

Initial brief. Appellate case number 26-1637 of 26 cv 00161- JL decision

United States Court of Appeal, First Circuit

Mary Maxwell, Plaintiff and Appellant

v

President of the United States, in both his official capacity and personal capacity

On appeal from the US District Court, District of New Hampshire. URGENT
concerning THE IRAN WAR

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STATEMENT OF THE ISSUES

1. What Role Should Judiciary Play in War Powers Cases?
2. What If the Existing Methods To Constrain a Rogue President Don't Work?
3. Does the Constitution Oblige the United States To Obey International Law?

STATEMENT OF THE CASE

On 20 February 2026, Appellant sought an injunction against a presidential declaration of war on Iran, and a declaratory judgement that such a war is illegal. She gave as reasons her desire to keep her constitutional right to life as well as her right to live in a country protected by a separation of powers. Judicial action would help restore the Constitution at a time when many Americans are accepting defeat in the face of tyranny.

Eight days later, on 28 February, President Trump actually did start a war, stating no reason and offering no plan. His first act was to attack an elementary school in Minab in a 'two-tap operation' that killed 160 girls and their teachers, an apparent war crime. Iran responded by bombing Israel and attacking US bases in countries such as UAE and Qatar, and by blocking ships from using the Strait of Hormuz. This has caused economic distress worldwide, and disaffection of our allies. Our reputation is in tatters.

The District Court dismissed this case on April 23, on lack of standing, citing *Horne v Flores* (2009) that a plaintiff must present an injury that is “concrete, particularized, and actual or imminent,” quoting *Arizona Christian Schools* (2011) that “a generalized interest of all citizens in good government does not confer standing.” Plaintiff replied that she does not ask the court for good government but is pointing to a war that violates the Constitution extremely.

The culprit is the legislative branch. By 1973, its War Powers Act had already watered down the United States Constitution’s Article I, sec 8, Clause 11, which clearly assigns war-making responsibility to Congress. This Act did two things: 1. It allowed the executive to go to war if we were attacked without warning, requiring the president to consult Congress within four days. But Iran had not attacked us or threatened to attack us. Also, Trump did not do that four-day consult. 2. If an emergency-based war has run for 60 days, the president must stop the war. The 60th day was April 29, 2026. Instead of stopping the war, Trump said that the war had in fact ended and is now replaced by a ceasefire. To play so cynically with the law’s wording is unfair. On May 14, 2026, Day 76 of this war, a House of Representatives vote on war powers, yielded a 212-212 tie.

Note: US’s war on Afghanistan, justified by ‘Arabs’ 9/11 attack,’ technically had Congressional approval, via an “Authorization to Use Military Force” that said President George W Bush could determine who the enemy was! That war ended, last year, after 20 years of pointless fighting, with 2,400 US troops dead.

SUMMARY OF THE ARGUMENT

The Third Branch may rule on war powers cases when the First and Second Branch are acting in cahoots for a cause other than The People. The current president’s unconstitutional conduct calls for a responsible approach that may suggest his removal. The United States’ obligation to obey International Law needs clarification. Silence by the judiciary in this area contributes to cultural change. A fresh precedent on this would energize the Rule of Law.

THE ARGUMENT

1. The Judiciary's Involvement in War Powers Cases

It's difficult even to pin down information on the latest move in the Iran war and its likely consequences. The US blatantly lies. Economics professor Jeffrey Sachs refers to Trump as a madman. Paul Krugman, another Economics professor, said he did not see how Trump's being accompanied to China by Elon Musk and other billionaires showed signs of being in our national interest.

The precious item known as Law is hardly entering into the conversation about this mysterious "war" – which is code-named "Operation Epic Fury." People cry about gas prices, and blame 'the Left' or 'the Right,' yet there no longer seems to be a forum for pinning down the purpose of, or the constitutionality of, this Iran war. We don't even hear the old Eisenhower warning "Beware of the power of the weapons industry." We hardly hear alarm calls about the coming demise of national sovereignty.

