



# It's Time to Expand the Traditional "Purposes of Courts"

Kent Batty

For more than 45 years, Dean Ernest Friesen has focused his considerable intellect and years of experience on the purposes of courts. Beginning in the early 1970s, in classes on court administration that he taught at the National Judicial College, he asked countless groups of judges and administrators what they thought the courts' principal purposes were. Over time he developed eight simple statements that remind all of us involved in the courts what our foundational principles are. I believe Friesen did so because he felt it was of utmost importance that those who work

in and with courts understand as clearly as possible the importance of the work of the courts and their role in society.

By now, the number of people exposed to these purposes must be in the hundreds of thousands. And certainly hundreds, if not thousands, of people in the field are using them as teaching devices. Friesen and many others like us hope that court leaders are using them routinely, at a minimum to explain the courts to the public, to support court programs, and to help justify court budgets to funding authorities.

"Friesen's Purposes," as many of us routinely refer to them, have been part of the lexicon of court administration since he first began promulgating them in the mid-1970s. Lo, these many years later, they still encapsulate quite well the basic roles or responsibilities of courts in today's society:

1. To do individual justice in individual cases
2. To appear to do justice in individual cases

3. To provide a final (previously, “a forum for the”) resolution of legal disputes
4. To protect against the arbitrary use of government power
5. To make a formal record of legal status
6. To deter criminal behavior
7. To help rehabilitate persons convicted of crime
8. To separate persons convicted of serious offenses from society

While this list continues to serve us well, the time has come to consider whether new purposes should be added to it. Indeed, the National Center for State Courts, in its Institute for Court Management course “Visioning and Strategic Planning,” lists Friesen’s purposes as “Results of Effective Performance” and then adds its own short list of additional results. It is also likely that, across the country, faculty who teach ICM’s “Purposes and Responsibilities of Courts” class have done their own embellishing of the original purposes as they fielded questions from participants and otherwise thought through the broadened roles courts perform today. Undoubtedly, many others working in the courts have thought the purposes could benefit from a review.

This essay is an effort to begin, in a formal way, to consider what additions, if any, should be made to Friesen’s original purposes. I’ve used the term *formal* advisedly. To be certain, I have my own suggestions for new role or purpose statements. The National Center, through the course content mentioned above, has put forward additional purposes (in the course materials as “results”). Others surely have formulated new purposes that

deserve consideration. What is missing thus far is a proper vetting process that would give the same broad support to any new concepts that Friesen’s years-long efforts accomplished for his (now our) “traditional” purposes. I am not aware that anyone has circulated widely new ideas for critical review, comment, and endorsement. This article is a first step toward such a process.

To begin, I offer my thoughts about the “results” promulgated in the ICM course.

### To preserve order in society

This purpose strikes me as either an essential function of all of government or as the purview of law enforcement. Looked at broadly, preserving order is what governments do, not just the judicial branch: Without some form of governance, even dictatorial or primitive, it is unlikely that order can be preserved. Looked at more narrowly, it is law enforcement that preserves order in the streets, so to speak, or in our homes or places of business. Courts, through their orders, can certainly assist in the preservation of order, but they cannot achieve it of their own doing.

### To reconcile relationships

It is arguable that this concept is encompassed in the original purposes, *to provide final resolution* and *to make a formal record*, but I see courts as providing the means or vehicle for reconciling relationships, not actually performing that role. They are different concepts. While courts can order the structure for certain relationships, courts do not actually reconcile them. That only comes from the individuals (or entities, I suppose) who are involved in such relationships. Reconciliation may also be a by-product of what courts do, but courts do not do the reconciling.

### To protect those who cannot protect themselves

This idea is very close to a concept I am advancing below, which relates to the abusive use of power. However, this conceptualization, too, seems to fit best within the ambit of law enforcement: “To serve and to protect” is their most common motto. It also has application, at least putatively, to the concept of aiding children and families. But the difficulties that occur in families finally have been seen to have such broad-ranging societal impact and consequential impact on courts that we need a statement of purpose that more clearly addresses those issues.

Below are possible new purposes that I have formulated from my personal experiences. I have been fortunate to have taught ICM’s “Purposes and Responsibilities” course with Dean Friesen three times. That has helped immensely to focus my thinking about possible additions. I have also taught the course several more times and found that, when we come to the discussion of purposes, nearly every class comes up with the “but what about?” question. For example, “Where do these purposes encompass juvenile abuse and neglect cases?” And finally, after 40 years in this field, I have seen firsthand the broadening public expectations of courts, as well as the upsurge of certain societal trends or emphases that bring to the fore new possibilities for purposes.

Examples should illustrate what I mean. More than 45 years ago, when Friesen began his quest for a list of purposes, there were no therapeutic, specialty, or problem-solving courts in the United States. Dade County, Florida, is generally recognized as having established the first such court, its drug court, in 1989. The still-accelerating growth of specialty courts

since that time is undeniable, as courts have been pressed to find ways to deal with problems that other elements of society could not resolve. Yet there may be nothing in the traditional purposes that adequately covers the role of such courts.<sup>1</sup>

In addition, in that era juvenile cases (both delinquency and dependency), their proceedings and impacts, seemed to be of limited concern nationally. To be sure, there were vocal advocates for improvements in the juvenile justice sector in the 1970s, but those cases were treated as the second-class citizens of the justice system. Indeed, until somewhat recently, the majority of judges tended to view an assignment to the juvenile bench as a task to be endured, not celebrated. But today we have many, many judges whose real passion is the juvenile system, believing that the juvenile bench is where one can do the most good for society. More importantly, the causes and effects of juvenile delinquency and the impact of high rates of detention on juveniles have become a significant focus of courts across the country. And the concern for and attention to cases of abuse and neglect and the impact on the lives of children, families, and society now occupies center stage in many jurisdictions, as should have been the case long ago.

