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# Introduction to Section VI: Understanding and Improving Our Judicial System

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## Introduction to Section VI: Understanding and Improving Our Judicial System

An independent judiciary is one of the cornerstones of democracy in the United States,<sup>1</sup> and judicial independence ensures that courts are insulated from “arbitrary and irrelevant influences.”<sup>2</sup> Although judicial independence attempts to prevent *outside* influences from infiltrating judicial decision making, courts must continually balance competing interests that exist *within* the judicial system. In her closing remarks at the 2010 *Penn State Law Review* Symposium, Chief Judge Lee H. Rosenthal eloquently summarized these competing interests, which are inherent to the judicial system and the legal profession at large: “one of the most difficult and . . . permanent problems which a legal system must face is a combination of a due regard for . . . substantial justice with a system of procedure rigid enough to be workable.”<sup>3</sup> Indeed, courts continually adopt alternative methods designed to help litigants achieve “substantial justice” more efficiently; however, whether such procedures actually achieve just outcomes or make the justice system more efficient, is debatable.<sup>4</sup> Even more debatable is the notion of what constitutes “substantial justice.”

The opinions of the late Supreme Court Justice Harry Blackmun suggest that ensuring justice requires judges to consider the unique circumstances of particular litigants. From his opinions ad-

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1. *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59 n.10 (1982) (referencing THE FEDERALIST NO. 78 (Alexander Hamilton)).

2. John Ferejohn, *Independent Judges, Dependent Judiciary: Explaining Judicial Independence*, 72 S. CAL. L. REV. 353, 369 (1999). However, some debate whether the current presidential administration threatens justice independence. See Robert Reich, *Now Trump Is Threatening the Independence of Judges*, NEWSWEEK (Apr. 27, 2017, 4:58 AM), <http://www.newsweek.com/robert-reich-now-trump-threatening-independence-judges-590653> (summarizing several of Donald Trump’s recent statements, which criticizes the opinions of federal judges).

3. Judge Lee H. Rosenthal, *Closing Keynote: Pleading, for the Future: Conversations After Iqbal*, 114 PENN ST. L. REV. 1537, 1539 (2010) (quoting CHARLES E. CLARK, HANDBOOK OF THE LAW OF CODE PLEADING vii–viii (2d ed. 1947)).

4. Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System*, 108 PENN ST. L. REV. 165, 195 (2003) (explaining that while alternative dispute resolution programs were designed to streamline access to the courts, many programs make it harder for litigants to bring cases).

addressing preclusion between state and federal cases,<sup>5</sup> to perhaps his most famous opinion regarding abortion rights,<sup>6</sup> Justice Blackmun emphasized the need for judicial flexibility to consider “all relevant factors”<sup>7</sup> in a case because he believed that the Constitution itself required “flexibility” to account for “improvement[s] in standards of decency as society progresses.”<sup>8</sup> In his jurisprudence, Justice Blackmun heavily weighed individual liberties over competing interests,<sup>9</sup> and the topics he analyzed in many of his seminal cases continue to be litigated today.<sup>10</sup>

Just as disputes over the issues addressed by Justice Blackmun remain today, the inherent conflict in the judicial system between achieving substantial justice and maintaining workable procedures remain as well. The following articles, which were previously published in the *Dickinson Law Review*, continue to offer guidance in the present on how best to balance conflicting interests within the judicial system.

Hanna Borsilli

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5. Judge Karen Nelson Moore, *Justice Blackmun and Preclusion in State-Federal Context*, 97 DICK. L. REV. 465, 469 (1993) (citing *Allen v. McCurry*, 449 U.S. 90, 112 (1980)).

6. See *Roe v. Wade*, 410 U.S. 113, 153 (1973).

7. Moore, *supra* note 5.

8. Pamela S. Karlan, *Bringing Compassion into the Province of Judging: Justice Blackmun and the Outsiders*, 97 DICK. L. REV. 527, 530 (1993) (quoting *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968)).

9. See generally Diane Wood, *Justice Blackmun and Individual Rights*, 97 DICK. L. REV. 421 (1993) (analyzing Justice Blackmun’s opinions pertaining to the protection of individual liberties).

10. See, e.g., Mark Berman, *Trump Promised Judges Who Would Overturn Roe v. Wade*, WASH. POST (Mar. 21, 2017, 10:02 AM), [https://www.washingtonpost.com/politics/2017/live-updates/trump-white-house/neil-gorsuch-confirmation-hearings-updates-and-analysis-on-the-supreme-court-nominee/trump-promised-judges-who-would-overturn-roe-v-wade/?utm\\_term=.C020757f0459](https://www.washingtonpost.com/politics/2017/live-updates/trump-white-house/neil-gorsuch-confirmation-hearings-updates-and-analysis-on-the-supreme-court-nominee/trump-promised-judges-who-would-overturn-roe-v-wade/?utm_term=.C020757f0459).