Of course the Judiciary should never make decisions about foreign policy, but if it simply declared the Iran war illegal (and why not?), it would be a vote for moral sense. It would revive the Rule of Law, on which we have always depended and in which Americans take pride.

If a court can't yell "Stop, stop, that's a crime," who can? Federally it is the job of the Department of Justice to do so, but they use discretion in a way that looks like they will not indict an Executive branch member. Chief Justice John Marshall of the US Supreme Court wrote in *Marbury v Madison*, in 1803: "[Constitutional] principles, so established, are deemed fundamental. And as the authority from which they proceed is supreme, ... they are designed to be permanent..... To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained ...?"

Appellant argues that waiting is no solution. As Justice Clarence Thomas wrote, in a dissent joined by Samuel Alito and Neil Gorsuch, about a 2020 presidential

election case, *Republican Party of Pennsylvania v. Degraffenreid* (2021):

“One wonders what the Court waits for. We failed to settle this dispute before the election, and thus provide clear rules. Now we again fail to provide clear rules for future elections.... By doing nothing, we invite further confusion. ...Our fellow citizens deserve better and expect more of us.”

In a dissenting opinion in *Laird v Tatum* (1972), concerning surveillance, Justice William Douglas, joined by Justice Thurgood Marshall, said:

“Those who already walk submissively will say there is no cause for alarm. But submissiveness is not our heritage. The First Amendment was designed to allow rebellion to remain as our heritage. The Constitution was designed to keep government off the backs of the people. ...The aim was to allow men to be free and independent and to assert their rights against government.”

Thus, appellant objects to the exclusion of her lawsuit on grounds of lack of standing. She thinks it inconceivable that citizens can’t stand before the court in an urgent situation. The urgency here is not only the possibility of world war, but the collapse of the Constitution, via its separation of powers. Neither the Executive nor Legislative branch is following the law, in regard to the Iran war. Short of rebellion, the public’s natural response is to look for any available constitutional avenue. In this case, the third branch, the Judiciary, is best.

It must be noted that, at the Philadelphia convention of 1787, the Framers of the Constitution, took seriously the problem “Who can start a war?” They Framers knew full well that no one man should be given the right to send troops to war. James Madison’s *Notes* contain the following remarks (on pp 45 and 46 of the Norton 1987 edition):

“Mr Pinkney was for a vigorous Executive but was afraid the Executive powers of the Existing Congress might extend to peace & war &c., which would render the Executive a monarchy...”

“Mr Rutledge animadverted.... He said he was for investing the Executive in a single person, tho’ he was not for giving them the power of war and peace.”

Madison himself spoke in the House on June 16, 1789. (on a different topic):

“I acknowledge, in the ordinary course of government, that the exposition of the laws and Constitution devolves upon the judicial; but I beg to know upon what principle it can be contended that any one department draws from the Constitution greater powers than another, in marking out the limits of the powers of the several departments. The Constitution is the charter of the people in the government; it specifies certain great powers as absolutely granted, and marks out the departments to exercise them.”

BACKGROUND: THE SILENCE OF THE WAR POWERS CASES

After the Constitution was ratified in 1788, the provisions about war-making were adhered to, up until, and through, World War II. Then in 1952, regarding the Korean conflict, there was one case in which the Courts got involved:

Youngstown v Sawyer, also known as the Steel Seizure case. There the Justices ruled that a war must be declared by Congress. However, in all subsequent cases, when a litigant seeks an opinion, he is turned away by four “doctrines.”

There are three doctrines besides ‘standing’: Mootness – it is too late to rule on event that is already finished; Ripeness – it is too early to make a ruling, and “the Political Question,” which means the matter belongs to the two political branches. These doctrines may have been put in place to lower the workload of the courts, but they also convey deference to the Executive.

