

STANDING WITH HEROES

More than 200 years ago, a judge from a developing nation, sitting with his fellow justices in his court, told his president and his legislature that they were wrong and he was right. With no army to back them up, and little support to be found in the Constitution, he expected them to obey the order of the court.

Today, it is easy to see that this judge, Chief Justice John Marshall, changed the course of history. Justice Marshall declared that an independent judiciary was a critical limit on the President and the Congress of the United States of America. What's more, he then created the tool of judicial review to allow the Court to strike down unconstitutional laws. By standing up to unchecked power, Marshall was one of the first heroes of our new nation.

Marshall's heroism has echoes today in countries around the world that are trying to develop democracy. Just last December, my local bar association, the Beverly Hills Bar Association, joined legal professionals in Ukraine who were supporting the independent judicial review of their democratic electoral process. We commended the courage of the Justices of the Supreme Court of Ukraine who, despite terrible pressures from opposition within the country and from Russia's President Putin, stood up for independent judicial review of their elections. Inspired, we called on the global legal community to support the Rule of Law and the independence of the judiciary in Ukraine.

Judges in Albania shared a similar experience. A few weeks ago, I met with justices from their Constitutional Court. While we had a great discussion about the U.S. legal system, we also found common ground discussing the fierce attacks they face at home as they try to be independent judges. I compared their situation to a soccer referee who faces a hostile crowd after a controversial call. But they corrected me quickly: while the anger toward the referee is forgotten by the next match, the anger toward the judge remains.

Sadly, I couldn't disagree – anger toward judges in the United States is on the rise. When I suggested it is a never-ending process of vigilance to protect our judges and our judicial system, they shook their heads knowingly.

In Cuba, I had a chance to see the other side of the struggle – a place where judges lack the independence they need to be heroic. In conversations with Cuban jurists, I learned that the Cuban Constitution has many similarities with our Constitution. Judges and lawyers were convinced that their system worked, since the wise Cuban legislature would never pass an unjust law. I couldn't help asking: What happens if the rights guaranteed under the Constitution conflict with a law passed by the Cuban legislature, or with the manner in which the law was enforced by El Presidente? They deflected me several times. "Justice will prevail." "You are entitled to an attorney." "Our laws are fair." Finally, I heard their revealing answer: "We have no right of independent judicial review."

American greatness is not the product of “traditional values” or even mainly due to our natural and strategic resources. Instead, our success is due to our willingness to listen to the judicial process, with its vigorous debates and independent fact-finding role. “Traditional values” tolerated and even endorsed slavery, child labor, discrimination against women and non-whites, unfair economic competition, and unsafe products and working conditions.

But over the last 50 years especially, judges have often been heroes in setting the moral standard when others in power were afraid to. In 1954, Chief Justice Earl Warren and his fellow Justices of the Supreme Court created a moral revolution in *Brown v. Board of Education*. They acted unanimously to end segregation in the schools. Justice Warren knew if they didn’t, they couldn’t convince a reluctant nation to follow them. Subsequent Courts followed with defenses of privacy, the rights of defendants, and other challenges to arbitrary government power.

We are seeing heroism again today, as liberal and conservative judges stand together against attacks from vocal public groups, the Congress, and the President. One judge in the Terri Schiavo case has been expelled from his religious congregation. Judges and their family members are being shot and killed. Another has been threatened with recall for making an unpopular decision in a domestic partners case. The group that made this last threat says it will do the same to any other judge with whom they disagree.

In the face of threats against their bodies and souls, judges demonstrate courage simply by making independent decisions. Like John Marshall before them, they deserve to be recognized as heroes for standing up to defend our rights. They deserve to have us standing with them in support of our system of government.