

Judges must work to reinvigorate public trust in all courts across the land

Judges must work to reinvigorate trust in the process of law across the nation.

By Judge Kevin S. Burke
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Public trust in the courts has dropped to an all-time low. Unfortunately, some judges are contributing to this loss of trust. And as the saying goes, the self-inflicted wounds hurt the most.

In a recent Gallup survey, 53 percent of people said they had “a great deal” or “a fair amount” of trust in the judiciary’s ability to do its job. That’s only marginally better than the other two branches of government — 45 percent said they trusted the executive branch to do its job, while only 32 percent said the same of the legislative branch.

All the branches of government are losing public trust. In 2009, 76 percent expressed trust in the judicial branch, 61 percent in the executive branch and 45 percent in the legislative branch.

Polling results from the Pew Research Center are even more disturbing. Seven in 10 Americans say that when deciding cases, the justices of the Supreme Court “are often influenced by their own political views.” A mere 24 percent say the justices “generally put their political views aside” when deciding cases. The belief that justices are swayed by their own political views spans partisan and demographic groups.

Supreme Court justices have lifetime tenure. None are going to be impeached, so maybe the 33,000 judges and others who care about courts should “just get over it.” But Alexander Hamilton wrote that courts have “no influence over either the sword or the purse”; they have “neither force nor will, but merely judgment.” The

ability of courts to be a strong voice in our democracy is dependent upon the trust the people have in the ability of judges to make fair decisions. Just getting over it is not an option.

There is a danger that a billion or so advertising dollars soon to be aimed at the election of a new president and Congress will paint graphic pictures of the impending apocalypse that will erode trust in government even more dramatically. The erosion of trust is a paramount issue and something needs to be done about it.

Part of the essence of an effective judiciary is respect for differing opinions on critical issues. Judges, if we try, can model behavior for the other branches of government. Judges often speak with colorful language, which is fine, but U.S. Rep. Mo Udall's words bear remembering: "Lord, give us the wisdom to utter words that are gentle and tender, for tomorrow we may have to eat them."

Many question the decision of the U.S. Supreme Court to prevent discrimination against gay people who wish to get married. But Justice Antonin Scalia helped undermine the public's trust when he gave a speech where he called the majority's decision the "furthest imaginable extension of the Supreme Court doing whatever it wants." Scalia said that the Supreme Court was made up of no more than "lawyers" who are "terribly unrepresentative of our country." He spoke dismissively of the Supreme Court's East Coast, Ivy League, New York City composition, calling the court a "select, patrician, highly unrepresentative panel of nine."

Scalia used pretty tough language that echoed his dissent when he accused the court of being a "threat to democracy" and the justices he disagreed with as the "Ruler of 320 million Americans coast-to-coast."

Unbridled language like this reinforces the idea that judges simply do whatever their personal or political philosophy dictates. But before you conclude that this is just about Scalia, it is not: Every judge has the potential to wreak havoc on the public's trust in the judiciary.

The "Red Mass" is a historical tradition within the Catholic Church dating back to the 13th century that officially opened the term of the court for most European countries. Although in recent years this tradition has become more controversial, the Red Mass is an event that drew many Supreme Court justices and other notables to church on Sunday in Washington, D.C. Many states have similar convocations. Mostly it is ecumenical, as exemplified by this homily of Archbishop Timothy Broglio, who said: "[W]e gather as a community of faith to beg an abundance of blessings upon the women and men of our judiciary and the legal profession. It is a moment to pause and pray for those who serve our country and foster justice for all."

On Monday, the United States starts its 2015 term. The vast majority of courts in this nation periodically take stock, and some even adopt strategic plans. But regardless of whether it is a prayer for the judiciary or a strategic plan, the U.S. Supreme Court needs to open this term with a singular focus upon building trust — and every judge in the United States needs to join in this crusade. Our explanations need to be clear,

understandable and judicial in tone and temper, avoiding intemperate shades of self-interest. Last term, the Supreme Court issued relatively few decisions, but used a record number of words to do so. But the commitment to readable and interesting explanations lies with every judge.

Most people will never experience having their case decided by the Supreme Court. But regardless of whether theirs is a traffic case or a divorce, the court's explanation needs to build trust in the legitimacy of our decisions. And when the billion dollars worth of political ads hit the airways, it would be encouraging to hear commentators say, "There seems to be a different tone from the United States Supreme Court this year." It would be nice if during the coming months commentators would report: "There seems to be a new tenor in the court; they seem to be more committed to building public trust."

And when the millions of people leave our state and federal courts in the next year, it would be nice if they said: "I was heard. I was treated with respect. I understood the decision."

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