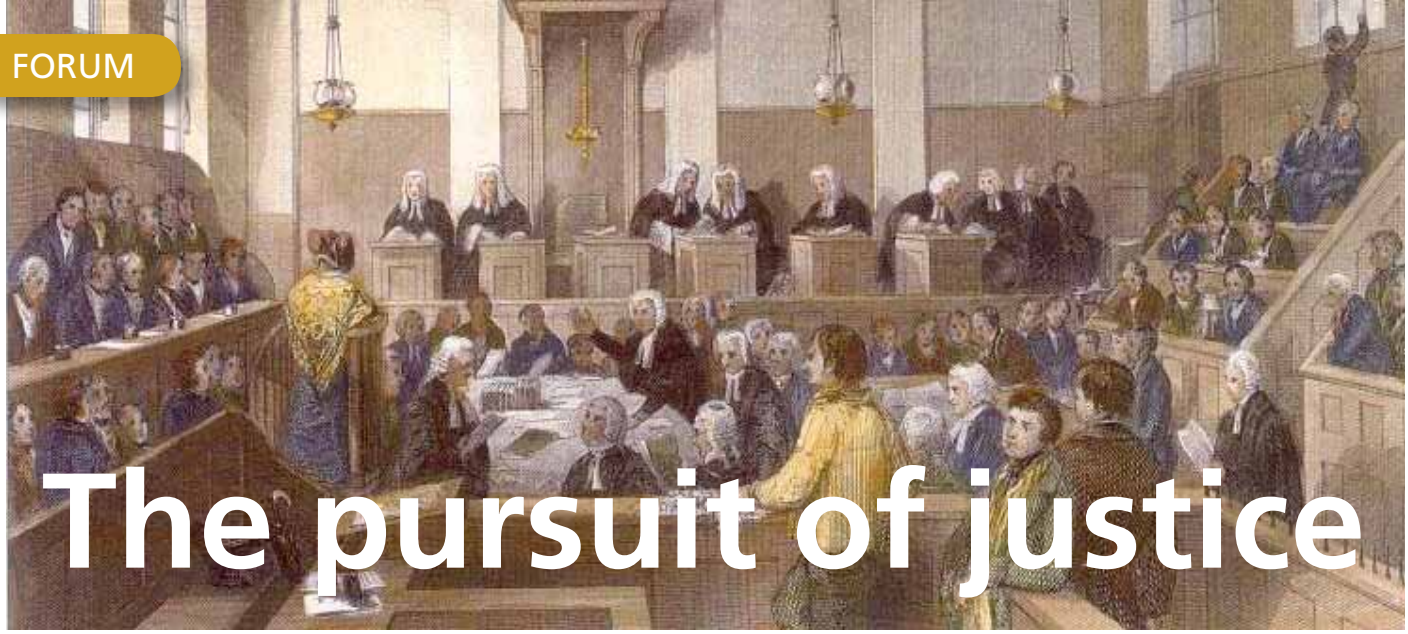

The pursuit of justice

Bram Fischer Memorial Lecture delivered by Chief Justice Margaret H Marshall of the Supreme Judicial Court, Massachusetts, USA, on 13 November 2009. Published with the permission of Chief Justice Marshall and the Legal Resources Centre, organisers of the event.

Bram Fischer's life purpose, in his own words, was 'to keep faith with all those dispossessed by apartheid.'[1] And keep faith he did. In his struggle to ensure that all South Africans enjoyed equal rights and shared equal opportunities, this man of privilege sacrificed everything – domestic tranquility, professional status, livelihood, and life itself. Bram Fischer lived, and died, for the cause of justice. He was a great patriot, and an enduring inspiration. I am immensely honored to deliver the Bram Fischer Memorial Lecture. I thank the Legal Services Trust for extending the invitation to me, but more importantly for its groundbreaking work furthering Bram Fischer's, and the new South Africa's, transformative vision of a just society.

When I think of this country's journey from the inhumanity of apartheid to a democracy based on substantive justice, I am awestruck. Bram Fischer died over thirty years ago. Your constitutional democracy is a bare fifteen years old. Yet opinions of your Constitutional Court are studied the world over. South Africa is an influential voice in the global dialogue on human rights. Surely much work remains to realise South Africa's vision of substantive justice for all. But much is well begun, and much well advanced. Your achievements are cause for great celebration, and tonight I celebrate with you, and pay tribute to the attorneys and to the jurists who have made this possible.

