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An independent judiciary and the critical role of the bar

AN INDEPENDENT JUDICIARY CANNOT DEFEND ITSELF ALONE, NOR WAS IT DESIGNED TO DO SO

Neither force nor will

In the spring of 1788, with the Revolution won but the young republic's future still unsettled, Americans debated whether to ratify a new Constitution. In that moment, Alexander Hamilton offered a strikingly modest account of the judiciary, one that would become, paradoxically, among the most enduring defenses of judicial power in American political thought. "The judiciary," he wrote in *Federalist No. 78*, "…has no influence over either the sword or the purse…. It may truly be said to have neither FORCE nor WILL, but merely judgment…."

Hamilton's words were both a reassurance and a warning. To a public wary of concentrated power, they offered assurance that an independent judiciary posed little threat to liberty. Yet that promise carried a profound vulnerability. A branch armed only with judgment must depend on others to respect its authority, provide its resources, enforce its decrees, and, above all, understand why its independence matters. Judgment without force ultimately rests on the public confidence that gives it strength.

Who, then, safeguards that confidence? The Constitution supplies the architecture of judicial independence: secure tenure, protection against diminished compensation, and the separation of powers. Judges give that architecture meaning through the integrity of their decisions, case by case. Yet between constitutional structure and judicial decision lies a broad civic space in which public trust is either strengthened or eroded. That space belongs, in significant measure, to the bar.

This article advances a simple proposition: an independent judiciary cannot defend itself alone, nor was it designed to do so. The legal profession, bound to the courts by oath and entrusted with a broader obligation to the rule of law, is an indispensable guardian of judicial independence. When lawyers explain, defend, and model the principles on which that independence rests, they help sustain the public confidence on which judicial authority depends. When the bar falls silent, the "judgment" Hamilton described is left without one of its most important defenses.

From grievance to guarantee

The American commitment to judicial independence was not born in the abstract; it was forged in grievance. Among the charges the Declaration of Independence leveled against King George III were two directed expressly at the administration of justice. The King, it declared, "has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." He also "has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers." To the founding generation, judicial dependence on executive will was more than a defect of colonial administration. It was among the abuses against which independence itself was claimed.

Article III responded to that experience by placing judicial independence within the constitutional structure. Federal judges would hold their offices "during good Behaviour," protecting their tenure from removal at the pleasure of political officials. Their compensation "shall not be diminished" while they remained in office, insulating their livelihood from the kind of political control the Declaration had condemned. Judicial power would no longer depend on executive assent, but would derive from the Constitution itself, vested in "one supreme Court" and such inferior courts as Congress might establish. What had been a colonial grievance thus became a constitutional safeguard: judicial judgment was to rest not on the favor of those who governed, but on institutions designed to protect their independence.

That design did not go unchallenged. Prominent Anti-Federalists warned that judges holding office during good behavior, largely insulated from direct political control, might become too distant from the people and exercise federal judicial power without an adequate practical check. Hamilton answered those concerns in *Federalist No. 78*. The judiciary, he argued, possessed neither force nor will and was therefore the "least dangerous" branch. Its insulation from political pressure was not a defect but a safeguard, enabling judges to protect constitutional rights against the "ill humors" that might at times sweep through society.

The Constitution thus sought to reconcile judicial independence with political accountability. Article III protected judges through secure tenure and undiminished compensation, while the broader constitutional structure preserved roles for the elected branches. The President nominates federal judges, the Senate provides advice and consent, and Congress determines whether to establish inferior federal courts and exercises substantial authority over their organization and jurisdiction. Judicial independence, in other words, was never designed as judicial isolation. It was embedded within a constitutional system that protects judg-

This article draws on the work of the Honorable Lawrence King, Judge of the Paradise Valley Municipal Court in Arizona, and Darren Breslin, Staff Attorney for the Pennsylvania Commission on Judicial Independence. At the 2026 National Association of Presiding Judges and Court Executive Officers Tenth Annual Trial Court Leadership Academy and Conference in Wilmington, Delaware, they traced the constitutional origins of judicial independence, examined the pressures confronting today's courts, and offered practical strategies for safeguarding it.

ment from political pressure while keeping the judiciary connected to the larger structure of representative government.

