

Crisis in the American Courts: Greylord and the Destruction  
of Fiduciary Bonds Between the Justice System and Society

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While it is commonly accepted and agreed upon that judges ought not to be partial, which (for reasons which will be discussed later) in the case of the judge necessarily implies corrupt, very seldom is there a reason given as to why the judge ought not to be partial to one litigant or the other. Perhaps this is because the judiciary is considered, as it was by the Founding Fathers, to be the weakest branch of the government and therefore the least able to do harm, or perhaps it is because the answer to this question is considered to be too obvious and therefore uninteresting. Nevertheless, with the ever-expanding role of the judicial system into the policy-making role that was traditionally reserved solely for the legislature (such as can be seen in the recent cases involving affirmative action, busing, and abortion, just to name a few), it is time to re-examine the role of the judge in the judicial system and his position in, responsibility to, and relationship with the rest of society.

Throughout history, the impartiality which a judge must possess has been a topic which has enjoyed much discussion and review. For example, one can find passages in the Bible describing God Himself as a just and impartial judge who does not discriminate or take an offering when he judges. In Deuteronomy, Moses tells those men he appoints as judges that they should "have no fear of men; for judgment is God's." (Dt. 1:17) The act or profession of judging has itself come to be regarded as almost a divine undertaking. "Acting as God or as God's Deputy, the judge is under an obligation...to imitate God."<sup>1</sup>

One of the reasons for the American Revolution (as expressed in the Declaration of Independence) was that the colonists believed the King's judges to be beholden to the crown, rather than to justice. Accordingly, when the Founding Fathers were writing the federal and various state constitutions, great care was taken to provide assurances that the judiciary would not be politically responsible to any authority higher than that of the people themselves. Guidelines for impartiality were even written into judge's oaths of office (such as this oath of office written in 1777 for the Chancellor of Virginia) whereby they would swear to:

do equal right to all manner of people, great and small, high and low, rich and poor, according to equity and good conscience and the laws and usages of Virginia, without respect of persons. You shall take not by yourself, or by any other, any gift, fee, or reward, of gold, silver, or any other thing, directly or indirectly of any person, great or small, for any matter done or to be done by virtue of your office, except such fee or salary as shall be by law appointed...you

shall...do equal and impartial justice without fraud, favour, affection or partiality. So help you God.<sup>2</sup>

In a 1780 document entitled, "A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts," (a document similar in intent to that of the Bill of Rights of the U.S Constitution) it was asserted that

(It is) essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

The document went on to specify the means by which this result might be obtained, but what is particularly interesting is that the authors of this declaration seem to have had full cognition of the fact that judges, unlike the God whom they are supposed to imitate, are imperfect and fallible.

The Founders recognized the danger of placing so tremendous an authority in one person in the executive branch, so they constructed a multitude of checks and balances on the power of that position so as to render it unlikely that power become there concentrated and consequently corrupted. Sufficient reason for the founders to relax their suspicions of corruptibility somewhat when they were designing the legislative branch was afforded by Aristotle who in Book Three of The Politics, pointed out that it is much more difficult to corrupt a multitude than a single person.

(...to be said for the many.) Each of them by himself may not be of good quality, but when they all come together it is possible that they surpass--collectively and as a body, although not individually--the quality of the few best.

Should even a few individual members of congress fall prey to the cabals of a faction, the integrity of the body would, as a whole, remain intact. With respect to the judiciary, however, little consideration was given to the development of methods and practices whereby judges could be effectively checked. In "The Federalist Papers," Alexander Hamilton took the position that those who had enough knowledge of the laws to be judges were few, "and making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge."<sup>4</sup> Citing the scarcity of persons qualified to be judges, and the need that these persons be therefore kept in office, Hamilton proposed that judges receive life tenure once appointed to their positions rather than serve for a fixed length of time. He also argued that tenure would free judges from deciding cases based on political pressures such as those which would be apparent if judges were constantly subject to popular vote and approval. Again, as a indication that the Founders recognised that corruption could obtain in the judiciary, Hamilton also cited the jury system as an effective check upon the judge, stating that: "(the jury system) must...be an effective check against

corruption. It greatly multiplies the impediments to its success."<sup>5</sup>

What was perhaps unforeseen by the Founders was the amount of publicity and constant public scrutiny which would be received by the President, and how this publicity would serve as a great and powerful check on the power of that position--the kind of publicity which, by their very nature, the courts cannot (and are unable to) admit.