I address you this evening conscious of a certain irony. I left South Africa in 1968. Bram Fischer would have disapproved, as he did in the case of others opposed to apartheid who removed themselves from 'ground zero' of the struggle. Nevertheless, I like to think that were Bram alive today, my own decades-long work for justice, although in a different arena, would win me at least partial dispensation.

The political, economic, and social circumstances of South Africa and those of the United States, my adopted country, are dissimilar. Our histories differ. Our constitutions differ. But we meet at a time when in both countries the principle of impartial justice – the foundation of both democracies – is threatened. The mode of attack? A firestorm of half-truths and provocative rhetoric aimed at the heart of liberty: the principle of judicial independence. Let me be clear. I am not indicting all criticism of judges, far from it. Even criticism rendered in what one of your leading journalists described to me as 'language extreme and startling,' is always welcome in a free and open society – if it aims to improve the ability of judges to carry out their core functions. Such criticism makes our courts stronger. Criticism that excoriates judges for not acting like elected politicians, criticism that would have judges beholden to a partisan constituency – this type of criticism can destroy the roots of democracy.

I recognise that context matters. The circumstances leading to harsh criticism of the judiciary in South Africa are not those inciting such criticism in the United States. I did not train as an attorney in South Africa. I have never practised law here. I am no longer a South African citizen. I do not presume to speak with authority about the South African experience. Rather, this evening I offer an American perspective on judicial independence. On this subject I do speak from experience – as a law student and advocate in the American system, as an associate justice of the Supreme Judicial Court, the Massachusetts court of last resort, and now as Chief Justice of the Supreme Judicial Court and head of the Massachusetts Judicial Branch.

For those of you to whom the American constitutional system may be somewhat unfamiliar, some brief background is in order. Massachusetts, a state of about six million people, is one of fifty-one sovereign United States governments (the 50 states and the federal government) bound to one another by an overarching charter of government, the Federal Constitution. The key word here is 'sovereign.' The United States Federal Constitution, as interpreted ultimately by the United States Supreme Court, establishes the basic protections for all Americans. But the safeguards of the Federal Constitution are a floor, not a ceiling. The separate states – each of the 50 individual sovereigns – are free to provide greater, or additional, protections to their residents. A state's highest court is the ultimate interpreter of what that state's constitution demands.

State courts are also empowered to construe, and very often do construe, the guarantees of the Federal Constitution. In this manner, as the late Justice William Brennan observed, state and federal courts are 'coequal guardians of civil rights and liberties.'[2] And under the United States's layered system of government, any judge – whether a United States Supreme Court Justice or a municipal judge adjudicating a misdemeanor – may consider challenges brought under the Federal Constitution. Conversely, although there is no general federal common law, state courts remain common-law courts in addition to construing statutory and constitutional law.

The adjudicative authority of state court judges, then, even as to federal constitutional matters, is extensive. How far does the influence of state courts reach? Here are the raw numbers for 2007, the latest date for

which comparative data are available. The total number of cases filed in all federal district and appellate courts nationwide, not including bankruptcy cases, was 384,330. In state courts? 47.3 million cases, not including traffic offenses. More than ninety-five per cent of all cases filed annually in the United States are filed in state courts.

In Massachusetts, approximately 42 000 men, women, and children come to our trial courts every working day. They appear before approximately 400 trial judges in over 100 courthouses around the state. And many of the cases raise challenges under state and federal constitutional law.

I have spent thirteen years on the Supreme Judicial Court, the last ten as Chief Justice. I have heard hundreds of cases. My observations on judicial independence and its continued viability arise from my experience as a working jurist. My concern, moreover, is a practical one: How, in a constitutional democracy, does the work of doing justice, fairly and impartially, get done?

II

In fact the work of justice never gets done. Deuteronomy exhorts us not to 'attain' justice, but rather, 'Justice, justice shall you pursue.' Full and complete justice is forever in our sights, yet always just beyond our reach. It is forever a work in progress.