Two pillars, dependent on the other

Judicial independence rests on two mutually reinforcing pillars. The first is institutional independence: the structural insulation of the judiciary, as a branch, from political control by the other branches. It requires jurisdiction governed by law rather than altered to reward or punish decisions; secure tenure, with removal only through constitutionally prescribed processes; adequate and reliable court funding, determined through regular procedures rather than wielded as leverage over judicial outcomes; and sufficient administrative autonomy for courts to manage their dockets, personnel, and internal affairs. These protections provide the framework within which independent judgment can operate. Without them, even the most principled judge may face pressure through diminished resources, manipulation of jurisdiction or institutional structure, or other forms of political retaliation. No measure of individual courage can substitute for structural protection.

The second pillar is decisional independence: the freedom of each judge to decide each case according to the law and the facts, without fear or favor. It requires freedom from political direction, so no public official may dictate how a case should be decided; freedom from public pressure, so judgment follows the law rather than the passions of the moment; and freedom from threats to a judge's safety, livelihood, or family. Above all, it requires freedom to reach an unpopular result when the law demands it. Constitutional rights do not lose their force because their protection is unpopular, and judicial independence matters most when fidelity to law requires a result that prevailing opinion would reject.

Decisional independence is where judicial independence becomes tangible, where principle is tested in practice. A court may be staffed by life-tenured judges yet still yield to public pressure in a particular case; a judge may possess extraordinary courage yet remain constrained by an institution deprived of the resources necessary to function effectively. Neither form of independence, then, is sufficient on its own. Institutional safeguards create the conditions for independent judgment, while individual resolve gives those safeguards meaning. Each sustains the other, and neither can endure for long alone.

The pressures of our moment

The tension Hamilton and the Anti-Federalists debated has never disappeared; it has simply assumed new forms. Today, both institutional and decisional independence confront pressures the founders could scarcely have anticipated, pressures that test the limits of the constitutional safeguards they created and expose vulnerabilities their design could not fully resolve.

Elections and campaign money.

The founders chose not to subject federal judges to popular elections, but most states eventually took a different path. Today, 38 states use elections in some form to select or retain the justices of their highest courts. In California, superior court judges face contested elections, while Court of Appeal and Supreme Court justices periodically stand before voters in retention elections.

Where judicial elections exist, campaign spending follows. What were once relatively modest races have increasingly become expensive political contests, fueled not only by candidates but also by parties, interest groups, and independent expenditures. The consequences extend beyond how much money is spent. Judges and judicial candidates may seek financial support from lawyers and others with interests before the courts, while outside groups can spend heavily to influence judicial races. Even when a judge acts with complete impartiality, a substantial campaign contribution can create an appearance of influence when the contributor later appears before the court. And when outside spending is funded through organizations whose donors are not readily apparent, the public may be left unable to determine who is financing efforts to shape a judicial election.

The danger, then, is not simply that money may influence judicial decision-making. It is that money can weaken confidence that decisions are independent at all. In a system whose authority ultimately rests on public trust, the appearance of dependence can itself carry a high cost.

Fiscal pressure

Article III protects the compensation of sitting federal judges from diminution, but it does not similarly insulate the judiciary's operating budget. State constitutions, including California's, generally provide no comparable guarantee of adequate compensation and judicial funding. That distinction creates a potential point of institutional vulnerability: funding decisions can become a source of political pressure on courts, particularly when budgetary threats follow unpopular rulings. More commonly, however, the danger is quieter and more persistent. Chronic underfunding can create backlogs, reduce staffing and other essential resources, pressure judges to resolve cases more quickly, and limit meaningful access to the courts. Over time, those constraints threaten more than administrative efficiency. They can impair the conditions necessary for careful and independent judgment and erode public confidence in the fairness of the judicial process.

Misinformation and eroding trust

In a matter of hours, a complex judicial opinion can be stripped of context and reduced to a provocative headline, a misleading clip, or a few sentences circulated online. In that environment, an adverse ruling may be treated not simply as a decision the losing side believes was wrong, but as evidence that the judge was biased, politically motivated, or otherwise compromised. That tendency emerges against a broader decline in confidence in the federal judiciary, with perceptions of the courts increasingly shaped by whether decisions align with partisan or ideological preferences. The result is a serious challenge to judicial independence. When disagreement with a ruling becomes indistinguishable from distrust of the institution that issued it, public confidence can erode even when the judicial process itself remains sound.

