



Posted on: Wednesday, April 30, 2003

LAW WEEK

The Judiciary: 'crown jewel'

This is the fourth of several articles written by state judges commemorating Law Day (May 1) in Hawai'i.

By Clarence A. Pacarro
District Court judge on O'ahu

Imagine a government, or regime, in which one person (or one entity) could dictate what laws he liked or which laws would be enforced or not. Doesn't seem fair, does it?

That was the situation in our country over 200 ago under England's King George III. That is why the founders of our country created a constitutional system of checks and balances, including an independent judiciary, to curb abuses of power and undue influence.

In Hawai'i, our state Constitution also establishes our judiciary as a separate and co-equal branch of government. Unlike legislators and executives, judges do not represent particular groups or advocate for specific policies. Judges are bound and obligated to apply the law to the facts of each case, without being influenced by public opinion or a political platform. The ability to make impartial decisions without favoring one party or issue over another is the essence of judicial independence.

Judicial independence allows courts to protect the basic rights of individuals and to decide cases fairly according to the law without regard to political or public pressure. The cornerstone of our liberties is the power of the courts to protect the rights of the people from the momentary excesses of political majorities or government overreaching. This is not necessarily the case in other countries.

According to Ed O'Brien, executive director of Street Law, Inc., as recently as 15 years ago, judges in the Soviet Union often used a concept called "telephone justice" to render their decisions. They would call the Communist Party leadership and ask, "What does the party want in this case?" and then rule accordingly. Our system of justice does not allow this.

Professor John Ferejohn of Stanford University maintains that an independent judiciary upholds three critical values of a democratic society:

- The rule of law — ensuring that every individual, of whatever social standing, is subject to the same protections and restrictions under the law, and that powerful people do not manipulate legal proceedings (i.e., no "telephone justice").
- Constitutional integrity — preserving the ability of the Constitution to protect our freedoms and order our society by ensuring that one societal institution has the power to overturn laws that violate the Constitution.
- Enforcement of the law — guaranteeing that legitimate laws will be enforced in daily life and not simply stated as theory.

An independent judiciary, in Hawai'i and throughout the nation, generally protects these principles, a fact not to be taken too lightly.

Mr. O'Brien of Street Law, Inc. also reports that Russian presidents in the recent past often declared rulings by the highest court null and void because they did not like them.

In South Africa, until its new constitution took effect in 1994, the all-white Parliament had the final say on the constitutionality of laws, not the courts. In Latin America, citizens would often criticize their governments for having laws on the books that were not enforced by either the courts or the police. An independent court system with its checks and balances, as well as the evenhanded enforcement of laws, did not exist in those societal situations to provide the necessary protection for the people.

But the exercise of the Judiciary's independence is not without ramification. Just as offensive speech is the price of the First Amendment's protection of free speech, controversial (and sometimes unpopular) decisions are part of an independent Judiciary that seeks to protect the rights of all individuals in our society.

While no system of justice is perfect, America's uniquely independent courts have proven themselves the "crown jewel" of our system of government. It is a justice system that is being widely studied and often copied by other countries trying to transform their legal systems.

As we celebrate Law Day this year, let us remind ourselves of the importance and the necessity of a strong and independent Judiciary to ensure that cases are decided on their merits and the law, and not on undue influence from any segment of our society.

Thanks to the American Bar Association (www.lawday.org) for providing some of the information used in this article.