Here is a list of cases, mostly appellate rulings, to show that many of our wars in the last seven decades have been opposed by at least one plaintiff:

1. Vietnam. *Velvel v Nixon*, 1969. Dismissed on standing.
 2. Cambodia. *Holzman v Schlesinger*, 1973. Dismissed on Political Question.
 3. El Salvador. *Crockett v Reagan*, 1983. Dismissed on Political Question.
 4. Nicaragua. *Sanchez-Espinoza v Reagan*, 1985. Dismissed on Political Question.
 5. Grenada. *Conyers v Reagan*, 1985. Dismissed on Mootness.
 6. Persian Gulf. *Dellums v Bush*, 1991. (District level). Dismissed on Ripeness.
 7. Iraq. *Doe v Bush*, 2003. Dismissed on Ripeness.
 8. Kosovo. *Campbell v Clinton*, 2006. Dismissed on Political Question.
 9. [threat to] N Korea: *Maxwell v Trump*, 2019. Dismissed on Standing.
- No doubt many more such cases were filed from 2012 until now in 2026.

None reached the merits; they were all dismissed. No case reached the US Supreme Court, not even *Massachusetts v Laird* (1970) where that court had original jurisdiction owing to the plaintiff being a state. Regarding the denial for leave to file in that case, Justice Douglas dissented:

“[It] requests that the United States' participation be declared 'unconstitutional in that it was not initially authorized or subsequently ratified by Congressional declaration'; it asks that the Secretary of Defense be enjoined 'from carrying out, issuing, or causing to be issued any further orders which would increase the present level of United States troops in Indochina'; and it asks that, if appropriate congressional action is not forthcoming within 90 days of this Court's decree, that the Secretary of Defense be enjoined 'from carrying out, issuing, or causing to be issued any further order directing any inhabitant of ... Massachusetts to Indochina for the purpose of participating in combat or supporting combat troops in the Vietnam war.’”

In his dissent, Douglas pointed to other cases:

“In *Ex parte Milligan* (concurring opinion), it was stated that 'neither can the President, in war more than in peace, intrude upon the proper authority of Congress. ... That issue in this case is not whether we ought to fight a war in Indochina, but whether the Executive can do so without congressional authorization. This [*Ex parte Milligan*] is not a case where we would have to determine the wisdom of any policy.

“[As to] the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government. The Solicitor General argues it would show disrespect of the Executive to go behind his statements and determine his authority to act in these circumstances. Both *Powell* and the *Steel Seizure Case* ...however, demonstrates that the duty of this Court is to interpret the Constitution, and in the latter case we did go behind an executive order to determine his authority. As Mr. Justice Frankfurter stated in the *Steel Seizure Case*:

“To deny inquiry into the President's power ... because of the damage to the public interest to be feared from upsetting its exercise by him, would in effect always preclude inquiry into challenged power [W]ith every desire to avoid judicial inquiry into the powers and duties of the other two branches of government, I cannot escape consideration of the legality of Executive Order No. 10340.... It is far more important to be respectful to the Constitution than to a coordinate branch of government.”

2. President Trump's Unconstitutional Behavior

The Internet is awash with cartoons mocking President Trump. This adds to the citizen's hunch that the Constitution has been buried. We are now supposed to put up with such an extreme statement from the White House as "I will attack desalination plants." There is also the matter of Trump's obsession with profit. During the Gaza genocide he spoke cheerfully about building casinos in Gaza.

Almost twenty years ago, in 1987, Donald Trump was interviewed by journalist Barbara Walters. He said that our allies did not pay fairly for the US's protection of the Persian Gulf. Barbara and Trump spoke as follows:

"Barbara: For Donald Trump, the real culprit is Iran. **Trump**: Why couldn't we go in and take over some of their oil, which is along the sea? Barbara: How? ... I mean, do we want a war? What do you mean, we take their oil? Would you send in the Marines? Would you take a chance in the war? **Trump**: There's going to be a war in the Middle East. Let them have Iran. You take their oil. That's what I'd do. Barbara: What if the Soviet Union said, you do this to Iran, we're going to come in? **Trump**: I don't believe they'd do it. The next time Iran attacks this country, go in and grab one of their big oil installations, and I mean, grab it and keep it and get back your losses, because this country has lost plenty because of Iran...."

