When I started brainstorming for this issue, I was troubled by the extensive national media coverage of a recall election for a trial judge in California, Judge Aaron Persky. I was frustrated that the large volume of coverage had so few facts regarding Judge Persky or the already infamous sentencing decision that underlay the recall effort. While judicial accountability is critical to the credibility of our courts, I was also alarmed by the lack of any coherent communal standards for evaluating whether to recall a judge in our national dialogue. The plan for this issue resulted. We had no idea that the Kavanaugh hearings and the national attention to the Larry Nassar sentencing would only further spotlight community evaluation of judicial officers. How should we judge the judges, and how do we balance the need for impartiality with the need for accountability?

First, we hear from an accomplished lawyer and gifted former journalist, Jeff Hunt. His article gives us the facts we wanted to hear behind the Persky recall. Not surprisingly, the situation raised more challenges, regardless of your perspective, than the media coverage suggested.

In our second article, Justice Barbara Pariente and Melanie Kalmanson give us frontline accounts of efforts to “send a message” to judges. They discuss the dangers of a judiciary too beholden to popular will and make a case for that apparently passe notion of judicial independence. They also explain objective standards for evaluation of judges.

In our third article, we turn to the other side of the spectrum. Prof. James Gibson and Michael Nelson discuss the critical importance of accountability to the credibility of the judiciary and the risk of being known as The Least Accountable Branch. The authors question the premise that judges should be insulated from the views of the community. They discuss the scope of judicial discretion and question how a judiciary can be accountable if the subjective exercise of that discretion is effectively deemed unreviewable.

Our fourth article from Prof. Jordan Singer provides a broader perspective on the relative roles of accountability and independence for the judiciary. Prof. Singer reviews some history of our attempts in judicial selection systems to balance these sometimes competing elements. In his list of sample retention challenges, you could add one in my state of Colorado last year. A highly regarded trial judge made a ruling that a powerful civil attorney disliked and the attorney funded an advertising campaign against him that our nonpartisan, merit-based system was not equipped to handle. He was retained so, like other examples cited by Prof. Jordan, you may see that as an example of the strength of the current system or a cautionary tale of troubles to come.

Finally, I provide an essay reminding us of a time when the judiciary really was no more than a reflection of the popular prejudices of the day and how some of those influences are still with us. While tied to our topic, my essay is intended more to follow the advice of our psychology experts from issue 54:2 to be mindful of the purpose and value in our work.—David Prince

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The cover photo is the Bent County Courthouse in Las Animas, Colorado. The courthouse opened in 1889 and is currently the oldest functioning courthouse in Colorado. Additionally, the courthouse is on the National Registrar of Historic Places. Cover photo by Mary Watkins.