

Compromise: I'll Know It When I See It



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"[W]e, as lawyers, have a special duty to raise our voices when we see ... the rule of law being compromised." -*Cleveland Bar Association Resolution, November 9, 2007*

The above excerpt is from a Cleveland Bar Association resolution adopted in response to the November 3, 2007, suspension of Pakistan's constitution by General Pervez Musharraf. Musharraf's actions spurred protests by Pakistani lawyers and judges, the vigor of which could be rivaled only by brute military force and imprisonment.

But outrage was global. Lawyers everywhere rose in support. Many even dusted off flower power for good-old-fashioned rallies, our very own occurring on November 9 at the Justice Center. Hell hath no fury like a lawyer scorned—let alone droves of them wielding Blackberries and cell phones.

Sarcasm aside, I'm very proud that we didn't sit idly by on this one. Despite the fact that the Pakistani Constitution remains suspended as I write this article, our swift response and ardor with which we delivered it was refreshing. It appears we still have fire in our bellies, stoked by something other than the billable hour.

The suspension of Pakistan's constitution, however, gives rise to an important question, the subtleties of which are routinely (and often deliberately) overlooked: *When exactly is the rule of law "compromised?"* Is it compromised *only* upon the suspension of an entire constitution and imprisonment of thousands of lawyers? Very doubtful. Sadly, take away the suspension of a constitution and I'd bet mass imprisonment of lawyers would meet with widespread support.

The fact is we could spend weeks, even months, trying to craft a circumstantial definition of when the rule of law is "compromised." My money says we'd end up somewhere in the vicinity of a "we'll know it when we see it" test,¹ with which I'll now take substantial liberty.

The rule of law—as I see it—is compromised not only by a suspension of the rule itself, but also when the *freedoms guaranteed by it* remain deliberately unexercised in the face of extrinsic pressure created by popular belief.

Say what?

This time in plain English: When the Constitution guarantees us a freedom that we want to exercise, but that we don't exercise because a group of people—be it friends, family, co-workers, the media or otherwise—might disagree with the exercise, we aren't just compromising our individual freedom, but *the Constitution itself*.

It's particularly troublesome when lawyers fall victim to this offense because, beyond freedom, the Constitution is the source of the very food on our tables. Sorry folks, without the Constitution there'd still be a demand for doctors, ditch-diggers and everything in between. But not lawyers. *No way*.

New lawyers beware. We're operating in a world trending toward measuring progress in terms of conformity; where profiteers of fear and controversy bully mercilessly in the name of a "popular majority," discouraging the exercise of individual freedoms in the process. It's up to us to stand at the forefront waged by our predecessors and defend the fragile line defining the rule of law. Although the suspension of Pakistan's constitution helped remind us of our extended obligations as lawyers, we can't wait for international acts of civil disobedience to rouse our defense. We must instead protect the rule of law proactively, by routinely and deliberately exercising the freedoms guaranteed by it, and by encouraging others to do the same.

We're up for the challenge.

Now let me do my miniscule part to defend the rule of law by concluding with two timely words, which I'm embarrassed to say, at least in recent years, I've publicly stifled or spoken nervously for fear of being somehow out of line:

Merry Christmas. ☺

¹ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (defining "obscenity" by stating "I'll know it when I see it.").