Justice has no pinnacle. Circumstances change, and bring to light new wrongs, and new claims for redress. In the United States African-Americans taught us that it is not enough for white people only to be free. The suffragists taught us that it is not enough for men only to have the vote, and later, feminists taught us that it is not enough for men only to hold power, or to enjoy a workplace free from sexual harassment. Gay, lesbian, bisexual, and transgendered people have taught us that it is not enough for heterosexual persons only to have the freedom to express who they are. The disabled have taught us that it is not enough that the able-bodied only enjoy our public spaces or participate fully in the workforce. We do not know what tomorrow's work of justice will demand. But we do know that it will test anew our constitutional commitment to equality and fairness under law.

Constitutional democracy is living democracy. It presumes – it helps create – an ever-changing world. It eschews rigidity. Constitutional democracy, every constitutional democracy, is inherently, perpetually transformative. To those who suggest that the transformative work of constitutional democracy is a new phenomenon, the long view of history suggests otherwise.

Consider the first constitutional case presented under the world's oldest, still-governing democratic constitution, the Massachusetts Constitution of 1780. The case, actually a series of cases, arose in 1783. On one side, a black man, Quock Walker. On the other, a white man, Nathaniel Jennison. The question before the court, in essence, was whether Walker was Jennison's 'proper negro slave,[3] his property, whom Jennison had every right to abuse or punish as he saw fit.

The newly-minted Massachusetts Constitution declared that 'all men are born free and equal, and have certain natural, essential and unalienable rights.' When the *Walker* cases reached the Supreme Judicial Court, that Constitution was but three years old.

In the criminal case against Jennison, the man who claimed to 'own' Quock Walker, Chief Justice William Cushing declared that, under the Massachusetts Constitution, 'every subject' was guaranteed liberty – 'every subject' – and that slavery was 'inconsistent' with that constitutional guarantee.' Massachusetts thus became the first government anywhere to abolish slavery by judicial decree. Nine decades before the American Civil War.

A footnote: The five Supreme Judicial Court Justices who heard the *Quock Walker* cases were holdovers from the colonial days. All had been appointed by the Crown. Chief Justice William Cushing, who pronounced the court's decision, was a slaveholder of long standing. Historians describe Cushing as having been 'reluctant' to free even slaves to whom he had promised freedom . . . prior to the *Walker* decision.[4] Chief Justice Cushing's role stands as a powerful reminder to me that an individual jurist can put aside prior experience and beliefs when new substantive law so demands.

III

The *Quock Walker* decision might be called the grandfather of transformative constitutionalism. The Constitutional Court of South Africa is one of the great modern proponents of transformational constitutional law. In its comparatively brief history, your Constitutional Court has issued paradigm-shifting decisions on matters as diverse as the death penalty, the right to adequate housing, and the right to public health care services for treatment of HIV.[5] The thread connecting the *Walker* decision with the work of your Constitutional Court? Judicial independence.

The outward structures of judicial independence are well known: constitutional guarantees that judicial salaries may not be reduced, that judges serve for extended periods, or for a lifetime, during good behavior, that judges may be removed from the Bench only for cause. I am concerned with the animating spirit of judicial independence. Former Chief Justice Pius Langa has captured that spirit in words that bear repeating: the 'principle of the independence of the judiciary,' he reminds us, 'is not for the benefit of the judge but for the benefit of the community.'[6] Judicial independence is but a path to a goal: greater equality, more perfect justice. Judicial independence is a trust held in benefit for the people.

Trusts demand accountability. Judicial accountability and judicial independence, it has often been said, are two sides of the same coin. They operate on both an institutional and an individual level to secure human rights. On the institutional level, judicial accountability means the openness and transparency of judicial administration, the broadest access to justice for all, and a willingness of courts constantly to reexamine and improve their practices and performance. Individually, judicial accountability means the responsibility of each judge to follow the law, in other words the judge's accountability for the integrity, fairness, clarity, and independence of his or her decisions. Both kinds of accountability – individual and institutional – bear closer scrutiny, for as one United States President has observed, 'a constitutional government is as good as its courts; no better, no worse. . . . It keeps its promises, or does not keep them, in its courts.'[7]

Adjudicative accountability

I turn first to adjudicative accountability, the accountability of the individual judge. Ultimately, judicial independence rests in the hands of the individual judge. After the case has been argued and the record established, and perhaps in the midst of intense, sensationalised public attention, the judge, sitting alone in her chamber, must hold one question, and one question only, before her: what does the law require?