Appellant notes that on 20 January 2017, Donald Trump took the oath of office: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

A president taking this oath cannot then say that his business views supersede his oath. The taking of the oath switches his priorities to ones appropriate to protecting the nation. If a president refuses to switch, he should not be president. If he does become president and acts contrary to his oath, other members of government should persuade him to the proper priorities. Failing that, he must, of course, be removed from office. In this case, Appellant filed her request for an injunction before Trump undertook to make war. While that war action appears to her to be a breach of the presidential oath, she is not now

asking the court to do anything about that breach, or to sponsor a removal of Trump from office. She asks the court only for a declaratory judgment that will reassert the Constitution's requirement for a Congressional declaration of war.

3. The United States' Obligation Regarding International Law

Appellant, in her PhD thesis, which is published as "Morality among Nations," argues that international law is not genuine law as there is no one to enforce it, and that it is unnatural for persons to care more for strangers than for their own. However, the Constitution must be obeyed. Article II Section 2 says:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...."

The following treaties enter into today's problem of Iran. First, the United Nations Charter that says that the signatories will not attack one another, and the Geneva Conventions that forbid unnecessary harm done to civilians during war. A treaty requires ratification by 2/3rd of votes in the Senate. There is the Washington Treaty of 1949 that created NATO. The most interesting part of this is that almost everyone in the US is unaware of what NATO's restrictions are, and how it be possible for US troops to take orders from anyone but the US.

New organizations such as the World Economic Forum also have participation by the US. These preach global control of everything, leading to a virtual end for national sovereignty. Appellant assumes that the Judiciary stands ready to deal with constitutional questions related to international law. We may need look to overseas scholars to help us. Philip Allott, who is Professor of International Law at Cambridge, UK, recently wrote for ejiltalk.org as follows: "In an interview with the New York Times, President Trump has said that he does not need international law; he has his morality. Stephen Miller and Pete Hegseth have said that power rules the world and the United States is the most powerful country in the world. Thereby they mean to dismiss the obligatory effect of international law in relation to the United States...."

“A myth has been gaining traction in recent years to the effect that the world is governed by a ‘rules- based international order.’ International law in its modern form has evolved since the late-18th century, with the rise of the modern nation-states and their domination of the world in the 19th and 20th centuries. The post-1945 new world order was itself made under international law.

“Although international law is obviously itself a rules-based international order, use of the new term [suggests] ... that is different from international law. Its content must presumably be identified subjectively, reflecting the self-interest of the person or agency using the term in a particular situation. It is as if President Trump were to say: ‘I have my own international law’. It cannot replace international law which applies equally and universally to all states.”

There is also the matter, which does not have treaty foundation, of the US’s ties to Israel. In the current war, Israel played a prominent role, openly telling Trump what to do “or else.” Appellant does not see a role for the Judiciary here. At the moment, bipartisan sponsorship in the House exists for an item to go into the 2027 National Defense Appropriations bill that would somehow unite the ownership of weaponry by US and Israel. This appears unconstitutional.

REGARDING THE POTENTIAL MOOTNESS OF THIS CASE

Appellant wishes to avoid having her case denied on mootness. She filed it on 20 February 2026, eight days before the Iran war started. The clerk of court did not furnish the Form (440) with which Plaintiff could serve papers on the Defendant until March 9, by which time the war was underway begin. In her reply to the Magistrate’s indication that the case would be dismissed on standing, Plaintiff stated that her issue of ‘personal harm’ had changed—it was no longer “I might be injured” but “I’m already injured” (by the guilt of causing the death of Minab’s schoolgirls).