### The Problem

The judge is in a very interesting position. He has almost no limit on his authority within his jurisdiction, only mild sanctions imposed upon him for being in error (this sanction, if we wish to call it that, being an overturn of his decision upon appeal), and the very nature of his office requires that his deliberations and decisions be made in near complete secrecy and privacy. From the standpoint of the Legal Realist, the judge is free to decide cases based upon his own opinions of what constitutes justice so long as he can justify his decision with previous decisions in similar cases or demonstrate that there are overriding principles involved which necessitate that his decision be made in one way or another. The only boundary which the judge is asked to observe is that of consistency with the decisions of higher courts and (to a lesser extent) with his own precedent. On this view it becomes very easy

to both account for judicial corruption and show why it is so particularly noxious a crime:

Judges who accept bribes are simply rejecting their obligations to follow past and set future precedence in favor of personal profit. While they realize that they are--to a certain extent--bound to follow precedence unless there is a mitigating factor in the present case, they ignore this responsibility and substitute in its place their own personal profit as the motive for and the basis on which they decide the case. In the sentencing hearing of former (Greyford) Judge John Devine, the presiding U.S. District Court Judge Susan Getzendanner said, "What makes judicial corruption...an unthinkable...(and) stunning crime...(is) that it harms the public, it harms me, and (it harms) my fellow judges."<sup>6</sup> Obviously, the short-term effect of judicial corruption is the immediate loss of justice and fairness to the immediate parties in the molested trial proceedings. What is worse, however, is that the verdict rendered in the contaminated case can become accepted and later cited as legal precedent, thereby tainting the whole of the body of law.

Judges are often thought of as professionals in a community in much the same way as are physicians, lawyers, and dentists. There is a significant difference, however, between the judge and the man who holds any other professional position, the scope of which far exceeds merely the fact that they are practitioners of separate fields.

This difference can be found in the type of relationship enjoyed by the judge and by the professional--and especially in each of their respective responsibilities--to the community itself.

All of the above-mentioned professionals have a specific relationship with the person or persons to whom they have been asked to render their services. In the case of the physician or dentist, this relationship is with the patient and in that of the lawyer, the client or clients. In the case of the judge, however, this particular relationship assumes a special significance because it involves, as recipients of the judge's services, all of the members of the community simultaneously.

In the prosecution's closing argument at the sentencing hearing of former (Greylord) Associate Judge John Murphy, U.S. District Attorney and Chief Prosecutor Daniel Webb said:

...we place in a judge the entire trust and confidence of the entire community. It is the single, most honored and respected and trusted public office that we ever bestow upon one of our citizens.

This type and magnitude of broad-based authority and influence vested in the single individual, the judge, can not be found anywhere else in the professional world, yet in this case it is very seldom questioned.

While it may be true to a certain extent that the judge himself is but mere flesh, as are both the defendant and the plaintiff, and that regardless of the outcome of the case

the Earth will continue to spin on its axis, the Sun will continue to rise, and waves will still pound the rocky shores, what is either forgotten or unrealized is that there is in the bench a magnitude of meaning which transcends this world of mere physicality. Hegel, perhaps better than any other political philosopher, was able to describe this special kind of relationship between the state and the individual. In The Philosophy of Right, he says:

In contrast with the spheres of individual rights and individual welfare, the state is from one point of view an external necessity and their higher authority; its nature is such that their laws and interests are subordinate to it and dependent on it. On the other hand, however, it is the end immanent within them, and its strength lies in the unity of its own universal end and aim with the particular interest of individuals, in the fact that individuals have duties to the state in (the same) proportion as they have rights against it.