The weight of this question is immense, and the judge's burden, a solitary one. No case ever presents the identical set of facts; few legal arguments are wholly without merit. The judge must decide. On her holding may hinge access to vital medical treatment,[8] the right of non-citizens to social welfare benefits,[9] the viability of a small business or of an entire industry, the reach of a statute, or, in some cases, the wholesale reworking of a social paradigm. On the clarity, or not, of the decision, on the strength, or not, of its underlying factual and legal support, rests the public's faith in courts as trustworthy arbiters of conflict and champions of transformative justice.

Here I pause to note, with apologies to my appellate colleagues, the special position of the trial judge in a constitutional democracy. Henry Lummus, a former associate justice of my court and himself a distinguished trial judge, observed many years ago that '[n]o judicial system can be stronger than its trial judges. A learned and brilliant court of last resort can give a system a high reputation abroad, but that reputation will be hollow unless merit is found in the trial court.'[10] Trial judges are the silent heros of democracy; their role is vastly under-appreciated.

Trial judges, and all those who bear the weighty burden of judicial authority in a constitutional democracy, must possess a deep knowledge of the law and skill in its practice. They must be capable of managing proceedings effectively and show respect towards all. They must be good communicators. And they must be more. They must, as Chief Justice Sandile Ngcobo said recently, be able 'to stand alone when the occasion calls for it.'[11] Judges must have courage. Backbone.

Judicial courage is multi-textured. On one level, to do the work of constitutional justice, the judge must possess the courage to decide as the law requires, no matter how deep the break from past precedent, no matter how unpopular the decision may be, no matter how much pressure is brought to bear from the outside. No one relishes being lambasted over the airwaves and ridiculed over the internet. After my court's decision in *Goodrich* v. *Department of Public Health*, the so-called 'gay marriage decision,' venomous emails, hundreds of them, poured in from around the world. Some of America's most famous 'talking heads' criticised me in the most unflattering terms. Disaffected individuals hired a small plane to fly for weeks over Boston and its surrounds, including over the apartment building in which I live, trailing the banner: 'Impeach Margaret Marshall.'

My reaction? Proceed to the next case, and decide as the law requires.

The second aspect of individual judicial courage? Honest self-reflection. 'Transformation' means literally the act of shaping anew. To accomplish transformative justice, the judge must be willing to reshape his most deeply-held convictions, his most deeply ingrained attitudes, if that is what the case demands. Recall Chief Justice Cushing, and slavery. A judge cannot be a blank slate, nor would we wish this. Experience matters. But if we cannot judge from the center of the case rather than from the center of our own predispositions, then we are not judges.

Judges must act independently, and with integrity. That is a given in any constitutional democracy. To ensure that individual judges comport themselves as their obligations demand, there must be an effective means of *judicial* oversight. In many jurisdictions, this means a judicial conduct commission. A judicial conduct commission with teeth. In my view, an effective judicial conduct commission will be supervised by the judiciary, adequately funded to allow for full investigation of complaints, bound by fair rules of procedure, composed of learned members sworn to neutrality, and open to public scrutiny. Where a judicial conduct commission is, or is seen to be, weak, secretive, ineffective, or stacked against complainants, judicial accountability falters, and with it the credibility of the judiciary.

Institutional judicial accountability

The accountability of the individual judge is one aspect of judicial accountability, undoubtedly the easiest, for broad consensus exists that judges must be fair and impartial. Now for the more difficult, the far more difficult, issue of institutional judicial accountability. Assessing the institutional accountability of courts means, first, de-mystifying the work of the judicial branch. The judiciary – judges and their staff – both delivers justice to litigants and is a workplace organisation. It has an internal administrative structure. It has a distinct organisational culture. It makes plans and sets goals. Its leaders set the tone of how work should proceed, and others inside and outside the organisation pay close attention. The effectiveness of an organisation such as the Legal Services Trust is measured by the reach and quality of its programs. By what measure do we assess the effectiveness of the delivery of justice?

Here I shall focus on three aspects of institutional accountability that

are, in my view, critical to sustaining judicial independence and the transformative work of courts in a constitutional democracy: diversity on the Bench, effective court management, and access to justice. First, diversity on the Bench. This is a touchy subject. The appointment of Justice Sonia Sotomayor to the United States Supreme Court was almost derailed over her remarks in a speech many years ago that judges from diverse backgrounds might bring unique perspectives to the consideration of legal controversies. Some influential politicians and commentators took this statement to portend a lack of objectivity. Concern also has been raised, in the United States and elsewhere, that diversity on the Bench will bring under-qualified people into the judiciary and depress the substantive quality of justice.

