



# The Cost of Judicial Independence Is Accountability



**I**t's a lesson we all learned growing up. If you want independence, you have to earn it. And the price is not just age or status, it's accountability. If you borrowed the family car and wrecked it, you were probably accountable for some or all of the cost of the damage. But before you even got to borrow the car, my guess is that you had to satisfy your folks that you were a responsible driver and could demonstrate that attribute to them.

The legal profession has long supported the independence of the judiciary and demanded little in the way of accountability. Appellate court judges write opinions, so their performance is regularly reviewed, not just by the parties to the matter they

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are deciding but by every other judge, lawyer and interested private citizen who wants to read what the judge wrote.

But what about trial judges at the local level? Attendance at trials is no longer a common occurrence, even by the press, particularly in civil matters. So the accountability occurs 10 years into a judge's term when he or she stands for retention.

Recent events in both Luzerne and Philadelphia counties have exposed rogue judges who are about to be held accountable for egregious misdeeds after the fact. But what about the misdeeds that are not matters of criminal or even judicial attention but that drive lawyers nuts? What about judges who have forgotten what the practice of law is like or who never knew? What about judges who are mean-spirited or ill-tempered toward the lawyers who practice in front of them? And what about judges who are outright biased? Should we wait 10 years to address this behavior?

The Pennsylvania Conference of State Trial Judges is amenable to an informal process of identifying this small minority of the bench to address individuals who may have lost their way — and I emphasize that it is a small minority, because the overwhelming majority of judges are dedicated public servants who go about their jobs in the highest tradition of their calling. Whether an informal process is

enough in light of recent events remains to be seen. A task force created by past PBA President Andy Susko and chaired by past President Mike Reed is now looking at various models of judicial performance evaluation used around the country. The task force will report to the PBA House of Delegates on its conclusions, with input from both the bench and the bar.

Many of us have had bad experiences with a judge that were probably as much our fault as the judge's. But if you think you are the "victim" of a rogue, I'd love to hear from you. Every time I stand up and support the independence of the judiciary, I want to do it with the full knowledge that both our appellate and trial courts deserve nothing but full support.

We have some wounds to heal right now and we need to ensure that what has happened in Luzerne County does not happen elsewhere. It's hard to imagine that someone in the county wasn't suspicious about what was going on. Maybe they just needed an outlet that didn't exist. I'd like to see the PBA be a safe haven for any lawyer who has something to say about the court in his or her county. ☘

*Clifford E. Haines*  
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