

**LAW DAY 2003 – CELEBRATE YOUR FREEDOM:  
INDEPENDENT COURTS PROTECT OUR LIBERTIES**

**Judge Eugene A. Lucci  
Lake County Common Pleas Court**

The Constitution grants us rights, but without courts, the Constitution might just be a quaint document on parchment. It is the courts that enforce the Constitution, protect our rights as Americans, and make the rule of law a reality. Independent courts are fair, impartial, and dedicated to the rule of law. Judicial independence is the most essential characteristic of a free society. In a democracy, no one – no matter how powerful – is above the law, as long as judges have the authority to apply the law impartially and fairly.

Independent courts are an integral part of the U.S. system of government. Under the Constitution's system of checks and balances, one role of the courts is to restrain the legislative and the executive branches by ruling actions void when they violate the Constitution. This power was first exercised in 1803 in the case of *Marbury v. Madison*, when Justice John Marshall ruled that a federal law was unconstitutional. Many years later, Marshall said, "The Greatest Scorge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary." Our founders designed a constitutional democracy based on a system of checks and balances. You can't have checks and balances without an independent judiciary.

Judicial independence in a democracy means acting impartially, making just decisions and being perceived to act without the undue influence of outside forces. It ensures that every individual, of whatever social standing, is subject to the same protections and restrictions under the law and that powerful people do not manipulate legal proceedings. It preserves the ability of the Constitution to protect our freedoms and order our society by ensuring that one societal institution has the power to overturn laws that violate the Constitution. It guarantees that legitimate laws will be enforced in daily life, not simply stated as theory. It means that judges can decide cases before them without fear or favor, based on the law and the facts of that particular case. It's a way to provide for fair and impartial courts. Judicial independence does not mean that judges are free to decide cases according to their own whims or prejudices. It means judges have the authority to exercise their constitutional obligation to make hard decisions, unpopular decisions, without concern for retribution, personal or professional.

The independence of our judiciary is under attack in many ways. Interest groups and political parties are pouring millions of dollars into targeted judicial campaigns, using highly negative advertising to influence voters and outspending the judicial candidates themselves. Nasty judicial campaigns blur the lines between the role of judges as impartial arbiters and the political role of lawmakers and executive branch officials. The public begins to view judges as being just like any other politicians. This perception threatens the public's trust and confidence in our state courts. Campaigns are costing more and more. Usually there is no public disclosure of the sources of money. The trend is for special interests to produce and air television commercials, usually "attack" ads, against a candidate they oppose. Americans are prone to think these special interests are trying to shape public policy to their own ends.

The problems go beyond judicial elections. State legislatures cut budgets for the courts while caseloads continue to increase, threatening the institutional independence of courts by placing more pressure on judges to decide more cases with fewer resources. In many jurisdictions, compensation is an issue. There is a growing disparity between private practice and the judiciary. Some beginning lawyers make more than experienced judges do, while judicial salaries fail even to keep pace with inflation. Successful lawyers are reluctant to give up a lucrative law practice to serve on the bench. Recently, some judges have come under fire by politicians and the general public because their decisions seem unfair or inconsistent with the public's sense of justice. Some critics have even suggested that judges should be impeached for unfavorable rulings.

Decisions and opinions about judges and courts are made often without accurate information. The judicial process is designed to be fair and impartial, relying on careful development of facts and thoughtful deliberation about the law. Sound bites and film clips fail to convey accurately the nature of the system. Misinformation undermines public confidence and support for the justice system. Sensationalism based on a small number of the 100 million cases each year causes misunderstanding. Cases can be complicated and confusing trials supervised by fair and impartial judges are our method to develop truth to resolve disputes.

Can we have judicial independence and judicial accountability at the same time? Of course. The system has its own accountability in the right ways. Federal judges are nominated by the President and confirmed by the Senate. The American voter has a voice in this process. State judges are selected in various ways, each with its own measure of accountability. Judges can be disciplined, even removed, for illegal or unethical conduct. Litigants who feel they did not get justice at trial can appeal to a higher court. Ultimately, the power over the laws remains with the people. If the American people do not like how a judge or the courts interpret a law, they can bring pressure on the legislature and executive to change the law. This process has worked throughout the history of the United States. Four amendments to the U.S. Constitution and many amendments to State Constitutions were enacted specifically to overturn the effect of court decisions.

An independent judiciary assures all Americans that cases will be decided on their merits. All litigants know that their case will be decided according to the law and the facts, not the vagaries of shifting political currents or the clamor of partisan politicians. Decisions are based on what is right and just, not what is popular at the moment. Throughout American history, the independence of the judiciary has protected individual liberties and prevented a tyranny of the majority. Examples include extending voting rights, ending segregation, and protecting average citizens from unwarranted government intrusion.

An impartial judiciary is a cornerstone of our democracy, one of the guiding principles that sets us apart from other nations of the world. Indeed, when visitors from developing democracies come to the United States, they come to learn about and draw on our judicial system, not our executive or legislative branch models.