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LAW WEEK

## Courts must have freedom

*This is the third of several articles written by state judges commemorating Law Day (May 1) in Hawai'i.*

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The U.S. Constitution establishes the Judiciary as a separate and co-equal branch of government. Unlike elected officials, judges do not represent particular groups or advocate for specific policies. They are bound to apply the law to the facts of each case, without being influenced by public opinion or political platform.

The ability to make decisions without favoring one party or issue over another is the essence of judicial independence.

Some cases particularly highlight the importance and necessity of judicial independence. In the 1950s and '60s, a number of federal judges in the South made decisions furthering desegregation in the face of hostile public opinion and political disapproval. For example, Judge Frank Johnson used the *Brown v. Board of Education* (1954) ruling to strike down segregation on Montgomery's buses, vindicating Rosa Parks' refusal to move to the back of the bus.

He went on to apply the law in a series of extraordinary decisions and orders, which allowed a civil rights march to go forward, threw out an Alabama law excluding African Americans and women from jury duty, and integrated the University of Alabama.

Judge Johnson was socially ostracized in his home state of Alabama and was under the protection of U.S. marshals for many years. The Ku Klux Klan labeled him "the most hated man in Alabama," and Gov. George Wallace called him an "integrating, carpetbagging, scalawagging, bald-faced liar." But to the people whose rights he enforced, Judge Johnson was a hero.

In 1965, Martin Luther King Jr. said, "Judge Johnson gave true meaning to the word justice." However, judges can do justice only if they are allowed the independence to do so.

Of course, not all of the cases handled by judges are high-profile cases. In fact, the vast majority of a judge's work never makes any headlines, although to the parties involved, their case may be the most important matter in the world. However, when any case makes the news, it would be unfair and misleading to evaluate anyone, much less a judge, by a single case or story in the media.

Judges are human, and they can and do make mistakes. Fortunately, the system has built-in avenues through which judicial errors may be corrected. For example, the infamous *Dred Scot* decision of 1857, which may have hastened the Civil War, was overturned a decade later by constitutional amendments. In Hawai'i state courts, litigants who feel they did not receive justice can appeal a judge's decision to a higher court, all the way to the Supreme Court.

Further, judges themselves are also subject to review and scrutiny. Judges must adhere to a strict code of conduct that is monitored by the Commission on Judicial Conduct, and are reviewed for retention by the Judicial Selection Commission. Both commissions are independent panels composed of members of the community who are charged with preserving the quality and integrity of the Judiciary.

So, while judges must be free to make decisions independent of outside influences, checks and balances ensure that this freedom is not abused and that the judges' decisions are based only on the law and evidence presented in court.

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