Appellant realizes that her case might now be dismissed on mootness, either because the war did begin, or, if Congress now declares war, because the problem has thus been solved. She asks that a Declaratory judgment nevertheless be made. She is mindful of the case of *Roe v Wade* (1973) in which Texas

was sued for trying to prevent abortion of Jane Roe's baby. By the time the matter reached the US Supreme Court, the baby was already a toddler. In ruling why it was still proper to decide the matter, Justice Blackmun noted that, as pregnancy lasts only 270 days, such cases might never get adjudicated timely: "Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be 'capable of repetition, yet evading review'. We, therefore, agree with the District Court that Jane Roe had standing to undertake this litigation, ... and that the termination of her 1970 pregnancy has not rendered her case moot...."

Appellant thinks it is the same with wars. Lawsuits to prevent a war will likely arrive too late. – but a firm precedent should be set, a sort of *Roe v Wade* for war. To her it appears that doctrines of ripeness and mootness get used politically in war powers cases, to stop citizen's involvement. Both the Dellums case of 1991 and the John Doe case of 2003 were dismissed on ripeness, yet a few days later, the relevant wars (both in Iraq) quite predictably got underway.

As for mootness, the case of *Smith v Obama* should have merited a ruling, as plaintiff Army Captain Nathan Smith asked for a way to quell his concern that he might order his men into an illegal war. It appears that the appeals court strung the case out until his active service, plus a Reserve year had ended.

Appellant, having studied Professor Louis Fisher's defining work, "Constitutional Dialogues: Interpretation as Political Process," agrees with Fisher that there is no point in saying that the judiciary is a perfectly neutral arbiter. And the justices admit it. In *Warth v Seldin* (1975), Justice Brennan, in a dissenting opinion joined by Justices White and Marshall, wrote:

"...the opinion, which tosses out of court almost every conceivable kind of plaintiff who could be injured by the activity claimed to be unconstitutional, can be explained only by an indefensible hostility to the claim on the merits. ...But courts cannot refuse to hear a case on the merits merely because they would prefer not to, ... when the record is viewed with dispassion, that at least three of the groups of plaintiffs have made allegations, and supported them with affidavits and documentary evidence, sufficient to survive a motion to dismiss for lack of standing...."

And as for her case not meeting the definition of “controversy,” she asks that the old precedents give way to the realization that we are living in a new era now. Who’s to determine whether the boldness of a president, in declaring war, is a controversy? President Trump states openly that he planned “to destroy a whole civilization.” No one had ever heard such words from an American leader. That statement, by itself, can change a whole culture. Maybe it was meant to do so.

CONCLUSION TO THE ARGUMENT

Appellant seeks a restraining order on Defendant regarding his current actions in the Middle East which are unconstitutional per Article I, sec 8, Clause 11. The bottom line is that President Trump is acting illegally and no department is willing to stop him. She claims that the four doctrines that dismissed war powers cases for more than a half century have had the practical effect of saying “Always allow the president to make war.” Thus, even if her case is dismiss-worthy under the present doctrine of standing, she asks to have the Iran war considered so egregious as to merit a judicial ruling.

She also asks that it be handled URGENTLY, given the prospect of a World War and the ecological damage that may occur if Trump’s boldness remains unbridled. A ruling will make people realize that a legal solution is available right there in the parchment, as always. Many legal maxims support her case:

“The niceties of the law are not the law.” *Apices juris non sunt jura.*

“It is the duty of a good judge to enlarge his jurisdiction, i.e., to amplify the remedies of the law.” *Boni judicis est ampliare jurisdictionem.*

“We should judge by the laws, not precedents.” *Judicandum est legibus, non exemplis.*

“The law will always furnish a remedy.” *Lex semper dabit remedium.*

“The reason of the law is the life of the law.” *Ratio legis est anima legis.*

“Where there are many councilors, there is safety.” *Salus ubi multi consilarii.*

(Selected from *Law Dictionary*, 1888 – Wesley Gilmer’s 1986 revision of Wm. Cochran Cox’s 1976 edition.)

