

The Need to Preserve and Defend Judicial Independence— Our Constitutional Protections are at Risk

by Dean J. Zipser

In my May column, I wrote about Law Day, and how it was established to observe our legal system. Unfortunately, that system—and, more particularly, our judicial officers—have been the subject of unmitigated and entirely inappropriate attack. It must stop.



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Our Founding Fathers designed a governmental system of checks and balances among the three separate branches. It is, and has been, the model for the rest of the world. An indispensable element of our system is an independent judiciary—a

judiciary that is not subject to political pressure, and one that is free to continue to protect individual liberties.

An independent judiciary is not one that is free to decide matters based on whim or prejudice, but one that is able and free to decide based on the facts and the rule of law. It must exist without political pressure or fear of attack, retribution, or personal safety. Yet, that is not what we find today. This year (and it is only mid-May when I write this), we have already seen judges become the subject of political rhetoric and intimidation from politicians merely because they disagreed with rulings, and we have had to witness shameful, violent attacks against our judicial personnel and their families. Interest groups are directing millions of dollars in negative advertising to targeted judicial campaigns in an attempt to

influence voters and outspend the judicial candidates themselves.

At the same time, we see state legislatures, including California's, cutting court budgets—forcing our courts to handle an ever-increasing caseload with fewer personnel and resources. We need judges and lack the funding for them. Our courthouses are in dire need of upgrading. Many pose security risks and do not even meet earthquake standards. And now our judges are also confronted with threats and intimidation.

As lawyers, we are uniquely situated—indeed, the most equipped—to step forward and help protect our system of justice and restore the necessary checks and balances. Our Board of Directors has always felt strongly about these matters and is continuing to address them this year. Indeed, the mission of the OCBA includes working to “enhance the system of justice.” Earlier this year, for example, we passed a resolution opposing the current attempts in Congress to split up the Ninth Circuit into two or more circuits—an effort many believe is motivated primarily because the politicians do not agree with the Ninth Circuit's rulings, and another example of challenging judicial independence. We also intend to speak out further to register our disagreement with the treatment of our judges by many in the political arena.

In seeking to restore and preserve judicial independence, we are not saying that judges are or should be immune from criticism or disagreement. Indeed, freedom of speech also constitutes a hallmark of our constitutional protections. We are, and should remain, free to disagree with judicial decisions. But such disagreement does not equate to threatened retaliation. Yet, that's where we now find ourselves, as many have crossed the line. Elected officials have called for impeachments of judges, not because

of some illegality or unethical behavior, but merely because they do not like a decision.

Such politically motivated threats to judges undermine our legal system. Equally troubling, they lower public support for, understanding of, and confidence in, our justice system.

And where would we be without an independent judiciary? One need look only to voting rights and desegregation, as just two examples, to quickly realize the need for an independent judiciary to preserve our constitutional rights and protect the rights of the minority.

Judicial independence also does not mean a lack of accountability. Judges are still, and will always be, held accountable for their decisions as part of the legal system itself. Besides the right of appeal to a higher court, the judicial selection process, discipline and peer review, and the ability of the Legislature to change laws are just a few of the ways judges remain accountable.

We are part of this system, and it is incumbent on all of us to help reverse these disturbing trends. As the current ABA President, Robert Grey, Jr., has noted, an attack on our judges is equivalent to an attack on our democracy. Our court system must be adequately funded, our courts must be safe and secure, and our judges must be free from attack.

The OCBA remains committed to working toward those objectives, which, unfortunately, no longer can be taken for granted. I urge all of you to join us. Thank you.



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