicated in courtrooms makes open and transparent proceedings imperative to equitable outcomes. ... "Lawsuits are public events."

Hodge v. U.S., 2007 WL 4082037 (M.D.Pa. 2007). (Citations Omitted, Emphasis added).

[925596395.html](http://www.isboard.co.uk/downloads/djmc_web_100406.pdf), the United Kingdom, c.f Judicial Studies Board, Sitting as a District Judge in the magistrates court at p.15 et seq., http://www.isboard.co.uk/downloads/djmc_web_100406.pdf.

14 We swear or affirm that we "... will administer justice without respect to persons, and do equal right to the poor and to the rich, and... I will faithfully and impartially discharge and perform all the duties incumbent upon... under the Constitution and laws of the United States." 28 U.S.C. 453.

15 It is somewhat different in the courts of appeal, since it is useful for purposes of guidance that a majority of an appellate court sign on to opinions.

The people have a number of legitimate expectations from their courts, but not the least of those is that they will know with certainty whether the faith they placed in their judges is being fulfilled. Unless the citizenry has that legitimate belief, all other pillars of the judicial system must fail. Accordingly, unless...there is an overriding necessity of urgent national security importance or overweening private matters of no legitimate public interest, courts should always opt for access. Indeed, even in those rare cases where total access is limited, the limits should be as narrow as possible solely to meet only the legitimate concerns involved.

The judicial branch is the weakest of the three.¹⁶ Its support must come from public perceptions of public value, and it is in the interest of everyone that the citizenry has the chance to observe and decide. One of the most important of those public values is the legitimate belief that judges are neutral decision makers.

D Neutrality

I cited above the oath we take as federal judges. Note that it is different in a major respect from the standard oath taken by all federal officials,¹⁷ other than the President. Besides vowing fidelity to the Constitution and to do the job "well and faithfully," it refers to impartiality, and to administering justice without regard to wealth or poverty of the litigants. That perception of judicial neutrality is invaluable to the development and maintenance of rule of law.

Much of the obligation to foster both the perception and reality of a neutral judiciary falls on the judges themselves, although a certain peripheral duty adheres to the other branches. Thus, Under the Code of Conduct governing our federal judiciary,¹⁸ a judge 1) should uphold the integrity and independence of the judiciary; 2) avoid impropriety and the appearance of impropriety; 3) perform duties impartially and diligently; 4) may engage in extra-judicial activities to improve the law, legal system and administration of justice; 5) should regulate non-judicial activities to minimize conflict with judicial duties; 6) regularly file reports of compensation; and 7) refrain from political activity.¹⁹

¹⁶ Cite Federalist No.

¹⁷ I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

¹⁸ <http://www.uscourts.gov/guide/voI2/chI.html#I>.

¹⁹ Canon 7, in essence, prohibits a judge from leading, holding office in or speaking for a political organization; acting as a leader, holding any office in or raising money for or donating to a political organization or publicly endorsing or opposing a political candidate, and from engaging in any other political activity except that a judge may generally assist an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area. See Cannon 4.

E

Enforcement of Superior Law In All Cases

The doctrine of *stare decisis*

F

Executive and Legislative Compliance With Final Court Decisions

After the close of our Civil War, the Supreme Court heard an habeas corpus petition filed by a Northern supporter of the defunct Confederacy. In *Ex Parte Milligan*, the Court reversed a prior decision²⁰ denying the writ in wartime. Justice Davis explained the danger of wartime judicial deference to military rulers:

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln; and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate.

Ex parte Milligan, 71 U.S. 2, 18 LEd. 281,4 Wall. 2 (U.S.Ind. 1866).

III

How is Rule of Law Achieved?

- Constitutional structures
- Public and governmental respect and reliance on interpretative institutions
- Fair efficient decision making with results applied in a neutral fashion

IV

What Are the Benefits?