Another example: One could argue that it was not until the early 1990s that we in the courts embraced the idea that courts needed to be fully accountable to the other branches and to the public for their functions and costs; that transparency was essential

to accountability; and that ivory towers could no longer be the courts' refuge. So, while accountability and transparency may not truly be a court purpose, there is nothing within the traditional purposes that could be stretched to include the concept that accountability to the public for use of resources is part of the fundamental purposes of courts.

Here then are my proposals for three additional purposes of courts.

### To protect individuals and society from the abusive use of power

While I know that this purpose is quite close to Friesen's fourth purpose — *to protect against the arbitrary use of government power* — I propose this addition for its broader concept.

That original purpose was intended, in large part, to reflect the concerns of the Founding Fathers and their predecessors that history (especially European) showed that monarchies were very effective at exerting control over the lives of their subjects, for example, arbitrarily detaining them, controlling or manipulating the adjudicatory process, and creating laws with retroactive effect. History's answer to those abuses, going back at least to the Magna Carta, was the creation of concepts like *habeas corpus*, due process, and prohibition of *ex post facto* laws. Protecting the citizenry from the government was certainly a significant aspect of our revolution against England.

The most frequently cited example of the modern-day misuse of

government power has been the use of eminent domain to seize private property. Reflecting on more vivid examples, I would include such things as law enforcement's overreactions against peaceful demonstrations, to say nothing of discriminatory enforcement practices and the IRS's, the FBI's, or the NSA's overreach in targeting individuals, corporations, or segments of the population for selective scrutiny or enforcement. Clearly, we are well past the days when eminent-domain actions were the best example we could offer as possible abuses of government's power.

But there is no purpose among the original ones that captures the courts' role in protecting the public from the powerful segments, corporate entities, and individuals of the private sector. In today's world, I believe we need such a purpose statement. Under the potential abuse of power by the private sector, I would include corporate behaviors such as land grabs to secure oil, gas, water, or mining rights; actions that appear to disregard the public's safety, like the behaviors that produced the Love Canal fiasco or the Superfund sites that are still being fought over; basic corporate bullying of private individuals who cannot match corporate funds to support legal actions; and, most recently, predatory pricing practices for things like essential but rare medications.

### To provide appropriate services to aid "at-risk" children and their families while safeguarding the community

This statement tries to capture in a short phrase, for consistency with the traditional purposes, the full spectrum

<sup>1</sup> It may be argued that they fall under the rehabilitative purpose, but that concept was not part of the original discussion of that purpose. Indeed, it could be said that, with mandatory sentencing laws and changes in societal views over the last five decades, the rehabilitative purpose has become deemphasized, overwhelmed by societal emphasis on punishment.

of the work of our juvenile courts and juvenile justice system. While it is hard to encapsulate the scope of juvenile court work in a succinct statement, there can be no doubt that, as recently as 25 years ago (maybe less), juvenile dependency and neglect, delinquency, and detention were still relatively modest blips on the radar screens of most court leaders. It is clear today that the focus on the issues of children and their families and how courts should deal with them has become far more intense than it was. We seem finally to have recognized that better alternatives for dealing with such problems result in less future involvement in the justice system. It is time to acknowledge the importance of what we do by giving that field its own “modern” purpose.

### To demonstrate accountability for the effective, efficient use of public resources

I arrived at this purpose by working through the implications of the accountability/transparency concept on what courts should do. In teaching the purposes and responsibilities, I describe accountability and transparency as the means of demonstrating the court’s responsibility for its own operations and use of public resources. I further describe the three concepts—accountability, transparency, and responsibility—as essential to sustaining the independence of the court, forming a shield that protects that independence. But I struggled with a purpose statement, such as “to maintain the independence of the branch,” which really is a concept much different than those in the original purposes. Those “originals” really speak to outputs, if you will,

that courts provide to the public, while maintaining independence seems to be more about self-preservation. I believe that independence is a by-product of accomplishing all our purposes effectively and efficiently, but it is of such importance that it needs addressing.

It seems clear that it was not until the early 1990s that we in the courts broadly embraced the ideas that courts needed to be fully accountable for their effectiveness and efficiency to the other branches and to the public; that transparency was essential to accountability; and that ivory towers could no longer be the courts’ refuge. I cannot read into the original purposes anything that addresses this concept. So the above proposal attempts to capture the idea as the most basic building block supporting the independence of the branch.

So I offer these concepts for consideration as new purposes to be added to the eight we have from Ernie Friesen. My hope is that this article will start the discussion aimed to produce consensus around possible additions to those original purposes.<sup>2</sup>

I do not doubt that there are people reading this who strongly disagree with at least some of my perspective. But that’s okay. As firmly as I may hold to my conceptualizations, I am really just trying to stimulate informed discussion on an important topic for our field. We need to keep the purposes vivid and alive as courts try to meet the myriad challenges they face today. If we do not make an effort to update the traditional purposes, people may see

them as more and more distant from their understanding of what courts should be about today. If we lose focus on the foundation for independence, accountability, and responsibility that they provide, we may put the public’s trust and confidence at risk. We must avoid that consequence.

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### ABOUT THE AUTHOR

Kent Batty began his career in the courts working for the Colorado Judicial Department in 1975. Following a career that spanned more than 40 years, he retired from the Pima County (Arizona) Superior Court in September 2016.

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<sup>2</sup> I want to thank Dean Friesen for sharing his thoughts on an early draft of this article and Gabe Goltz, of the Arizona Administrative Office of the Courts, for his comments on a later version. Both helped me develop my thoughts more thoroughly.