

MEMORANDUM

LAWYERS BUILD NATIONS

By Kenneth G. Petrusis*

Afghan factions agreed in talks in Bonn, Germany, to set up a six-month interim government to replace the Taliban. Included in the deal is the dispatch of a multinational security force.

But some members of the interim Afghan government say the peacekeepers will not be permitted to use military force, disarm belligerents *or interfere in Afghan affairs*.

The Security Council, however, authorized the use of “all necessary measures” to allow the new government and the troops themselves “to operate in a secure environment.”

MSNBC NEWS SERVICES

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What is missing from this picture is the rule of law. Our forces focus on providing military support for a provisional government in the hope that it will establish a just and free society under the rule of law. Just verbalizing the thought is enough to show how fanciful that is.

We should not stand by waiting and hoping that some faction which has never heard of nor seen a working justice system will somehow create one out of thin air. Instead, it is our duty as a country built on the rule of law, to lobby for the establishment of a body, perhaps U.N. supervised, to see that an impartial judiciary is appointed. The judiciary should represent all factions in Afghanistan and the rulings of that judiciary must be given effect, as an equal and independent arm of the provisional government.

At the 2000 Conference of Delegates for the State Bar of California, the outgoing head of the California Judges Association, and Palmer Madden, the incoming President of the California State Bar, gave two seemingly unrelated addresses. The former spoke on the importance of the independence of the judiciary to our judicial system and the recent role of lawyers in rebuffing attempts to remove judicial officers based upon unpopular decisions. The latter spoke to the importance of lawyers and the judicial system in creating and preserving property rights as a cornerstone to the economic and political success of the United States.

Impressed by the insight of both speeches, I shared my enthusiasm with a colleague. My friend, however, responded that while he liked the judge’s theme of protecting our judicial officers, he was left cold by Madden’s discourse on the importance of preserving property rights. To him it sounded like the difference between

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the Democrats and the Republicans. One side starts from a people point of view. The other side starts from the creation and preservation of property rights. But our legal system is not either humanism nor trickle down economics alone. The two are part and parcel of the same coin, integrity.

A justice system with integrity guarantees the rights of individuals against the government, the well-funded, and the many. It gives the individual not only personal rights but property rights. These rights are primary incentive for achievement. The integrity of our justice system is dependent upon several elements. These factors include an independent judiciary, the rule of law, and access to the system.

The United States has more attorneys per capita than any other country in the world. Some would say that this is the result of our affluence. Rather, our affluence is the result of attorneys. Our surfeit of many lawyers creates and maintains the success and vigor of our system of justice. In other countries where there are few attorneys, other institutions resolve disputes. Those institutions involve political relationships, business relationships and family relationships. Influence, money, and shame which drive those institutions become the arbiters of a person's destiny not a jury of peers. The rationale is that these methods of dispute resolution make for a more efficient and workable society. The United States' system, so the rationale goes, is so overloaded with attorneys that it must fall under the weight of its cost in time and money.

It is because of our abundance of attorneys, not despite them, that the United States is the world leader in human rights as well as in economic success. This leadership is the necessary by-product of the judicial system that is the world's most successful and has the most integrity. The dollars and the humanity flowing to our shores demonstrate the faith that the world has in the stability of our judicial system.

Social justice, not monetary gain, was the primary reason for the growth of our legal system. The great leaps forward in the growth of our judicial system have coincided with times of social upheaval in the United States. The Revolutionary War, The Civil War, the anti-trust movement, women's suffrage and, most recently, civil rights and the peace movement are just a few examples.

In the early 1960's law was still a relatively sleepy profession. Law

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schools had plenty of seats available and competition for admission was slight compared to most professional graduate schools, particularly those in the areas of science and engineering. With the civil rights movement and the anti-war movement making great gains in the courts, the late 60's saw a radical shift of intellectual and moral talent. Idealists left other graduate schools or professions in droves and by the mid 1970's competition to enter law schools was at an all time peak and rising.

Access to a legal system is a hallmark and a guarantee of our government's integrity. No clearer evidence of access exists than the proliferation of attorneys. As attorneys, we accept criticism for exemplifying everything that is wrong with the legal system. It is a criticism that we should bear with pride. We are mere reflections of those thousands of souls who want their day in court and a chance to vindicate their rights. Each person who takes the dreaded step of retaining an attorney provides proof that not only are personal and property rights being upheld and vindicated, but that people believe the system can help them. The system can be improved. It still denies access to many. But, despite its faults, it is the most accessible and successful legal system in the world.

Contrary to my friend's perception that defense of property rights was unrelated to the independence of the judiciary, they are both aspects of the integrity of our judicial system which brings the rule of law to our country. We can be proud that we are attorneys and that there are so many of us. This very aspect makes our system of justice work well. We attorneys have made possible the growth in human rights and economic rights that are represented by the United States' leadership in those areas. Regardless of what people say, they will continue to bring themselves to this country for the personal and economic rights that attorneys create and preserve.

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