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(The nature of community) is twofold: (i) at one extreme, explicit individuality of consciousness and will, and (ii) at the other extreme, universality which knows and wills what is substantive. Hence they attain their right in both these respects only in so far as both their private personality and its substantive basis are actualized. Now in the family and in civil society they acquire their right in the first of these respects directly and in the second indirectly, in that (i) they find their substantive self-consciousness in social institutions which are the universal implicit in their particular interests, and (ii) the Corporation supplies them with an occupation and an activity directed on the universal end.

These institutions are the components of the constitution in the sphere of particularity. They are, therefore, the firm foundation not only of the state but also of the citizen's trust in it and sentiment towards it. They are the pillars of

public freedom since in them particular freedom is realized and rational...

...Only in this way is the substantive universality (community) aware of itself as its own object and end...

\* \* \*

...the substance of the individual...is his political sentiment (or patriotism)...which pure and simple, is assured conviction with truth as its basis..This sentiment is, in general, trust, or the consciousness that my interest, both substantive and particular, is contained in (the state's) interest and end, i.e.<sup>9</sup> in the (state's) relation to me as an individual.

Judicial corruption cannot help but to destroy this political sentiment brought about by trust, and without this feeling of patriotism, this demonstration of individual personal support, the legal system cannot help help but to disintegrate.

Concrete social wholes condition and make possible the integrity of the individual to be for himself and to take care of his own affairs; concurrently, the whole is the common product of all individual inner activities through which alone it comes about. The independence of individuals and their dependence on a common social work are produced together and are producing each other: The welfare of the whole means the welfare of its members and the converse. To know this and to be loyal to it is the mutual trust which is the substantial core of social ethics. It implies that freedom<sub>10</sub> for all and freedom for each are inseparable.

In the courtroom, the law assumes a dual role. It not only has the general quality of rules which apply to entire groups of persons as it is originally formulated by the legislature, but it becomes applicable to specific persons dealt with as individuals who are bringing or receiving particular complaints. It is this transcendent function of

the law in the particular context of the courtroom which is responsible for elevating the actions of the judge and litigants to this higher magnitude of meaning.

John Noonan suggests that one of the reasons that bribery is and will continue to be morally condemned is that it is a violation of trust, the precious necessity of every social enterprise. Trust is the expectation that one will do what one is relied upon to do. Public officials are relied upon to act for the public interest and not their own enrichment. But when judges accept bribes:

...they divide their loyalty. Whether or not they consciously act against the public interest, they have adopted a second criterion of action, the proper reciprocation of the bribe. The resultant conflict of interest is always a<sup>11</sup> dilution of loyalty, always a betrayal of trust.

There are a number of ways in which a judge may be corrupt, all of which stem from some kind of abuse or another. This may be in the abuse of his position in the society, abuse of the trust societal members have placed in him, abuse of the judicial system itself, or abuse of the very laws which he has sworn to uphold.

One might well ask how it is possible to abuse 'trust' or 'laws' since these are not things which are commonly considered to be abusable. The explanation for this unorthodox usage is simple. To abuse something is to use it for some purpose other than for what it was intended, and by doing so, detract from its value or quality. One abuses another's trust by using it as a cloak for performing unethical (and perhaps illegal) deeds--unsuspected and

