Hanousek v. United States: Social Engineering Encroaching on Individual Liberty

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Athletic Committee
A legal decision that unexpectedly judicially “extended the reach environmental criminal law” was *Hanousek v. United States*, wherein the United States Court of Appeals for the Ninth Circuit held the legal standard for criminal negligence under the Clean Water Act (CWA) was ordinary negligence. This decision, which was not granted a review by the United States Supreme Court, remains presently the only answer to this legal point.

Both Justices Thomas and O’Connor would have granted the discretionary *writ of certiorari* and heard the case, but it takes four justices to accept the case. The reasoning of the Ninth Circuit was the CWA was a “public welfare” statute designed to protect the public from potentially harmful conduct in an arena a reasonable person should know is stringently regulated. Justice Thomas and O’Connor, in their willingness to grant *certiorari* wrote, “I think we should be hesitant to expose countless numbers of construction workers and contractors to heightened criminal liability for using ordinary devices to engage in normal industrial operations.”

The question of statutory construction relied upon by the Ninth Circuit went unchallenged. Without further definition, the criminal provision regarding negligence was to be interpreted properly as only requiring ordinary negligence upending 500 years of common law on the fundamental *mens rea* requirement of criminal law. Since Blackstone’s Commentaries, the responsibility of the judiciary has always been to conduct strict interpretation of criminal statutes in favor of the accused. This was not done by the Ninth Circuit in this case. Instead, under the section titled “Criminal Penalties,” the court judicially wrote into the law the word “ordinary” in front of negligence holding “if Congress intended a higher negligence standard,” it would have specifically written it in the statute.

Our federal courts must continue, as they currently are, to be perceived by the legal community and the public at large as a beacon of hope against the darkness of ever-encroaching attacks against civil liberties and an objective arbiter of our Nation’s foremost legal challenges. This beacon will dim if those protections are to be governed by rules of sand — sand subject to the tipping of an hourglass — when competing social engineering objectives demand a new outcome, and thus a new rule to rationalize it.

1. 176 F.3d 1116 (9th Cir. 1999).
2. Id. at 1121.
4. 176 F.3d at 1121.
5. 120 S.Ct. at 861.
6. The court ruled this interpretation was a fair one based on the plain language of the statute and the public welfare nature of the CWA. 176 F.3d at 1122.
7. 176 F.3d at 1121.
8. See e.g., R. Moore, *So Help Me God* 158 (2005) “When judges put on their social engineering hats and go beyond the law to correct perceived inequities, they assume the role of the state legislature and violate the basic doctrine of separation of powers.” Many attractive reasons exist to usurp (wrongfully seize) the powers of another branch of government, especially when you wear a black robe, but it is always improper to do so. The judicial branch has no authority to assume the lawmaking mantle that belongs to the legislature even when it seems convenient to allow judges to do so because it will make things better. Such a misuse of power will always result in a permanent ‘evil,’ by leading to further usurpations.” Id. at 159.