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Law Day Remarks

The U.S Constitution: The Original American Dream¹

Hon. Judith S. Kaye

In choosing the theme for Law Day 1996—"The U.S. Constitution: The Original American Dream"—the American Bar Association seized on a stock phrase of today's popular culture. A quick computer search shows that, among thousands of recent uses, the American Dream is the name of at least one suburban shopping mall, a slogan for a newspaper ad campaign, and part of just about every speech given by presidential candidates. Indeed, one candidate, as he threw his hat into the ring, used the "dream" word thirteen times.

Most immediate associations with the phrase are economic—homes with white picket fences, nice cars, upward mobility. But there is in fact a great deal more to the dream, and that is undoubtedly why it has such resonance in our culture. Cars and homes may be its tangible manifestations, but the American Dream itself actually is freedom in a nation governed by law.

The public recognizes that the core of the American Dream is more than just physical comforts. In a series of polls asking people to describe the American Dream, "to have freedom of choice in how to live one's life" was among the top responses—beating out "to be able to become wealthy" and "to be financially secure enough to have ample time for leisure pursuits."

The source document for the American Dream is thus not House and Garden, not Horatio Alger stories, not the Harvard

1. Adapted from Remarks delivered at Law Day ceremonies May 1, 1996, at Court of Appeals Hall, Albany, New York.

Business Review. Not even Martha Stewart defines the American Dream. The source document for the American Dream is the United States Constitution. That document established a system of government that has, over the past two hundred years, produced the freest, most open society in history.

From high school civics classes we know the schematics of the system: three separate, co-equal branches of government that check and balance each other, and a Bill of Rights setting forth individual liberties upon which government may not encroach. In civics class that may have sounded dry—it may even sound a little parched here today. But tremendous drama and vitality are bound up in that political theory.

The struggle for justice and liberty, those abstract ideals that the Constitution seeks to secure in the real world: how many of us know someone who has undertaken great personal risk in pursuit of these goals? Whether it was leaving the old country in search of religious freedom, or going on Freedom Rides in the deep South, or serving in our armed forces far from home, the history of this nation is rich with stories of courage and sacrifice in service of the “abstractions” of justice and liberty.

Role of the Judicial Branch

As a judge, I am particularly proud of the role that the judicial branch plays in fostering the American Dream. Many struggles for freedom throughout American history have been fought and won in our nation's courts—because a separate, independent judiciary had the ability and the will to hew to the requirements of the law, even in the face of criticism, controversy and outright hostility.

The judiciary's contributions to the American Dream, moreover, are not merely a handful of landmark cases, and they most assuredly are not relegated to the pages of history. Every single day, the judges in this State are called upon to resolve cases of enormous difficulty, variety and importance—criminal cases, personal injury matters, family law issues central to the lives of our citizenry. These are the cases that help to secure the American Dream today not just for the litigants but for every one of us. Quietly, responsibly, impartially—and hewing to the requirements of the law—New York State judges resolved more

than two and a half million cases last year, and face much larger dockets this year. The real story is not the occasional banner headline. It is the full context of what we are about—that, day in and day out, the State court system is committed to securing the fact and the ideal of justice for all New Yorkers.

Independence of the Judiciary

A good deal of attention has been devoted lately to the subject of the independence of our separate, co-equal branch of government. And on Law Day it is certainly appropriate that we highlight this valued principle. From the very beginnings of our nation, this principle has stood as the cornerstone of our system of ordered liberties. Without independence of the courts, as Alexander Hamilton noted in the *Federalist Papers*, “all the reservations of particular rights or privileges would amount to nothing.” With an impartial judiciary, reason and principle—not privilege, pressure or passion of the moment—are the basis for the resolution of disputes.

Law Day 1996 finds us in the midst of an intensive nationwide seminar on first principles such as respect for law and judicial independence, centering on criticism of particular court decisions. The right to express one’s opinion is of course not only constitutionally guaranteed but also one of the truly wonderful things about this nation. Given the importance of the courts in our society, the public is rightly concerned that they function well. Judicial independence most definitely does *not* mean that the judiciary is immune, above criticism, beyond accountability to the public we serve. To the contrary, our doors, our decisions, are presumptively wide open to the public for viewing and comment.