Benefits of rule of law²¹

- Confidence in a secure future
- Willingness to invest in education, infrastructure and plant facilities -Economic, stability and growth
- Public devotion to national success
- Rational government decision making limited by articulated standards

V

Who Supports Rule of Law?

- Those who benefit from predictability
- Those who support the existing constitutional structure and its means of self-regulation and improvement
- Those whose rights are protected by the system
- Those who perceive the system as neutral, honest, efficient and fair

²⁰ *Ex Parte Vallindigham*, 68 U.S. 243,1863 WL 6528 (U.S. Ohio), 17 L.E.d. 589,4 Ohio F.Dec. 12, 1 Wall. 243.

²¹ I cite here no burdens from rule of law because I believe there are none which any legitimate government should not willingly bear. This thought is further expounded in the section below on those who oppose rule of law. See. Section VI.

VI

Who Opposes Rule of Law?

- Those who want unlawful power or to utilize lawful power in an unlawful way
- Those who seek to destroy (anarchists) or replace in an unlawful manner (revolutionaries) a constitutional system of government
- Those who benefit from chaos

VII

The Problem with Unprincipled Decision Making

- Necessity as a principle of law is inherently chaotic
- Grounds for decisions which can not be articulated in a principled fashion can not provide a rational basis for future conduct
- The results are inherently destabilizing
- Instability feeds on itself by creating victims who perceive no peaceful solution to their victimization

VIII

Rule of Law as a Political Principle

- Rule of law, constitutionalism, and democracy are analytically distinct but mutually symbiotic
- If political forces assume that abiding by court decisions will eventually benefit them both to protect their rights against unlawful attacks, and to foster the public's perception of them as fit to rule; then all interests are advanced.

THE INTERNATIONAL FAMILY JUSTICE JUDICIAL CONFERENCE FOR COMMON LAW AND COMMONWEALTH JURISDICTIONS 2009

Cumberland Lodge, England (4-8 August 2009)

Jurisdictions Present:

Australia, Bangladesh, Canada, Cyprus, England & Wales, Ghana, Hong Kong, India, Indonesia, Irish Republic, Israel. Kenya, Malaysia, Malta, New Zealand, Nigeria, Pakistan, Scotland, Singapore, South Africa, USA. Eastern Caribbean States

Number of Judges Present: 42

CONCLUSIONS AND RESOLUTIONS FROM THE CUMBERLAND LODGE CONFERENCE

WHEREAS the Common Law and Commonwealth jurisdictions participating in this conference recognise and value their common legal heritage and wish to sustain the legal culture which unites them.

AND WHEREAS the participating jurisdictions recognise and value the importance of this group of states as a group which is not merely regional but global in reach and which, although united by a common legal history, represents a plurality of ethnicities, religions and ideas.

AND WHEREAS the participating jurisdictions consider the building of mutual respect between judges as crucially important for the development of International Family Law.

AND WHEREAS the participating jurisdictions consider the creation of a Common Law and Commonwealth Judicial

Network as complementary to and supportive of the International Hague Network of Judges.

AND WHEREAS the participating jurisdictions recognise as a forerunner to this conference the Judicial Conference for Common Law Jurisdictions held in Washington in 2000 and are committed to continuing this process.

AND WHEREAS the participating jurisdictions aspire to increase the representation of Common Law and Commonwealth jurisdictions attending future conferences.

IT IS RESOLVED THAT:

1. The participating jurisdictions hold a tri-annual International Family Justice Judicial Conference for Common Law and Commonwealth Jurisdictions and shall ensure that the invitation to this conference is sent to all Common Law and Commonwealth jurisdictions.
2. A Common Law and Commonwealth Judicial Network be established forthwith. All jurisdictions participating in this Conference and those that are subsequently identified as participating in this Conference are encouraged to nominate a Judge or Judges to this Network. The nominated Network Judges and their contact details will be notified to and held at the Office of International Family Justice in London and will be regularly updated.
3. The rapid growth and complexity of cases involving international family and child protection law require the investment of more resources at national, regional and international levels to support judicial training in this area. This is needed in particular to assist judges to become familiar with and to apply consistently the Hague Conventions, as well as other international instruments concerning international child protection. Judges with experience in Hague cases are encouraged to lend their assistance to training programmes for countries which are in the process of implementing the international instruments.
4. Subject to domestic law, the judiciary should take an active role in encouraging the governments of their states to ratify the Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption (1993) and to promulgate implementing legislation to give effect to the provisions thereof.
5. Being aware of the economic dimensions of inter-country adoption, coupled with the real dangers of improper financial gain, illegal movement and sale of children and other related abuses, these aspects of inter-country adoption cannot be left only to reactive law enforcement but require pro-active awareness and caution.
6. Noting the increasing ratification of the Hague Convention on the Protection of Children and Co-operation in respect of Inter-Country Adoption (1993) by Common Law and Commonwealth countries and the concomitant efforts in member states to implement the Convention effectively. This Conference strongly supports the Inter-Country Adoption Convention and its aims.
7. When a judge is hearing a Hague Convention Child Abduction return application and the following issues are raised:

- a. Child's objection to return; and/or
- b. Grave risk of harm or intolerable situation; and/or
- c. Settlement of the child in a new environment

in giving the child the opportunity to be heard the judge should consider whether directly to see the child either solely or in combination with other means.

8. Mediation in cross-border child abduction be recognised and supported, subject to proper training of mediators in this specialised field. A register of trained and competent mediators for such cases should be compiled and made readily available to the judiciary in each participating state.
9. Regarding relocation cases, the search for common principles to be applied in the judicial resolution of relocation disputes in the best interests of the children concerned, be pursued both nationally and internationally. Further, participating jurisdictions shall use their best efforts to ensure such disputes are resolved in a timely fashion. In addition, more research and longitudinal studies should be carried out into the impact of relocation decisions on the children and parent_ concerned, whether relocation is permitted or not (including comparative studies as to the impact of. the non-custodial parent's decision to relocate).
10. Participating jurisdictions might consider providing assistance, including legal advice, for left-behind parents (including parents in non-Convention countries) who seek the return of a child abducted to a non-convention jurisdiction. Such an office might be centred in the Ministry of Law and Justice and named The Office of International Co-operation on International Family Law.
11. The conference emphasises the value of direct judicial communications in international child protection cases, as well as the development of international, regional and national judicial networks to support such communications.
12. The Conference has also identified a number of emerging international family law issues that require further study and discussion including international surrogacy arrangements (and also immigration issues in this regard) and transfer of embryos across boundaries, the status and recognition of unmarried relationships and the possible relationship between issues of child relocation and child abduction.

SOME LEGAL QUOTATIONS

- ❖ Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal.
—BACON, *Essays: of Judicature; I Works of Francis Bacon* (Philadelphia: A. Hart, 1852) p. 58
- ❖ The Judge should not be young; he should have learned to know evil, not from his own soul, but from late and long observance of the nature of evil in others: knowledge should be his guide, not personal experience.
—PLATO's *Republic*, bk. 3(Jowett trans.) (New York: The Modern Library & Random House), p.116
- ❖ A judge of first instance need not necessarily be a consummate lawyer. He should be a man of even

temper and one who can be trusted to display and continue to display courtesy to the litigants and bar; in short if I may use a much abused expression, he should be a gentleman. A sense of humor is always an asset, but a constant joker is anathema. Another quality devoutly to be wished for is the ability to keep reasonably silent while trying a case. —GODDARD, Lord (former Chief Justice of England), New York Times, Nov 23, 1959, p.21

❖ “Things necessary to be continually had in remembrance by a judge”:

1. That it be done, 1. Uprightly; 2. Deliberately; 3. Resolutely
2. That I rest not upon my own understanding or strength, but implore and rest upon the direction and strength of God.
3. That in the execution of justice I carefully lay aside my own passions, and not give way to them, however provoked.
4. That I be wholly intent upon the business I am about, remitting all other cares and thoughts as reasonable and interruptions.
5. That I suffer not myself to be prepossessed with any judgment at all, till the whole business and both parties be heard.
6. That I never engage myself in the beginning of any cause, but reserve myself unprejudiced till the whole be heard.
7. That I be not biased with compassion to the poor, or favour to the rich, in point of justice.
8. That popular or court applause or distaste have no influence in anything I do, in point of distribution of justice.
9. Not to be solicitous when men will say or think, so long as I keep myself exactly according to the rule of justice.
10. If in criminals it be a measuring cast, to incline to mercy and acquittal.
11. In criminals that consist merely in words, where no more harm ensues, moderation is no injustice.
12. In criminals of blood, if the fact be evident, severity is justice.

—HALE, Matthew, in CAMPBELL, John, Lord, Lives of the Chief Justices of England (London: John Murray, 1858) Vol. I, pp. 547-48



Guests on Book Launching Ceremony at FJA Auditorium

Judgments

2009 SCMR 1161

Schd. S.Os.12, 1 & S.2(bb)---Constitution of Pakistan (1973), Art.185(3)---Termination of employment---work being performed by the employee as “tube-well operator” was connected with “water work” “well” within the meaning of “construction Industry” as defined in S.2(bb) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968--Nothing was on record to indicate that he was being paid salary only for those days of week during which he worked--Record also showed that employee was engaged on a work of permanent nature within the meaning of clause (b) of S.O. 1 of the Schedule to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968---Employee being a permanent workman in terms of the provisions of the Ordinance, he could not have been summarily dismissed and that too without a written order----Procedure adopted by the employer in dismissing the employee, was violative of S.O.12 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968R---Petition for leave to appeal was dismissed in circumstances. [p.1168] A

2009 SCMR 1188

S. 302---Constitution of Pakistan (1973), Art. 185(3)---Leave to appeal was granted by Supreme Court to examine, inter alia, as to whether the High Court, under the circumstances of the case, was justified in confirming death sentence of the accused while at the same time acquitting two co-accused from the charge of murder on the same set of evidence. [p. 1190] A

2009 SCMR 1210

S. 497-_-Constitution of Pakistan (1973), Art.185(3)---Bail---Practice and procedure---Intervention by Supreme Court---Supreme Court would not unduly intervene in bail matters, which should ordinarily be left to the discretion of the Courts inquiring into the guilt .of the accused persons, which has to be exercised on sound judicial principles--Supreme Court does not interfere with the discretionary powers of the Courts below in bail matters, unless it is satisfied that the order of lower Court is perverse or has been made in clear disregard of settled norms of justice and principles of law. [pp. 1214, 1215] C & D

2009 SCMR 1243

Art. 1 85(3)---Civil, petition for leave to appeal---Supreme Court, jurisdiction of---Scope---Concurrent findings of fact by the Court below---Principle---Supreme Court does not normally go behind concurrent findings of fact recorded by Courts below, ,unless it can be shown that the findings were on the face of it against evidence or so patently improbable or perverse that to accept same would amount to perpetuating grave miscarriage of justice or if there had been any misapplication of principle relating to appreciation of evidence, or finally , if finding could be demonstrated to be physically impossible ---Such being the practice and rule of Supreme Court in civil petitions, burden lay rather heavily on petitioner to show that concurrent findings recorded by High Court are not sustainable on record and should be interfered with by Supreme Court. [p. 1247] B

2009 SCMR 1210

O. XXIII, R.3---Consent decree based on compromise between the parties can safely be equated to that of a contract, breach whereof would give rise to the fresh cause of action and a fresh suit can be filed by an aggrieved person for the redressal of his grievances---Principles. [pp. 1270, 1272, 1273] A, B, C & D

2009 SCMR 1279

s. 122---Amendment of assessment---Brief survey of the legislative process through which S. 122, Income Tax Ordinance, 2001 had passed in taking its present shape. [p. 1314] B et seq