Both concerns, in my view, are exaggerated. Diversity – in particular diversity of experience – is part and parcel of a living constitution. There is no less inherent objectivity in the views of jurists of diverse backgrounds than in the views of jurists of the same background. 'I don't think we should have nine clones up there,' former United States Supreme Court Justice Sandra Day O'Connor said, when asked about diversity on the Court. 'I don't think they should all be of one faith, and I don't think they should all be from one state.'[12] Or, I would add, from one gender, one ethnicity, one political persuasion, one education, one judicial philosophy or experience. In a multicultural society, a judiciary whose composition merely replicates existing hierarchies risks the loss of legitimacy.

Moreover, those who claim that increasing diversity on the Bench will lower the quality of justice need to revisit their constitutions. No judge comes to the Bench knowing everything about the law. So long as the judge possesses the intellect, education, demeanor, stamina, commitment, and courage required of a judge, he or she can be a good judge. I have seen this in Massachusetts, time and again. Through a carefully-designed program of judicial orientation and judicial mentoring, a judge from a small-town law practice can wisely adjudicate highly complex cases with global dimensions, and a judge from a traditionally privileged background can wisely adjudicate a case concerning the rights of the poor; a former commercial lawyer can preside with distinction over a criminal case, and a former prosecutor can shine in adjudicating a commercial matter. Under Massachusetts's programs of ongoing judicial training and assessment, every judge is given support to excel at every stage of a judicial career; judicial education and training is not for the novice judge alone. The high quality of substantive justice in Massachusetts owes as much to our program of ongoing judicial education as to the quality of our judicial appointees.

In its fifteen years of constitutional democracy, South Africa has made remarkable strides in creating a diverse judiciary of distinction. You have done so on a far faster, and more impressive scale than we have. I am only the second woman justice in the Supreme Judicial Court's 319-year history. There has been only one African-American Justice in that time, no woman of color, and no Asian or Latina Justice. The diversity of your courts is, and should be, great cause for pride and celebration.

A second aspect of institutional judicial accountability is transparency, that is openness in how courts operate, all courts. The commitment of constitutional democracy to transparency and openness is well expressed in the design of your new Constitutional Court building, whose windows allow any member of the public literally to stand behind the Justices as they hear oral argument. That transparency is just as vital in every trial court.

The quality of substantive justice may be stellar. But where, because of administrative inefficiencies, the victim of domestic violence cannot promptly obtain an order of protection, where defendants spend months or years in prison awaiting trial because they cannot afford bail, where a business cannot promptly obtain protection against the theft of its intellectual property, where a rural litigant has no ready means of public transportation to the courthouse – then justice is not done. A judiciary is more than its judges. It is security officers and law clerks, administrative officers and typists, family law advisors, magistrates, court interpreters, maintenance officers, financial officers, web masters, librarians, and archivists. It is buildings and budgets. Each person in the system serves the public; each has a role play in the delivery of justice.

When I became Chief Justice in 1999, the Massachusetts Judicial Branch was mired in nineteenth century ways of doing business. Cases were permitted to drag on in *Jarndyce v Jarndyce* fashion. Case dockets were kept primarily by hand. No one seemed quite sure at times who was responsible for what. I learned quickly that judicial independence is measured not by looking only at the Supreme Judicial Court, but at all of our courts.

What did we do? We – the court – engaged a distinguished panel of management experts and community leaders to assess the delivery of justice in all of our courts. With their help, we established clear lines of authority and responsibility governing all phases of a case from filing to resolution; we implemented case management procedures that included time standards governing the progress of every case, both criminal and civil in every court; we adopted metrics – cold, hard data – that allow us to assess – to assess objectively – how well we are succeeding. We publish this data quarterly on the courts's websites for all to see. We conduct confidential and anonymous 'access and fairness' surveys, thousands of them, in which we ask court users – <u>all</u> court users – about their experience in court. The survey includes questions on whether court staff are attentive, whether in the court user's view the case was timely handled, whether court hours are convenient and court forms understandable, and the like. We conduct confidential and anonymous surveys in which lawyers and court staff assess the individual judges on qualities such as demeanor on the Bench, promptness in rendering a decision, the clarity of orders and decisions, and trial management. We have found much truth in the old saw that 'knowledge is power:' Our data enable us to plan strategically and target resources to where they are most needed.

