

Standing Up for Fair, Impartial Courts

“The law makes a promise—neutrality. If the promise gets broken, the law as we know it ceases to exist. All that’s left is the dictate of a tyrant, or perhaps a mob.”

—Justice Anthony M. Kennedy

In 2001, 21-year-old Michael arrived in Phoenix as a refugee from the 30-year genocidal war in Sudan that has cost 2.5 million lives and displaced 4 million southern Sudanese citizens. The Sudan’s legal system had become a system of torture. The few lawyers had been run out. The schools had been burned. The courts had become puppets of a government bent on annihilating the Black Africans of the region.

Shortly before Thanksgiving 2002, Michael was hit by a car while riding his bicycle home from his job as a grocery store greeter. As the coordinator of the Sudanese Ministry for my church, I got the call that Michael had been badly injured. Michael wanted to talk to me about the ticket the police officer had issued to him. It bewildered him because the car hit him; he had done nothing wrong.

He listened attentively as I explained that he could request a hearing before a fair and impartial judge, who would only listen to evidence presented in open court. No, the judge would not punish Michael for challenging the police officer’s citation. No, the police would not hurt Michael for doing so. No, the police could not be bribed. And, no, politicians would have nothing to say about this.

Like many of those who seek refuge in the United States, Michael has developed a keen appreciation for the rights, freedoms and democratic system we take for granted. At first he was excited to know that he could have a chance to tell his side of the story. But his initial enthusiasm would soon give way to fear—a residue of his childhood experience in Sudan, where the only rational reaction to the police was to run, fight or bribe, and where the courts were the puppets of a corrupt government.

When I left his apartment, I thought he was comfortable with requesting a hearing to challenge the citation, but he called me every day for two weeks concerned that the request would bring the world crashing down on him. In fact, it took Michael two weeks *after* he prevailed at the hearing to believe that the judge had actually ruled in his favor.

The unfortunate truth is that most people in the world can only dream of fair, impartial courts, free from the influence of backroom politics.

This reality makes it ever more important that we as lawyers protect our courts from the political attacks that have recently become so prevalent. Political retribution for “unpopular” decisions is becoming the norm, and it can take many forms:


- “Starving the beast” by underfunding the judicial system
- Attacks on Arizona’s merit selection system

- Demands for unfettered gubernatorial discretion in the appointment of judges
- Demands for Senate confirmation of judicial appointments, even though well-balanced, 16-member merit selection commissions thoroughly vet the qualifications of all nominees
- Threats to unseat judges based on the outcome of certain cases
- Attacks on the Arizona Constitution’s preference for court rules made by the courts
- Jurisdiction-stripping legislation

Please pay close attention to the attacks on the courts. Sign up with the State Bar for e-mail alerts about attacks on the judicial branch. Speak to your legislators and neighbors about the importance of impartial courts, free of politics, and free of the influence of big money.

But first, learn everything you can about the existing system. To start, read the articles in this issue of ARIZONA ATTORNEY about fair courts and protecting them from attack. I am especially pleased by Ted Schmidt’s article, which provides a detailed history of merit selection. It supports the longtime position of the State Bar that Arizona has one of the finest judicial branches in the country, largely due to merit selection and the fairness it engenders.

Also, please keep tabs on *eLegal* and the State Bar Web site, www.myazbar.org. We will provide you with informational materials, sample client letters, and sample speeches about Arizona’s merit selection system, which courts are subject to merit selection and why, how all courts are accountable to the rule of law and the Constitution, and the significance of appellate review. The materials will also explain the judicial conduct commission, the judicial performance review commission, and how retention elections work.

The long and short of it is that we have a system worth preserving. If we don’t protect our courts, our courts won’t be able to protect us. 



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