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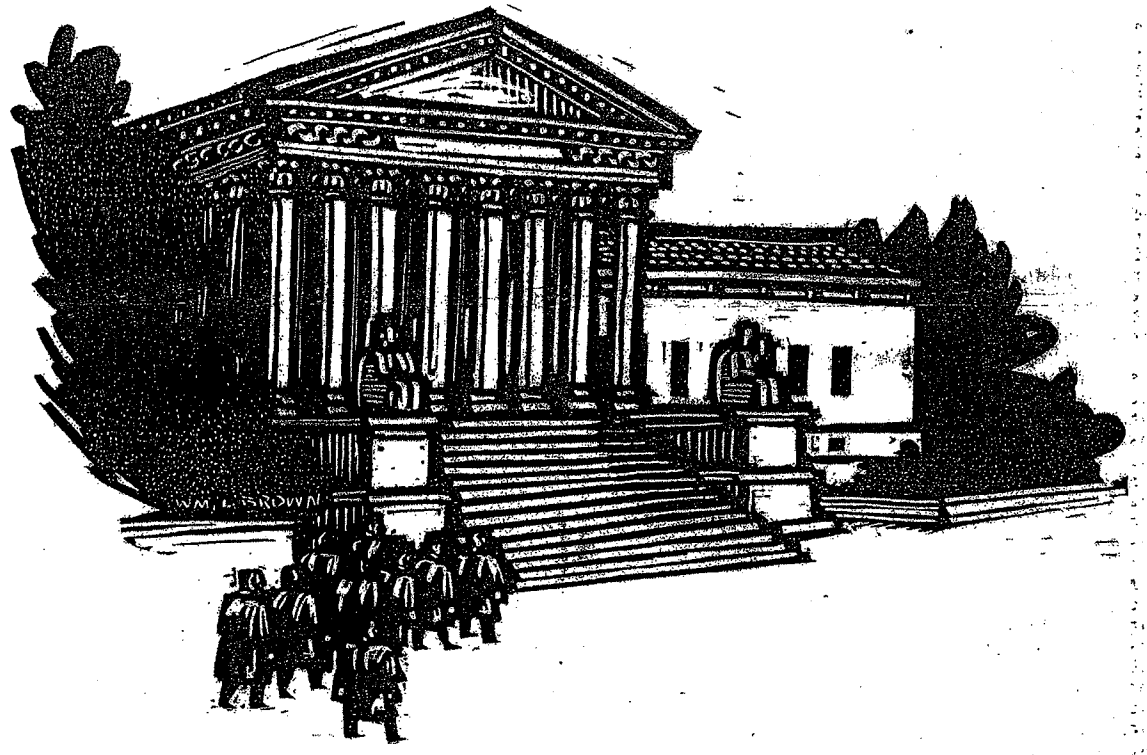
Law should sway court, not politics



The United States judicial system remains the envy of the world. Since our nation's earliest days, our judges' rigid adherence to "the rule of law" has provided both clarity and predictability in legal proceedings. A well-defined body of substantive law coupled with legal proceedings founded on due process has ensured just treatment of civil and criminal cases alike.

Judicial decisions derive from law even where popular public opinion is contrary to such outcomes. Thus, courts represent "level playing fields," where litigants of every social and economic background can be confident that their controversies will be decided solely on the facts and the law.

A virus does exist, however, constantly poised to attack and weaken this system of justice. It takes the form of assaults on the independence of jurists, designed to influence the outcomes of cases based on the passions of the moment or on temporal political winds. When successful, these attacks supplant "just results" driven by application of the law to the facts with "correct results" defined by an entirely different standard. Such attacks constitute an evil for which lawyers and citizens alike must be on guard. We are duty-bound as citizens and members of the bar to confront and defeat them.

In Connecticut, we employ a merit appointment system which screens prospective jurists to ensure each candidate possesses appropriate legal training, background and temperament. The governor nominates individuals to the bench from the approved list.

Once nominated, candidates are then subject to legislative approval. This process avoids the pitfalls encountered where judicial selection is an electoral process, such as the potential for influence based on campaign contributions or the actions of influence groups or political action committees to alter election outcomes. Given the dollars involved in some recent judicial elections — Wisconsin's Supreme Court contest comes to mind — the perception of "buying" a judicial election is reaching new heights.

Judges appointed to the Superior and Appellate courts and justices appointed to the Supreme Court serve for eight-year terms. To remain on the bench after a term, each jurist must be renominated and go through the reappointment process. This process stands at a crossroads in the Connecticut State Constitution involving powers vested in the legislative and judicial branches, respectively.

On the one hand, legislators are duty-bound to ensure the competence of those being considered for reappointment to the bench. Thoughtful inquiry as to a jurists' discharge of his or her duties while on the bench comprises appropriate fodder in a general sense; however, the line is crossed whenever the judicial thought process is questioned in a particular case. To place a jurist in the position of needing to explain or defend a particular sentence, award or decision constitutes an invasion into the powers vested solely in the judicial branch. Such inquiries are particularly difficult in this setting as the jurist is doing more than defending a decision; rather, his or her job may depend on the answers to such questions.

Judges who have been reversed by higher courts as a result of the misapplication of existing law or precedent should be held to task for such decisions, as they may reflect a lack of competency. On the other hand, many legal concepts are complex and a jurist's reversed decision might simply reflect an area of law that is evolving. Also, legislative questions posed regarding judicial demeanor or discourteous treatment of litigants, court staff or counsel are all appropriate grist for the reappointment mill.

It is the inquiries as to matter of discretion (particular criminal sentences or civil awards) that place jurists on notice that their decisions are reviewable by two very different standards: (1) by an appellate court reviewing for the proper application of the law to the facts and (2) by a legislature reviewing to determine whether a decision comports with certain prevailing political or social winds, regardless of the fact that such winds are subject to change. All too frequently a judicial career is held in the balance based on a review of a solitary ruling; one of hundreds or thousands over the judge's eight-year term. This can only result in a chilling effect on judges, thereby making them prone to consider matters outside the record and perhaps cautioning them to leave controversial cases to older colleagues who are nearing retirement.

As we celebrate Law Day on May 1, 2011, we will note our nation's rich and distinguished judicial history.

We'll remember John Adams defending British soldiers involved in the Boston Massacre. Our thoughts may extend to William Seward who, 15 years before becoming Abraham Lincoln's secretary of state, agreed to represent a man of color accused of breaking into a home and stabbing four people to death, a task no other lawyer would agree to perform.

Perhaps the recollection of Thurgood Marshall arguing before the U.S. Supreme Court in Brown v. Board of Education will occupy our thoughts.

As we recount these and many other great lawyers and cases in our nation's history, the fundamental and constant premise which has endured is that lawyers and litigants have the right to expect, indeed demand, that their causes be handled through the rule of law, not the winds of politics. This right can only be ensured by an independent judiciary and we are all responsible to stand guard at this constitutional outpost.

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