This work was, and remains, difficult. We heard grumblings from every corner of the Judicial Branch. We heard time and again: 'We deliver justice, not widgets,' or 'you will never make this work.' But we have. Slowly at first, and now at a good clip, we made progress, and we are continuing to make progress.

If judicial leaders care to maintain the public's faith in the courts, then they can no sooner afford to give short shrift to judicial administration than they can afford to ignore the rules of evidence at trial. As head of the Massachusetts judiciary, I have spent hundreds, thousands, of hours reforming the administration of justice in our courts. It is my second full-time job, and far from glamorous. But I am convinced that judicial institutions, like all institutions, tend toward organisational entropy if not otherwise prodded, and prodded they must be at the highest judicial levels. An administratively calcified judiciary cannot do the work of transformative justice.

Now to the third aspect of institutional accountability: access to justice. Equal access to justice is a priority of transformational constitutionalism. Why? Because, where the people have no confidence that every person can find justice in our courts – <u>every</u> person – democracy will wither, replaced by the invidious notion that our legal system works only for the powerful, the strong, the well-connected.

In a constitutional democracy, both individual judges and the judiciary as a whole have an obligation to identify, and then to eliminate, barriers to access to justice, particularly for those traditionally marginalised in our courts. In Massachusetts, these include people whose ability to speak English is limited; those who cannot afford to retain a lawyer in civil cases; the physically and mentally disabled; and the working poor, who often

cannot take a day off to come to court without significant financial consequences. The judiciary may not be able to eliminate all obstacles to access to justice that exist for court users. But it should, and it must, eliminate all such obstacles that exist within the judiciary itself. How else can the most vulnerable individuals and groups in our society have a meaningful avenue to claim their rights?

IV

'[T]he first essential requirement for ensuring justice,' says former Justice Kate O'Regan, 'is the belief in the minds of ordinary people that law can be just.'[13] The modes of individual and institutional accountability of which I have been speaking are essential to preserving a people's faith in their independent courts. I am speaking, of course, of true accountability: adjudicative integrity, administrative transparency, broadening access to justice. There is also a false judicial accountability, the demand that judges conform their decisions to the will of the current holders of political power. Where true judicial accountability presumes that the judiciary's principal allegiance is to constitutional principles that transcend the temper of the times, false judicial accountability claims that the judiciary owes fealty to present political winds.

One potent line of attack on judicial independence in the United States is that judges are 'activist,' 'elitist,' 'out of touch,' 'arrogant.' One finds this kind of attack on the radio, in the halls of Congress and state legislatures, in the opinion pages of prominent newspapers. Such faux-populist epithets are carefully calibrated to evoke strong negative emotions in their audience – feelings of being disrespected, humiliated, unheard, shut out. This is not rational discourse. It is demagoguery. Often, very effective demagoguery.

False judicial accountability runs counter to the foundational principles of democracy. It is inimical to the right of every person to dignity, to equality before the law and to the fairness and impartiality of adjudicative decisions. Against the often highly effective attacks on the principle of judicial independence, can anything be done? By whom? Again, I offer my impressions from the American context.

V

An understanding of constitutional democracy, what it is, and what sustains it, is not, as Justice Sandra Day O'Connor reminds us, 'passed down from generation to generation through the gene pool; it must be learned anew by each generation.'[14] Most judges and most lawyers believe passionately in the importance of an independent judiciary; we see its worth every day in our courtrooms. We must redouble our efforts to tell the public what we see. We must underscore the value of walking into a courtroom free of worry whether the judge's decision will hinge on the cast of one's political views or the depth of one's pocket. We must paint in clear, vivid colors a Judiciary not infected by what some Russian judges call 'telephone justice,' where the judge receives a call from a government official before making a decision. We must underscore that judicial independence is a right belonging to the people, a right gained by struggle and lost with peril. And we must make clear the distinction between true and false judicial accountability. In fine, the 21st century judge must have the courage, must make the commitment, to leave the chambers and step up to the lectern.