EXHIBITS

Exhibit A. George Orwell on the Real Purpose of War

[Within Orwell's *1984*, is a smaller book written by "Emanuel Goldstein." It contains this]:

"The essential act of war is destruction, not necessarily of human lives, but of the products of human labour. War is a way of shattering to pieces, or pouring into the stratosphere, or sinking in the depths of the sea, materials which might otherwise be used to make the masses too comfortable, and hence, in the long run, too intelligent.... The primary aim of modern warfare is to [avoid] raising the general standard of living. (in accordance with the principles of *doublethink*, this aim is simultaneously recognized and not recognized by the directing brains of the Inner Party)...

In the early twentieth century, the vision of a future society unbelievably rich, leisured, orderly, and efficient ... was part of the consciousness of nearly every literate person...

It was clear to all thinking people that the need for human drudgery, and therefore to a great extent for human inequality, had disappeared. If the machine were used deliberately for that end, hunger, overwork, dirt, ... disease could be eliminated within a few generations. ...

But it was also clear that an all-round increase in wealth threatened the destruction – indeed, in some sense was the destruction – of a hierarchical society. In a world in which everyone worked short hours, had enough to eat, lived in a house with a bathroom and a refrigerator, and possessed a motor-car or even an aeroplane, the most obvious and perhaps the most important form of inequality would already have disappeared.

If it once became general, wealth would confer no distinction. It was possible, no doubt, to imagine a society in which *wealth*, in the sense of personal possessions and luxuries, should be evenly distributed, while *power* remained in the hands of a small privileged caste. The problem was how to keep the wheels of industry turning without increasing the real wealth of the world. Goods must be produced, but they must not be distributed. And in practice the only way of achieving this was by continuous warfare.

Exhibit B. Laurent Guyénot on How Iran War Started

(From Guyénot's May 19, 2026 article "Deep Trump" at radbodslament.substack.com)

Consider how the decision to bomb Iran was made last February, as explained by the *New York Times* in an April 7 article.... On February 11, a meeting was held in the White House Situation Room attended by Benjamin Netanyahu, accompanied by Israeli intelligence officers.

Standing before a screen showing Mossad Director David Barnea and Israeli military officials, Netanyahu presented his case for bombing Iran with the aid of a PowerPoint presentation, demonstrating that it would bring down the Iranian regime and thus resolve instantly all the problems in the Middle East in one fell swoop, while making Trump the greatest man in history.

Seated across from him were President Trump, Secretary of War Peter Hegseth, Chief of Staff Dan Caine, Secretary of State Marco Rubio, CIA Director John Ratcliff, Chief of Staff Susie Wiles, as well as Jared Kushner and Steve Witkoff, unofficial negotiators. After Netanyahu's presentation, Trump nodded and said, "It sounds good to me."

The same group met again the next day, without Netanyahu but with Vice President JD Vance, ... A final meeting took place on February 26, including a few other people, such as advisor David Warrington, who discussed the legality of such an intervention. Trump concluded the meeting with these words: "I think we need to do it."

In the meantime, Vance had had several phone conversations with Netanyahu, who was urging him to act quickly. The next day, February 27, Trump sent the following message from Air Force One: "Operation Epic Fury is approved. No aborts. Good luck."

Exhibit C. Trevor Aaronson on FBI as Terrorism's Agent Provocateur. (from Aaronson's 2013 book "Manufactured Terrorism," lightly edited)

After 9/11, the FBI was tasked with recruiting a great number of informants who could check on the lives of Muslims. As a private researcher I became interested in "Muslim terrorism." My statistics show that in the ten years following 9/11, the FBI and Department of Justice indicted and convicted more than 150 people via sting operations. If these, the FBI not only led 50 of the terrorist plots but also provided all the necessary weapons, money, and transportation.

