



Defending a Vibrant and Independent Judiciary

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With July marking the official six-month countdown to the 2008 presidential campaign's largest-ever "Super Tuesday" primary, we can expect the mud-slinging to soon reach new heights. Unfortunately, one predictable target of these attacks will be uniquely unable to defend itself in the coming months—and that's the independent judiciary.

Political efforts to de-legitimize the bench for its proper function as the guardian of constitutional liberties have been under way for decades, of course, with the spotlight of presidential politics throwing the bugaboo of so-called "activist judges" into especially sharp relief every four years. Already, Sen. John McCain has set a new standard for hyperbole in announcing at presidential debate last May that, "One of our greatest problems in America today is justices that legislate from the bench, activist judges."

The danger of demonizing judges

has less to do with "legislating from the bench" than with cowing the judiciary into abrogating its role as a co-equal branch of government—and thereby weakening restraints on presidential and congressional power.

The Bar Association of San Francisco, under the leadership of President Nanci Clarence, recently created the Independence of the Judiciary Committee, on which I serve as chair. This committee seeks to educate the general public, respond to politically-motivated attacks, and remind our colleagues in the legal profession that we—as officers of the court—bear a responsibility to defend judicial independence.

Our nation is at a point in its history when the protection of our liberties is in strong tension with increasingly complex legal implications of medicine, technology and national security. It is times such as these when the co-equal branches of government must fulfill their constitutional duties with conviction and without interference.

It's up to all of us to stand for a vibrant, independent judiciary.