

A Call to Action: Threats to Judicial Independence Risk Fair & Impartial Justice-

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Importance of a Fair and Impartial Judiciary

There are three separate but equal branches of government, as set forth by our Constitution and that make up America's democracy. The legislative branch makes laws; the executive branch enforces laws; the judicial branch, interprets laws. The point of creating three separate but equal branches is a separation of powers so one branch does not get too powerful and become oppressive.

Judges are under a legal duty to follow the rule of law. A judge must be free from the pressures of public opinion and from the influence of special interest groups so that justice can be based on the rule of law and not determined by the highest or most popular bidder. Judges may not promise to rule on certain cases in certain ways and can in fact be removed from judicial office for showing favoritism.

A strong and impartial, independent judiciary is critical to America's form of democracy. Judges must have the courage to do what they believe is correct under the rule of law, even when it is unpopular and even against obvious public outcry, protest and dissent. It is their job and sworn duty which ultimately results in a fair and impartial judicial system for everyone.

In the event a judge is errant or errs in a particular case, there is a system to challenge the judge's actions. (1) The appellate or reviewing court can review and overturn an incorrect legal decision or sentence; (2) The Commission on Judicial Performance can discipline and even remove a judge from office for judicial misconduct which violates the Judicial Code of Ethics. It is by one or both of these routes that a judge's rulings and conduct are properly reviewed.

For our system of government to work to protect all of our rights as promised by the Constitution, judges simply can't be afraid to make an unpopular ruling; judges can't take a poll of the public or voters and then put out a ruling pleasing to the majority. To bow to public pressure or census would cause our system of justice to collapse, and in such a system we can all forget our Constitutional rights because they will be gone. Once justice bends and bows, you do not have a democracy and the very structure of the Constitution is in danger.

This is precisely what happened in Nazi Germany. In 1934, all judges were made Nazi party members and became partisan. They were under oath to follow Hitler's orders and thereby became instruments of the Executive branch of government. Judges were no longer independent and the judicial branch was subsumed into the other branches of government. What this meant is that individuals' rights and liberties were gone. There was no recourse to the courts to challenge government's actions. There was no longer any institution to protect individuals.

Threats to An Independent Judiciary

Approximately 10 years ago, a judge in Sacramento made an unpopular ruling in a same-sex rights case. Within 24 hours of the decision, there was a Recall effort launched and an appeal filed. The judge in that case and the appellate court received a clear message that if the appellate court did not reverse the decision, both the trial judge and appellate justices would all face the same fate- a recall election. This tactic was deemed to be an act of extortion by many legal scholars of the day, and the recall attempt was roundly rejected thanks to the bench and bar coming together to fight the attack.

Just last year, an Orange County judge imposed an unpopular sentence in a child molest case, which the D.A. appealed. A recall effort was launched based on disagreement with the sentence. The judge in that case was a 15-year jurist who previously prosecuted gang murders as a deputy D.A. That recall effort failed when the proponents failed to get enough signatures to put the recall on the ballot.

Around the same time as the failed recall effort against the Sacramento judge, a group came from out of state with ideas to reform California. The group launched an initiative called, "Jail For Judges." Under the initiative, judges would be stripped of their judicial immunity, meaning they could be sued every time they made a ruling! Judges would be subject to criminal charges and civil damages, including going to jail, for their judicial decisions.

A recent recall effort has been initiated by a Stanford Law Professor, Professor Dauber, against Judge Aaron Persky of the Superior Court of Santa Clara County following a sentencing ruling the judge made in the case of People of the State of California v. Brock

Turner. After presiding over the criminal sexual assault case of the Stanford student, the judge followed the recommendation in the Probation Report from the County's Probation Department, and then sentenced Turner for the crimes of which he was convicted. The law professor who started the recall effort against the judge is a friend of the victim who believed the sentence was too light, thereby taking her "case" for the recall of the judge to social media which ignited the recall effort.

At this time, the promoters of the recall effort have formed a political action committee (PAC), they have appeared in the media and have heavily criticized Judge Persky in the social media, and they've launched a website to fundraise for the PAC and gather signatures to promote their recall effort.

This recall effort against Judge Persky, a jurist for 12 years who previously served as a prosecutor of sex crimes, was launched solely because of one sentencing decision that the judge made in one case. It is not our intention to comment on the facts of the underlying Turner case.

If a recall against a judge is successful, not only does the judge get fired, the judge typically loses his or her pension under the current judicial retirement system. A recall effort against any judge carries serious consequences against not just the judge who is facing a recall, but for the entire American judicial system. We are treading on very dangerous ground.

There Has Been Notable Opposition to the Recall Efforts Against Judge Persky

Recent graduates of Stanford Law School, totaling 2/3 of the graduating class penned a poignant letter to Professor Dauber to drop the recall effort against Judge Persky. The students point out that they are troubled by the idea that any judge could be fired over sentencing decisions that the public thinks are too lenient and that judicial independence is a cornerstone of due process and an essential prerequisite of a fair criminal justice system.

Likewise, 46 leading law school professors issued a letter opposing Judge Persky's recall pointing out, "the recall movement seeks to make Judge Persky and all other California judges fear the wrath of voters if they exercise their lawful discretion in favor of lenience. This poses a serious threat to the rule of law...".

The SF Chapter of ABOTA, American Board of Trial Advocates wrote a letter to denounce the Recall efforts. ABOTA stated, " SF ABOTA strongly denounces efforts to recall any judge based solely on the unpopularity of a single decision...preservation of an independent judiciary is an integral and essential component of our system of justice and the proper functioning of our democracy...This is not a new concept. It dates back to the foundation on which this country was built, and our Constitution."

Call to Action

The public's confidence in the judicial system is based on one thing, that a person will get a fair hearing before an impartial judge. This ill-advised attack on Judge Persky is a threat to the independence

of the judiciary which ultimately is a threat to the rule of law, and sets a dangerous precedent. This is an attack on our entire system of justice.

Judge Kronlund has developed a Power-Point to educate the community about the importance of an independent judiciary and how it is critical to a fair and impartial justice system. It has been used extensively in presentations to civic groups and college classes. She invites you to use this Power-Point to educate your communities. Please contact her via e-mail so she can share her Power-Point with you. Bak@sjcourts.org