The justification? By catching a lone wolf before he strikes, federal law enforcement can take hi off the streets before he meets a real terrorist who can provide him with weapons. However, to this day, no example

exists of a lone wolf who, unable by himself to launch an attack, met a terrorist and became operational. Granted, an Afghan-American named Najibullah Zazi, came close to attacking the NY subway in 2009, with a plan to place backpack bombs on crowded trains but he had international connections and the ability to carry out the work on his own.

When Obama became president in 2009 he used many sting operations. In three years, his DoJ prosecuted 75 terrorism sting targets. Obama embraced national security as a tenet of his office. He also engaged US military resources in the ouster of Libya's Gaddafi, and conducted secret wars in Yemen and Somalia. The FBI has become effective in creating the enemy it is hitting.

If the Fort Dix Five, as the media later dubbed them, were terrorists, they were coerced ones – pushed along by criminals who had personal interests in their prosecution. (I know of a case where the informant got \$100,000.) Dritan Duka said that in the aftermath of 9/11, Muslims could be arrested just for talking. Bakalli asked the Duka cousins what jihad meant. It didn't mean violence, they told him, it was a personal struggle against oneself and a struggle to lead a good life. Soon, the FBI arrested the 5 men and charged them with attempted murder and conspiracy.

The key to conviction was that the prosecution did not have to prove that the Fort Dix Five would do the murder, just that they talked about it. This is the crime of conspiracy. In closing, US Attorney Fitzpatrick told the jury "We don't have to prove that they intended to kill."

This goes against the landmark case *Brandenburg v Ohio* (1969). Clarence Brandenburg, a Ku Klux Klansman, had given an inflammatory speech in 1964. He was prosecuted under an Ohio law of 1919 that prohibited advocating "unlawful methods of terrorism." He appealed his conviction to the US Supreme Court where it was overturned – as the government cannot punish speech unless it is intended and likely to result in imminent lawless action.

Mehenna's case is connected to this. Actually, the way prosecutors got around *Brandenburg* was by saying that Mehenna's advocacy of Al Qaeda and violence provided 'material support' to the terrorist organization which is against one of the new laws.

At his sentencing in 2012, Mehenna addressed US District Judge George A O'Toole, saying that he was the victim of a vengeful prosecution for his refusal to be an FBI informant. "I have spent the majority of four years in a solitary cell, the size of a closet, locked down for 23 hours each day." Judge O'Toole,

unmoved by Mehanna's statement, sentenced the 29-year-old to seventeen years in prison.

Exhibit D. Terry Shulze on Magna Charta and the Rational Basis Test (From "Review of Australian Law and Its Decline," by retired barrister Terry Shulze, at GumshoeNews.com June 19, 2018, lightly edited)

A farmer asked my help as he suffered financially from an Egg Industry Act by New South Wales Parliament. I thus inquired if the law had a rational basis. In the US, an enactment may be invalid if it does not serve a purpose. This is traceable to Heydon's Case of 1584 in England which searched for "the mischief which the statute was designed to remedy," i.e., its *raison d'être*.

The 1787 case of *Bowman v Middleton*, was about a 1712 Act of the Assembly which transferred a freehold from to another, without trial or compensation. The Court at page 254.8-held "that the plaintiffs could claim no title under the Act in question, as it was against common right, as well as Magna Charta, to take away the freehold of one man and vest it in another... without compensation, or even a trial by the jury.... That the Act was, therefore, ipso facto, void. That no length of time could give it validity, being originally founded on erroneous principles."

This 'rational basis test' isn't known by this name in Australia. However, in NSW, the validity of a law can be checked by its accordance with the Colonial Laws Validity Act. I gathered up some early cases, such as *MacDonald v Levy* (1833). Judge Burton recognized the duty of the judges as the guardians of the rights of the people. At page 49.0 he states,

"I look upon this clause as the great charter of the Colony, and at once yielding to the colonialists all that by the common law, or the liberal, and enlightened, and accumulated wisdom of our ancestors, has been provided for the protection of life, liberty and property, and for regulating the transactions of men with each other. All becomes by virtue of it "the justice and right" which the justices are sworn to do to all the King's subjects, and is expressly provided in one of the clauses of Magna Charta."