I have taken up the cause of judicial independence before medical professionals, manufacturers associations, music conservatory students, library groups, television reporters, and others. The newly-renovated home of the Supreme Judicial Court, the John Adams Courthouse in Boston, has become a vibrant center for learning about the law, a counterpart of sorts to your Constitution Hill. One program of which I am particularly proud is the Judicial Youth Corps, which allows at-risk teens to learn the value of independent courts first-hand by speaking with judges and observing the work of the court through holiday internships.

My point is simple: in an age of so much high-tech misinformation about the worth of independent courts, judges have an obligation to make the case for judicial independence to the public.

The case for the judiciary is strongest when courts work in partnership with the organised Bar. Who but the Bar is better to stand as the courts's natural allies? In Massachusetts, the Bench and the Bar have partnered to conduct Bench-Bar symposia and Bench-Bar listening tours across the state. Members of the Bar routinely serve on court committees. Judicial leaders and Bar leaders meet on a regular basis to discuss matters of mutual interest, from adequate funding of the courts to preparations for Law Day celebrations. The interests of the courts and the Bar do not always coincide, but over time we have built strong lines of communication. The ability to listen, as well as talk, to each other has enabled the Bar and the courts, working together, to establish programs that could not otherwise have come to fruition: projects to improve court management, civil legal assistance to indigent and low-income clients, alternative dispute resolution programs, and more. Because the Bar has made a strong commitment to the courts, the courts have been able to better serve the people.

VI

From the *Quock Walker* cases in 1783 to the latest decision of your Constitutional Court, the principle of judicial independence has stood the test of time. Its future, however, is far from secure. To the degree that judges and the Bar permit public conversation about the role of the courts to be dominated by cynics and fear-mongers, to that extent we shirk our obligations as guardians of the rule of law. Independent courts can withstand the tinkering around the edges that inevitably accompanies a change of political parties or shift in political philosophy. Not even the strongest independent courts can withstand a wholesale assault on their very reason for being. Each one of us has a role to play in countering those assaults. A very public role. Our embrace of that role will be cause for celebration.

Endnotes

[1] Quoted in Martin *Meredith Fischer's Choice: A Life of Bram Fischer* (2002)143.

[2] William J Brennan Jr 'The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights' 1986(61) *NYUL Rev* 535, 548.

[3] From record of the Walker proceedings quoted in Peter Agnes Jr 'The *Quock Walker* Cases and the Abolition of Slavery in Massachusetts: A Reflection of Popular Sentiment or an Expression of Constitutional Law?' 1992 May *Boston Bar Journal* 8, 9.

[4] John Cushing 'The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the «Quock Walker Case»' 1961 (5) *American Journal of Legal History* 118, 139-140.

[5] Respectively, *S v Makwanyane*, No CCT 3/94 (1995) (death penalty unconstitutional), and *Mohammed* v. *President of the RSA*, No CCT 17/00 (2001) (prohibiting non-consented-to extradition to country where defendant will face death penalty); *Government of the RSA v Grootboom*, No CCT 11/00 (2000) (right of access to adequate housing); *Minister of Health* v. *Treatment Action Campaign*, No CCT 8/02 (2002) (access to public health services for HIV treatment for pregnant women and children).

[6] Quoted in 'Judges to tackle court delays' news24.com, July 8, 2008 (on file).

[7] President Woodrow Wilson, quoted in Henry Lummus *The Trial Judge* (Reprinted 2007)11.

[8] See *Soobramoney v. Minister of Health* No CCT 32/97 (1997).

[9] See *Khosa and Others* v. *Minister of Social Development* No CCT 11/23 (2004) (indigent permanent residents have qualified right to child-support, care-dependency, and old-age grants).

[10] Henry T Lummus *The Trial Judge np* (1937; reprinted by the Flaschner Judicial Institute, Boston, MA (2007).

[11] Quoted in Jenni O'Grady 'Ngcobo: Constitutional Court judges must have courage' mail&guardianonline, Sept 20, 2009 (on file).

[12] Quoted in Joan Biskupic 'Sandra Day O'Connor says rulings are being "dismantled"' *USA Today*, Oct 5, 2009 (on file).

[13] Kate O'Regan 'Reflections on justice' 2008 December *Advocate* 41, 42 (on file).

[14] Sandra Day O'Connor *The Majesty of the Law: Reflections of a Supreme Court Justice* (2004) 38.