What is of concern, however—what we all must be attentive to—is that the discussion be thoughtful and above all well informed. Court decisions are frequently the product of several complex determinants, including the evidence and arguments presented by the parties, procedural rules, case law, statutory requirements and constitutional principles. These considerations are not easily captured in sound bites. And judges cannot call press conferences or conduct radio call-in programs to explain their decisions. But we must all be wary of simplistic, outcome-based reports of court decisions, which have the potential

to fuel public cynicism without enhancing public understanding.

There is a point, moreover, when the line between legitimate criticism of decisions and illegitimate attack on courts or judges is breached. Here is where we must be especially concerned, not because of the pronouncements of Alexander Hamilton two centuries ago, but because of the consequences that such attacks can ultimately have on each of us today as we turn to the courts for impartial enforcement of our own interest and rights. In the end, independent tribunals, respected by the public, are our best guarantee for a peaceable, orderly, safe and free society.

Connectedness of the Judiciary

We have heard a good deal lately about the independence of the judiciary. I'd like to shift the focus, because on Law Day it is important that we consider as well the issue of the "connectedness" of the judiciary. While courts surely must be independent in their decisionmaking, they also are public institutions that exist in the community to serve the citizenry. We are vitally independent, yet vitally connected.

In addition to our central role of resolving disputes, the Unified Court System has been working hard to improve our connections to the public.

We have for example joined with our partners in government to secure much-needed reform to reduce the length, frequency and burden of jury service. In the area of family violence, we have together with law enforcement and others established one of the first Statewide Automated Family Violence Registries in the nation; we have together provided training on domestic violence and child abuse issues for judges throughout the State; and we have, with the help of the Department of Social Services, opened children's centers in the courts. To accommodate the special litigation needs of this great commercial state, we have with the business community and the commercial bar set up the Commercial Division of the State Supreme Court. And we are seeking, through an exciting new program called CourtLink, to improve the "user friendliness" of all our courts.

In the area of criminal justice, I am today inviting the Governor, the Legislature and other policymakers to join with us in establishing a high-level task force to develop a soundly structured Statewide system of alternative sanctions for nonviolent offenders. This is an important area in which we can and should improve our responsiveness to the public.

For some defendants, the criminal justice system regrettably can be a revolving door—a period of incarceration followed by a return to the community followed by a return to incarceration. The public is understandably frustrated because the costs—both tangible and intangible—are so high. In the case of nonviolent offenders, alternative sanctions present an opportunity to help break, not merely interrupt, the cycle of recidivism. That is in everyone's interest.

The court system has already taken some initial steps to develop models in this area. Our first project was the Midtown Community Court in Manhattan, which combines punishment and services to address the low-level yet intolerable criminal activity that diminishes the quality of life in Times Square and surrounding neighborhoods.

Our Drug Courts, focusing on the critical role that substance abuse can play in recidivism, will place selected nonviolent defendants who are chronic substance abusers in treatment programs, with judicial monitoring and random drug testing. Our first Drug Court opened last February in Rochester, with a second to follow shortly in Brooklyn, and others planned in Erie, Suffolk and Onondaga Counties.

These efforts are certainly a good start, but what is needed is a comprehensive, high-level Statewide structure of alternative sanctions. We look forward to working together with our partners in and out of government on this important issue.

On this Law Day, we in the court system celebrate our independence and we celebrate our connectedness. Both are essential to the rule of law. We take neither for granted. The Framers provided us with a magnificent concept and an exquisite blueprint, but each generation must work to ensure that the integrity of the plan is preserved and its full potential realized.

We cannot yet say that we have accomplished the original American Dream. But then again, ideals rarely are fully real-

ized in this imperfect world. We can be proud today, however, that we have remained true to the dream, by maintaining the integrity of the system so carefully crafted by the Framers, and by working to improve our connections to the public, whose trust and respect is essential for the rule of law to prevail.