therefore unnoticed. Laws are abused when they are construed in such a way as to subvert the intentions of the framers of that law, and are instead used to benefit someone who is not otherwise deserving of benefit, or to bring some kind of harm to someone who is otherwise not deserving of that harm. The corrupt judge is in the perfect position to effect these types of abuses. In Book One of Plato's Republic, Socrates argues that if a man is to be considered a good guardian of something, he must also know how that thing with which he has been charged might be stolen in order that he may protect it from each possible threat. This leads to the seeming contradiction that, as Socrates points out, if the just man is an expert in guarding (in this case) money, he must also be an expert in stealing it. Socrates' interlocutors regard this as counterintuitive and reject it as being definitive of justice in a man, but the implication for the judge seems obvious. The man who becomes knowledgeable about the workings of the legal system is the one who is also most able to abuse it. This is what is so particularly lamentable about the Greylord cases. The judges involved in the various instances of conspiracy and bribery exposed by the investigation occupied the most powerful positions in the legal system, had the full trust of their communities, and not only had the responsibility for justice within those communities, but also for those respective communities' idea of justice itself. The idea that one might attain an expert status in the abuse of the

legal system twists and distorts the commonsense notion of justice.

Judges are essentially human persons with human imperfections and weaknesses, yet are charged with handling super-human responsibilities. A great majority of persons who assume the bench are aware of this, and try to the best of their ability to do their job, which is to promote and secure justice for those persons who enter their courtrooms. Unfortunately, however, from the convictions of the so-called "Greylord Judges" that have been secured by the FBI and the United States Attorney Office, it seems that there are some judges who preside over courtrooms to obtain financial and/or political gains for themselves rather than in order to promote the well-being of their society. At the time that the first indictments in the "Greylord" case were announced, one could hear comments such as: "Just write this off as another episode of Chicago-style politics," or "So what? Many professions have persons among their ranks who are either dishonest or incompetent. This is an unfortunate and undesirable fact, but a fact nonetheless, and it is just a 'part of the way that the world works'. There is nothing that can be done about it."

It is my contention that in civil society, judicial corruption is a greater tragedy than is corruption or incompetence in any other professional field. For example, if a patient were to believe his physician or dentist to be incompetent, or merely question the particular

professional's diagnosis of a specific case, he has the option of going to see another practitioner for a second opinion (or third, or fourth, if he so desires). Likewise, if a client questions the competency--or the honesty--of his attorney, he can fire him and request the services of any of a multitude of available counsel. This freedom of choice, however, does not obtain in the peculiar case of the judge. The reason for this disparity is that the judge does not work for the person or persons who are immediately before him, but works instead for the entire community. His responsibility is to the whole community, but he fulfills this responsibility through the proper disposition of the individuals--and the cases they bring--before him. The defendant or plaintiff who believes that the judge to which his case has been assigned is incompetent, or is for some other reason unfit to hear his case, is left with almost no means of action in which he may take recourse. In most cases the defendant is left with only two choices. He must either appeal to his assigned judge for a replacement (which is, of course, subject to rejection, and if not accepted will most probably cause damage to his case), or he must risk a tainted verdict upon the first hearing of the case, and hope that he later be granted an appeal, or perhaps even a re-hearing. These options unfortunately do not seem to be adequate courses of action when one considers that the matter at hand is the procurement of justice.

Let's imagine a scenario in which a judge has a magical device which can look into the future and tell the judge which litigant in the case presently before him will win. Assuming that there is no aspect of what is called a self-fulfilling prophesy involved, what harm would there be if the judge were to accept bribes voluntarily offered by the fatalistically pre-disposed winner? The judge has taken nothing from the loser (not even, strictly speaking, a fair trial), and nothing unwittingly from the winner. Let's also imagine that our judge gives all of the money that he has been offered and has accepted in this way to various needy charities. Can we still say that justice is somehow being violated? Yes, because the judge is doing something which he is not officially empowered to do. He does not have the consent of the people, and therefore lacks the requisite authority to do this act which he is able to do only because of the powers vested in his official position. By the very nature of his act, it is something which cannot be made public. It is a betrayal of public trust. In the case of this bribe, as with any bribe, there is no accountability but to the briber and in the person who is bribed.

Public trust, a thorough knowledge of the law, and a respected position are the tools which the "good" judge needs in order that he may carry out his assigned duties. Unfortunately however, they are also the devices by which the corrupt judge takes advantage of society and destroys the philosophical underpinnings of the system of justice,

the preservation and maintenance of that with which he has been charged.

