

Careful Self-Examination Is Vital

Thomas W. Ross

Editor's Note: We reprint here the remarks delivered by Judge Thomas W. Ross on November 13, 2000 in the Great Hall of the United States Supreme Court at a ceremony in which he received the William H. Rehnquist Award. That award is presented annually by the National Center for State Courts to a state court judge who possesses the qualities of judicial excellence.

As we sit here tonight our democracy is under great stress. Six full days after Election Day we still do not know who will be our next president. It is very likely that the outcome may be decided only after action by our courts. This is not something we want. But, should we be surprised or angry if this happens? The answer, in my view, is a resounding no. Instead, we should be thankful that our system of government and the rule of law allow us to resolve disputes even about something as important as who will hold the most powerful office the world in a courtroom and not in the streets. We should also be proud that our citizens still have enough confidence in our courts and judges to trust that we can resolve such important disputes fairly and in a just manner.

My fear, though, is that this confidence the public has historically had in the judiciary is eroding. On MSNBC last weekend, a commentator speaking about the election said, "It would be a disaster for this thing to go to the courts." He went on to say that the public does not trust the courts, that the courts were entirely political, that the outcome from litigation would be entirely political, and that the public would have no confidence in the outcome. I was quite disturbed by his remarks and, though I disagree with the extreme nature of his comments, I fear they may have some validity.

Why is this? In my view, it is in part because of the way growing numbers of Americans view our criminal justice system. The court system most Americans see and think of is our criminal justice system. Increasingly, as we all know, there are large segments of our society that no longer believe the courts are fair to everyone. Increasingly, there is a belief by many of our citizens—both white and black—that justice is available only to whites and the wealthy.

These citizens do not feel the poor get a fair shake and they believe the system discriminates against people based on inappropriate factors. These are concerns we don't like to hear about. These are things that are uncomfortable to talk about, particularly for those of us that are white and well off economically. Many of us believe these are only problems of perception and have no basis in fact. I believe they are real. I also believe, however, that they are mostly not based on overt discrimination so much as they are reflective of a society struggling to adapt to increasing cultural pluralism.

If we learned nothing else from this past election we learned that our nation is deeply divided in a number of different ways. There are divisions based on political party, individual issues, race, gender, economic status, religion, and even geography.

These divisions and splits find their way into our courts whether we want to admit it or not. Concerns by many of our citizens about the high percentage of African-Americans in prison compared to whites and racial profiling are increasingly part of everyday discussion in many communities. The death penalty moratorium movement has a certain momentum and is further evidence that more and more people, including many who believe in the death penalty, are questioning the fairness of our criminal justice system.

Part of the reason I became involved in sentencing reform is my desire to help recapture some of the lost public trust and confidence for our courts. It is my view that the time has come for us all to look at our systems and change them in ways that make them more truthful, more rational, more consistent, and less susceptible to discrimination. I truly believe the changes we have made in North Carolina have moved our state in the right direction on these issues.

As I plan to leave the bench, I intend to continue my work in criminal sentencing reform. I work with a group at the Vera Institute of Justice in New York called the National Associates Program on Sentencing and Corrections. This group is made up of judges, district attorneys, police, and correction officials and legislators from all over the country. What the group has in common is that they have all been through sentencing reform in their states and they want to offer assistance to others to make the process more rational and less political. The group has no common philosophy or agenda. It is bipartisan. We have a cooperative agreement with the Corrections Program Office at the U. S. Department of Justice. They fund a great deal of our work. We are working now in five or six states and I believe can provide to state officials working in these areas a level of peer-to-peer assistance that is unparalleled and unavailable anywhere else.

Thoughtful review and reform of sentencing laws to make them more truthful, consistent, and certain is part of the answer. But to move to the next level in addressing trust and confidence issues, I believe we must invest significant resources in high-quality research to determine whether and where our criminal justice system discriminates. It is time we look more carefully at police arrest practices and prosecutorial charging decisions to see if there is disparity in treatment based on race, gender, religion, or economic status at these stages of the process. We must continue to examine plea-bargaining and sentencing in our courts to see if people are treated differently based on inappropriate factors. And, we must look as well at release practices to better understand what happens at this stage of the process. The data is vital. We have learned the value of quality data in North Carolina with our computer simulation model and I think we must have equally good and reliable data in these areas.

The National Center for State Courts has an impeccable reputation for independence and quality. Or at least they did

before they selected me for this award. One step we can take is to help insure that the National Center is funded in a way that would enable them to do the research and gather the data that is needed to fully understand the issues I have mentioned and to help the states begin to forge solutions.

One way to measure the health of a society is to examine the quality of its justice—to look at how it exercises its power over the least of its citizens. Our nation is becoming increasingly diverse. Our population looks much different than it did ten years ago and it will be even more diverse in ten more years. If we want our system to provide justice for all our citizens as these demographic and cultural changes occur, we must make sure our courts are open and available to all. We must be sure that all people are treated fairly and receive justice without regard to their net worth, what they look like, or where they are from.

As President Franklin D. Roosevelt said, “Among American citizens there shall be no forgotten men and no forgotten races.” Today, I believe President Roosevelt would also want us to remember Americans of every gender, class, and faith. Before we can accomplish these goals, we must know the facts and identify where in our system the problems exist. They are

there and right now we are just not looking to find them. It is time to admit we have problems, look for the reasons they exist, and find solutions to fix them. This work will not be easy or pleasant. Self-examination rarely is. However, if we fail to meet this challenge, I fear the remaining confidence the public has in the courts will evaporate—and without that public trust the fabric of our government will be in jeopardy.



Thomas W. Ross is the executive director of the Z. Smith Reynolds Foundation in Winston-Salem, North Carolina. He was director of Administrative Office of the Courts in North Carolina from June 1999 through December 2000 and had served as a superior court judge from Greensboro, North Carolina, since 1984. Previously, Ross had been the administrative assistant to a North Carolina congressman, and he had taught law and government at the University of North Carolina. He served as the chair of the North Carolina Sentencing and Policy Advisory Commission for nine years, during which time comprehensive sentencing reforms were adopted.