Direct political and personal pressure

Efforts to alter the structure of courts in response to their decisions, threats of impeachment following lawful but unpopular rulings, proposals to withdraw jurisdiction over categories of cases after unfavorable outcomes, and legislation that interferes with judicial administration can each place pressure on the institutional independence of the courts. More immediate still is pressure directed at judges themselves. Threats, harassment, and intimidation transform an institutional concern into a deeply personal one, forcing judges to exercise independent judgment while confronting risks to their own safety and, at times, the safety of their families. Federal data reflects the seriousness of that threat, and California judges have increasingly confronted similar concerns. Behind every statistic is a judge, and often a family, asked to decide without fear while being given reason to feel it.

Why the bar must answer

Judges are uniquely constrained in defending their own independence. The ethical obligations that make judicial restraint essential to public trust also limit how judges may respond when that trust is challenged. A judge cannot answer every distortion of a ruling or engage every critic and must take care that a defense of the judiciary is not mistaken for a defense of a particular result. Judges speak principally through their decisions. But an opinion cannot hold a press conference, correct every mischaracterization, or explain to a skeptical public why judicial independence matters.

The bar is not similarly constrained. Lawyers occupy a distinctive place between the courts and the communities they serve. As officers of the court, they are bound to the administration of justice and by oath to the constitutional order that sustains it. Yet for many Americans, lawyers are also the most immediate and familiar representatives of the legal system: the attorney who drafted a will, navigated a custody dispute, sought redress for an injury, defended an accusation, or stood beside a family in a moment of crisis. That position, at once within the legal system and among the people it serves, gives the profession a particular capacity and responsibility to explain the court's work to the public.

That responsibility does not require lawyers to defend every judicial decision; quite the opposite. Lawyers challenge judges every day, and rigorous, reasoned criticism of judicial decisions is essential to the rule of law. But the profession must draw, and help the public understand, the line between criticism and intimidation, between disagreement with a decision and an attack on the legitimacy of the judicial process itself. It is one thing to argue that a court erred and to seek reconsideration or reversal through the processes the law provides. It is another to treat an adverse ruling, without more, as proof that a judge is corrupt or illegitimate, or to answer judicial decisions with threats or intimidation. The first engages the rule of law on its own terms. The second corrodes the conditions that allow it to function.

This responsibility extends across the profession: to statewide and local bar associations, specialty and affinity bars, law schools, and individual practitioners. Affinity and specialty bars can play an especially important role because they often speak to communities whose experiences with the justice system may differ markedly and whose confidence in legal institutions cannot simply be presumed. When these organizations explain what judicial independence protects, why it matters, and how it serves those whose rights may be unpopular or vulnerable, they can reach audiences that institutional statements from courts may not.

Above all, that defense must be principled, not partisan. The bar's commitment to judicial independence cannot turn on the judge's identity, the litigants' popularity, or which side prevailed. Its voice must be raised with the same conviction when the decision is celebrated as when it is condemned. A defense of judicial independence that appears only when one approves of the outcome is not a defense of independence at all; it is merely a defense of results.

An agenda for the profession

The bar need not invent this role from scratch. Models already exist, and many of the necessary tools are within reach. Pennsylvania offers one example. In 2005, the Supreme Court of Pennsylvania chartered the Pennsylvania Commission on Judicial Independence to strengthen public understanding of the courts, explain the importance of an independent judiciary, and respond to unwarranted criticism of judges and the judicial system. Its work is instructive because it translates principle into practice: plain-language materials explaining how courts operate; educational resources describing the respective roles of judges and juries; Constitution Day programs for students; a speaker's bureau; and ongoing public outreach that sustains the conversation beyond moments of controversy. Just as important, the Commission partners with the bar, academic institutions, and civic organizations. Its example demonstrates a simple point: defending judicial independence is most effective when the legal profession treats public understanding as an ongoing responsibility rather than a response reserved for moments of crisis.

Drawing on that model, bar associations can pursue a practical agenda along several fronts.

Build public understanding

Civics education should begin early and continue beyond the classroom. Bar associations can place lawyers and judges in schools, community organizations, and public forums; develop accessible explanations of how courts work; and explain why judicial insulation from political and public pressure protects litigants rather than judges themselves. Misinformation flourishes where understanding is absent. The most durable response, then, is not simply to correct falsehoods after they spread, but to build public knowledge that makes those falsehoods less persuasive in the first place.