I (Shulze) found that Judge Wise, in *Rusden v Weeks* (1861) clearly supports the position of judicial review of legislation of the NSW Parliament:

"...as the supremacy of the law is the characteristic of every constitutional government, it becomes imperative duty of courts of justice, independently of all political considerations, to decide which is the law of the land."

In general, the early judges (prior to Australia's 1901 Federation) clearly considered that the people of NSW had fundamental constitutional rights, that the courts could declare an Act of Parliament void, that the laws of the legislature must be reasonable and not inconsistent with the Constitution and that the fundamental documents, such as the Magna Charta, Bill of Rights and Habeas Corpus Act comprised parts of the Constitution.

However, two things occurred in the latter half of the 19th century in NSW which perverted this thinking. One was a book "The Constitution of the Australian States" by RD Lumb, which said. "No colonial law was to be void on the ground that it was repugnant to the fundamental principles of English Law."

The other was the reassertion of legal positivism in the form of "Parliamentary sovereignty." South Australia's Parliament had written to Queen Victoria, in 1864, bemoaning: "the danger and impolicy of leaving in the hands of the Colonial Judges the power to declare the Acts of this Parliament illegal... We, therefore, trust that Your Majesty will graciously relieve us from further suffering under this enormous evil... that it shall not be competent for any Judge in the Courts of Providence.

(The judges' reply was "No.")

I noted works of Sir Edward Coke (1552-1634). He had said, in Dr Bonham's case "when an Act of Parliament is against common right and reason, or repugnant, ... the common law will control it, and adjudge such Act to be void".

Coke also said, during the drafting of the Petition of Right of 1627, that "sovereign power is no parliamentary word. ... Magna Charta is such a fellow that he will have no sovereign."

Did I win my challenge to the Egg Industry Act? Some say I did, insofar as a back channel to the NSW Parliament alerted someone to my plans and so they got rid of the Act. What's more, they legislatively offered compensation. The small farmers in the industry couldn't believe what happened – they were receiving money instead of being harassed. My client received 1.2 million dollars, of which I never saw a penny. (But earlier I was given a frozen turkey and 4 dozen eggs.)

Personally, I think the situation has further declined since 1985. I know not the reason why each judge takes their path regarding the independence of the judiciary, but it does appear from reading the various cases that, if the judiciary has lost its independence, it is a 'self-inflicted wound'.

Exhibit E. by Cambridge Professor Philip Allott. Note: Allott was for 13 years a legal advisor to UK Foreign office, an experience that inspired him to offer a new philosophy for International Law. See his *Eutopia*. The abstract of Allott's 2002 book "The Health of Nations: Society and Law Beyond the State" says:

The human world is changing. Old social structures are being overwhelmed by forces of social transformation which are sweeping across political and cultural frontiers. A social animal is becoming the social species. The animal that lives in packs and herds (family, corporation, nation, state) is becoming a member of a human society which is the society of all human beings, the society of all societies.

The age-old problems of social life -- religious, philosophical, moral, political, legal, economic -- must now be addressed at the level of the whole species, and the level where all cultures and traditions meet and will contribute to an exhilarating and hazardous new form of human self-evolving....There will be new levels of human energy, creativity, intelligence, to serve the highest aspirations and the highest ideals of all humanity. We know that we will be writing a new page in the better story of human self-evolving.

Statement of Compliance with Rules of Procedure: This appeal is 6468 words, in Times New Roman font 14.

Respectfully submitted,

Mary Maxwell, pro se June 4, 2026
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(This 18-page document has been served on the Appellee, June 4, 2026.)