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Saving the Third Branch of Government

by Richard A. Huver

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Imagine for a moment what our country would be like without a strong, independent judicial branch of government. Theoretically, a "law" which violated our Constitution could be passed by the Congress and signed into law by the President. Who would be able to effectively challenge that new law? Without an independent judicial branch, there would be no realistic avenue in which to do so. Sure, you could try to impeach the President but that process would be decided by the Congress. Or you could wait until the President and/or Congress were up for reelection, however long away that might be. But what would happen in the interim?

Now consider the impact of a third branch of government – the Judicial branch. A single person can challenge the entire Congress and the President of the United States -- two of the most powerful institutions in the nation. With an independent judiciary, one that is available to all, not just a select few, such a challenge has a place to be heard.

Consider recent events as evidence of the importance of the judicial branch. The U.S. Supreme Court decided the executive branch exceeded its power when it unilaterally decided that a prescription drug statute passed by Congress in the 1970's also permitted it to prosecute doctors in Oregon who prescribed lethal drugs at the request of terminally ill patients; two advocacy groups filed federal lawsuits challenging the President's unilateral interpretation of the Patriot Act to eavesdrop on domestic communications without a warrant; and in a recent Editorial entitled "Epic Overreaching," even the *San Diego Union Tribune* noted the importance of judicial review in applauding Google's challenge to a Justice Department subpoena seeking to spy on what individuals were searching on the Internet. Noted the *San Diego Union Tribune*, "[w]e shouldn't have to count on the judicial system to protect us from our own Justice Department, but apparently we must."

Despite its obvious importance, there are individuals continually at work trying to weaken, if not destroy, our judicial branch. Small segments of society who want to force their individual beliefs and ideals on the entire country have increasingly attacked any judge who issues a ruling contrary to their wishes as being an "activist." Critics attack the entire civil justice system, using catchy phrases like "jackpot justice" and "frivolous lawsuits," claiming the only solution is through "tort reform." Some have even called for a Constitutional Amendment

to allow the public to overturn any “controversial” judicial decision through popular referendum. Can you imagine the public being asked to vote on a proposition to overturn individual judicial decisions that is driven by special interest groups and political marketing firms funded by a few wealthy individuals or corporations using 30-second sound bites? Frightening!

The people attacking the judicial system are not individuals identifying a particular problem and offering realistic solutions. They want to cut down our third branch of government, or at minimum, substantially trim back its power. But if you remove one of the legs from a tripod, the entire tripod will fall over. So, too, would our entire country topple over if these few are allowed to succeed.

Not to worry, you say. This could never happen. Oh really? Why isn't the public rising up in outrage against these attacks on our judicial system and the efforts to deal a fatal blow to our cherished form of government? Is it because they agree? Or have they forgotten their history lessons from school? Maybe it is because no one is reminding them of the principles upon which our country was formed and why an independent judicial branch is so vital to our country.

Our Founding Fathers created three independent branches of government for a very specific reason -- to assure there was a system of checks and balances in place to avoid the possibility that one branch of government could ever impose its own unilateral decisions on the people. Created by the first three Articles of the U.S. Constitution, the three branches are still considered the most perfect form of government because of the manner in which each branch checks and balances the acts of the others. Moreover, our nation was founded on the principle that a judicial system must be free from any political pressure by any other branch of government. As Alexander Hamilton wrote, “...the complete independence of the courts of justice is peculiarly essential in a limited constitution.”

Yes, yes, you are saying. We already know all about the three branches of government. We understand it is important for the judiciary to be truly independent and free from political pressure. But how do I combat these attacks, you ask? Well, one way is to educate the public about our civil justice system, the judicial branch of government, and the important balance of power created by our Founding Fathers and the Constitution. **I believe educating the public about the civil justice system and our judiciary should become a cornerstone of our organization.** And what better way of doing so than going back some 230 years to review the birth of our nation and the creation of the judicial branch of government.

It is important to remind our friends and neighbors about these guiding principles and why the civil justice system plays such an important role in a civilized society. Resolving disputes in a court of law is better than taking the law into your own hands. It is vital that legal disputes be decided by an impartial jury of citizens as guaranteed by the Constitution. Remind them about procedures that are already in place -- even within our judicial system are checks and balances -- that take care of a potentially erroneous ruling by a judge. Talk about the alternatives to such a system -- a system in which one branch of government decides what is right, what is wrong and what it will permit. Sounds like a monarchy to me.

In 2005, our last Board voted unanimously to join with other local bar associations and our courts in making the following public statement:

We, the undersigned, hereby express our solidarity in support of the independence of our Nation's judges, juries and courts. While the Constitution guarantees the right of every American citizen to disagree with a decision of a jury or judge, personal threats, demeaning words or creating an atmosphere of contempt are never acceptable. We all need to fear a day when our legal rights are determined by public opinion. The right to be judged by an independent judge or jury must be protected.

CASD urges you to join in this effort to preserve our justice system. Do not allow our detractors to define who we are and what we do as lawyers and officers of the court. Do not allow those with individual political gain as their sole motivation to attack our judicial system. We have voices as well. Do not be afraid to talk to people. You will be surprised at how quickly some negative opinions will change once people are given the facts. This is an important role we all can play -- even if it changes just one mind at a time.