Prepare for rapid response

Bar associations should establish

protocols before controversy arises, identifying when a response is warranted, who will speak, and how quickly the profession can respond. A standing roster of trained spokespeople, clear criteria for intervention, and principles that apply regardless of the judge's identity or the case's outcome can allow the bar to address serious distortions promptly without becoming an advocate for a particular ruling. Existing efforts, including committees devoted to responding to unfair criticism of judges, offer a foundation to build on. In an information environment measured in hours rather than days, a response mechanism that begins only after a controversy erupts may begin too late.

Defend the people who judge

Threats and intimidation should draw an unequivocal response regardless of the decision that provoked them. Bar associations can condemn threats against judges, advocate for sustained judicial-security funding and appropriate protections for personal information, and support networks that connect threatened judges and their families with practical resources and professional support. Judicial independence cannot depend on judges simply becoming accustomed to fear.

Strengthen the structure

The profession should advocate for adequate, stable, and predictable funding for the courts, as well as compensation structures that cannot readily be manipulated in response to judicial decisions. Chronic underfunding is not merely an administrative inconvenience; it can weaken the conditions necessary for careful adjudication, meaningful access to justice, and public confidence in the courts. Structural independence requires institutions with the resources to perform the work the Constitution and laws demand.

Accountability

None of these measures places judges beyond accountability. To the contrary, independence and accountability are complementary conditions of legitimate judicial authority. Judicial ethics must be enforced visibly and credibly, misconduct must carry consequences, and reasoned criticism of judicial decisions must remain vigorous. Independence is not freedom from the law or scrutiny; instead, it is freedom from coercion. Independent judgment must be protected from external pressure and arbitrary will, while remaining firmly governed by law. That is the balance Hamilton's conception ultimately demands, and the balance the profession must help preserve.

Renewed by every generation

From councils designed to prevent any one leader from wielding unchecked power, through a Declaration that condemned a king for making judges dependent "on his Will alone," to Hamilton's vision of a judiciary possessing "merely judgment," a common principle runs through the American constitutional tradition: independent judgment cannot rest on the restraint or goodwill of those who hold power. It must be secured by institutions strong enough to endure when restraint and goodwill disappear.

Institutional independence provides the structure. Decisional independence gives that structure meaning in every case a judge decides. But both ultimately depend on something no constitutional provision can guarantee: public trust. That trust is earned gradually, case by case, and can be lost with remarkable speed. Preserving it is therefore not incidental to judicial independence. It is essential to it. Here, the legal profession's responsibility becomes most urgent.

The founders established the constitutional foundations of an independent judiciary, but they could not preserve them for generations they would never know. That work passes to us. It belongs especially to lawyers, who have sworn to support the Constitution and who understand, perhaps better than anyone outside the judiciary itself, both the courts' indispensable role and their inherent vulnerability. A branch possessing neither force nor will has always depended on others to defend the conditions that make independent judgment possible.

The bar must be among the first to do so: in our classrooms, where understanding begins; in our communities, where trust is built; and in the public sphere, where that trust is tested. We need not defend every decision, excuse every failing, or place judges beyond criticism. We must defend something more fundamental: the conditions under which judges can decide according to law without fear, favor, or coercion. Constitutional design secured judicial independence for one generation. Whether it endures must be answered by every generation that follows. And for us, the time is now.



Judge Sergio C. Tapia II is Presiding Judge of the Superior Court of Los Angeles County, the nation's largest unified trial court, where he directs its resources toward meaningful access to justice for all. Appointed in 2013 by Governor Edmund G. Brown, he previously served as Assistant Presiding Judge, Criminal Division Supervising Judge, Assistant Criminal Division Supervising Judge, and in numerous leadership roles on the court. He serves on the Judicial Council's Trial Court Presiding Judges Advisory Committee and Court Facilities Advisory Committee, Governor Gavin Newsom's Judicial Selection Advisory Committee, and the Executive Board of the National Association of Presiding Judges and Court Executive Officers. He came to the bench after nearly seventeen years as a public defender. He also worked as an attorney at the Legal Aid Foundation of Los Angeles. A faculty member for the Center for Judicial Education and Research, he has spoken on artificial intelligence in the courts at Stanford Law School. He co-authored and presented research on justice innovation at the European Group for Public Administration's annual conference in Glasgow, Scotland. He is President of the California Latino Judges Association and the Los Angeles Superior Court Judges' Association. Bar associations across the region's diverse legal community have honored his service. Fluent in Spanish, he holds degrees from U.C. Berkeley and the University of Iowa College of Law.