

DAN FOLEY: SETTING THE BAR HIGH FOR JUSTICE BY JOANNE TACHIBANA, HONOLULU

On October 2, 2000, Attorney Dan Foley was sworn in as Associate Justice of the State Appellate Court by Hawaii State Supreme Court Justice Ronald Moon, in the company of his peers, family and friends.

A career advocate of personal civil rights for more than two decades, a true champion of individual human rights — when called to serve in a new capacity in the judicial system, Dan Foley was prepared. The time for change was at hand. Accordingly, Dan Foley's role was transformed as he took his place as a member of a four-panel team for the Hawaii Intermediate Court of Appeals.

The appointment of Dan Foley by Hawaii's Governor Benjamin J. Cayetano was a bold one and brought mixed reaction from the local community. Dan Foley, an outstanding and well-respected civil rights lawyer, has taken on tough constitutional and legal battles for little or no financial reward. A summary of the typical areas of his past practice includes: legal rights of same sex couples; first amendment rights of police officers; first amendment rights of lobbyists and candidates for office; first amendment rights of vendors on public sidewalks; first amendment and private rights of adult arcade operators; police brutality; prison conditions; discrimination based on sex, race, handicap, age, marital status and sexual orientation; premises liability; defamation; abuse of process and malicious prosecution.

Attorney Foley was brought into the national spotlight during the case of marriage rights for same sex couples, which was popularly called "same sex marriage." It stirred major debate statewide and resulted in groundbreaking rulings by the State Supreme Court that paved the way for other states rulings on this issue.

Throughout his career, Dan has been a tireless advocate for his clients and has striven to pursue justice in accordance with the Hawaii Rules of Professional Conduct. Outside of his law practice, Dan was an adjunct professor of civil rights at the William S. Richardson School of Law at the University of Hawaii. He served as counsel to the State Civil Rights Commission in drafting the Commission's Administrative rules. He chaired the Hawaii Bar Association Section on Criminal Justice.

Dan Foley has been recognized for his achievements and has received numerous awards; two highlights are the "Lawyer of Year" by the ACLU-Hawaii and the LAMBDA Liberty Award.

Dan Foley's experiences laid the foundation of his respect for civil liberties. As a Peace Corps volunteer (1969-70) in Lesotho, Africa, he witnessed the devastation of civil war that resulted in the suspension of the constitution. In this absence of due process, the rights of individuals were suspended. While spending a summer at a private law school in Mexico, he perceived a country where the constitution existed on paper, yet bore no relationship to the people's daily lives.

These experiences impressed upon him the importance of the U.S. Constitution and Bill of Rights, and affirmed his decision to pursue a career in law. Following his graduation from the University of San Francisco Law School in 1974, he traveled to Micronesia where he spent the next eight years drafting articles for the constitution, helping return the region to self government. "To this day he remains a near-legendary figure among the people there" (*ImiLoa*,¹ p. 23).

In the field of law, Thurgood Marshall, a well-known figure in the history of civil rights in America and the first black Supreme Court justice, remains one of Dan's heroes. Justice

Marshall is credited with changing the landscape of American society by overturning the “separate but equal” apartheid of American life. He won a landmark decision in the 1954 “Brown v. Board of Education,” which declared segregation of public schools illegal. Justice Marshall defined the term *equal* as “getting the same thing, at the same time and in the same place.” Although he worked on behalf of black Americans, the structure of individual rights he created became the cornerstone of protections for all Americans — women, children, prisoners and the homeless. Dan’s career has been a testament to the Marshall legacy.

In 1984, Dan Foley’s wife, Carlyn, introduced him to the SGI and Nichiren Daishonin’s Buddhism in Hawaii. The wisdom and compassion of the Buddhist philosophy are exemplified in Dan’s approach to his daily life. A speech given by SGI President Ikeda at Claremont McKenna College in 1993 illustrates the broad view of human life that made Buddhism appealing to Dan.

“To be of real and lasting value, change must be gradual and inspired from within.” Mr. Ikeda referenced economist Friedrich A. Hayek’s analogy of a gardener describing the attitude a true liberal takes toward society: “The growth of plant life is both spontaneous and gradual. At most, the gardener can create conditions propitious to growth. In the same way, Hayek urges that we must utilize the ‘spontaneous forces of society.’”

Mr. Ikeda continues: “Coincidentally, the gardener analogy also leads us to consider the need to respect diversity within society. One of the most critical questions today is how, after the fashion of a skilled gardener, we can create a harmonious garden from the manifold human talents and qualities, while respecting the unique and sacrosanct individuality of each person.

“By adopting an inner-directed and gradualist approach, we can find ways through which the diversity of our experience can become a source of creative energy.” Mr. Ikeda concluded that the tradition of America’s experience qualifies the United States to assume “a special mission to demonstrate a pattern [of respect for diversity] for the entire world” (*Seikyo Times*, March 1993, p. 36).

The respect for the sanctity of each individual is exemplified by Dan Foley’s conduct in all aspects of his life. Lawyers often fail to display that quality. Even Dan’s opponents testified in his favor at the Senate confirmation hearings. They commended his integrity, honesty and positive working relationships with other counsel, friend or foe. Although he took cases that were controversial and unpopular — and certainly not lucrative — he maintained focus and was a successful advocate on behalf of his clients.

Ironically, his advocacy was an issue that was questioned at the Senate public hearings. The remarks of State Senator Jonathan Chun brought clarity to this issue. Senator Chun, who strongly opposed the same-sex marriage issue, commented on that question. “Can Mr. Foley stop being an advocate for his own personal viewpoints as to what is right and apply the law as the people intended it? I feel he was honest and sincere when he testified in front of the Senate Judiciary Committee that he can stop being an advocate for his personal view and base his decisions only on the law.” With that stated, Senator Chun voted in favor of Mr. Foley’s appointment.

The affirmative testimony of State Senator Colleen Hanabusa crystallized the attributes of Dan Foley. Having worked both with and against Mr. Foley, the senator stated that it was an honor to co-counsel on cases. “On issues of constitutional law and ramifications, in my opinion, there is no one better. My support for Mr. Foley is unequivocal. ... The Dan Foley I know is not afraid to take on politically incorrect issues. He is not afraid to help the underdog. And he is not afraid to say what needs to be said and what needs to be argued on unpopular matters. ... The other part of Dan Foley is that he is somebody who gives more than 100

percent for cases that may pay him less than one percent. Now that is an honorable trait in any profession but especially among us attorneys.”

To those who protested Mr. Foley’s appointment, Senator Hanabusa said that “the Dan Foley I know would say: ‘Isn’t the Constitution a wonderful instrument? Isn’t freedom of speech the most precious of our rights? And isn’t it true that equal rights and due process for all is something that we should all be willing to fight for?’”

Her only lament was that when the government or someone may infringe on our constitutional rights, there will be no Dan Foley to be our advocate. In closing, she stated that “the one satisfaction that you may have is that if your case goes up to the Intermediate Court of Appeals, you know that there you will have someone with intelligence, integrity, objectivity, impartiality, the unique ability to reason and judicial temperament, and that is what we want in people we put up to the Intermediate Court of Appeals.”

That is Dan Foley the jurist, the first civil rights attorney to be appointed to Hawaii’s State Intermediate Court of Appeals. Wearing the distinguished robe of judge is Dan Foley, a man whose sterling character is widely recognized.

1. *ImiLoa* (Remaking Government Renewing Hawaii) — A publication of the State of Hawaii, Winter 2000 issue.