### Are There Any Solutions?

"How do you attack judicial corruption and misconduct? Who should investigate and punish the judges? What should they look for? How should they do it? ...These issues have been debated for years among lawyers and judges in forums ranging from raucous saloon discussions to formal and sometimes pompous debate within the American Bar Association. But Greylord has brought them into the public spotlight."<sup>12</sup>

The Greylord investigations and subsequent trials have been an effective check on the Cook county court system for the time being, but it will most likely have little effect as time goes on, and has not done anything to control judicial corruption outside its immediate scope. What is needed is to establish a check from within the judicial system itself. Rather than the threat of external investigations imposed upon the judiciary (which, handled improperly could become a means by which good judges could be hassled by a corrupted or factious justice department), an internal check should be developed. One such method, which by no means exhausts the possibilities by which an internal check might be established, would be to offer a third alternative to what now is either a trial by jury or a bench trial. This third alternative, which could be selected by either party to a case, would be to have the case heard by a three-member hearing board or tribunal consisting of periodically rotating judges. Were one judge

approached and bribed, the outcome of the case by no means would be decided. What is more, the likelihood of any one judge accepting a bribe would be greatly diminished for fear of being discovered by two other judges with whom he has had neither sufficient time nor opportunity to form a conspiracy. While it would become necessary to hire more judges, no single judge would have complete responsibility for the decision in any given case, so conflict of interest would not be as crucial an issue. The current restriction which prohibits judges from practicing law could be relaxed, so the amount of pay given to the auxilliary judges could be considerably reduced. Under this system, the check upon the judge usually afforded by the jury could be effectively reproduced without the costs involved in the jury selection procedure, or any of the other problems associated with the jury system.

Hegel said:

This uncertainty of who is right and the legal claims and defences of each party against the other in civil law suits could not take place if the objectivity of the right in and for itself were not presupposed. The judge must represent this objectivity of right. This requires his independence from practical interests, if he is to judge them impartially.<sup>13</sup>

Justice is represented to us as a lady blindfolded, holding a set of scales. In order for justice to obtain, it is necessary that she apply legal rules blindly. In order to preserve our legal system, it is necessary to protect Lady Justice from those who would try to tilt her scales and lift her blindfold.

## NOTES

- 1) Noonan, John T. Jr. Bribes Macmillan Publishing Company. 1984. pps. 16-17.
- 2) ibid., p. 428.
- 3) Aristotle, Politics Book Three, Chapter XI, Section 1. (1281a-b) Trans. E. Barker.
- 4) Hamilton, Alexander. The Federalist Papers #78 Ed. Clinton Rossiter. Mentor Books. 1961. p. 471.
- 5) Hamilton, Alexander. The Federalist Papers #83 Ed. Clinton Rossiter. Mentor Books. 1961. p. 500.
- 6) Tybor, Joseph and Possley, Mourice. Lawyers Unwilling to Blow Whistle on Corrupt Peers, Judges Chicago Tribune. 6 Jan 1985. section 5, p.1.
- 7) ibid.
- 8) Hegel, G.W.F. The Philosophy of Right Trans. T.M. Knox. Oxford Clarendon Press. 1952. p.161.
- 9) ibid., p.163 and 164.
- 10) Hegel, G.W.F. Encyclopedia of Philosophy Trans. Mueller, Gustav E. Philosophical Library, N.Y. 1959. p. 246.
- 11) Noonan, John T. Jr. Bribes Macmillan Publishing Company. 1984. pps. 704-705.
- 12) Tybor, Joseph and Possley, Mourice. Lawyers Unwilling to Blow Whistle on Corrupt Peers, Judges Chicago Tribune. 6 Jan 1985. section 5, p.1.

- 13) Hegel, G.W.F. Encyclopedia of Philosophy  
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