

Steven Puiszis Authors Article, “The Need For Lawyers to Protect Judicial Independence”

In The News | 4 min read

Feb 11, 2013

For the past several years, I have had the privilege of serving as Chair of DRI’s Judicial Task Force. One of the IDC’s core values is to support a fair, unbiased and independent judiciary. As a result, at this judicial reception the IDC asked me to speak about the need to protect the independence of the judiciary and what lawyers can do to protect judicial independence.

When I was a young attorney the need to protect the independence of the judiciary was not something on my radar. I was worried about handling my cases well, and developing a book of business. And, back then, the threats to judicial independence were few and far between.

Unfortunately, that is no longer the case, which is why DRI formed its Judicial Task Force in 2005. One of the goals of our Task Force is to educate lawyers, and members of the defense bar about the need to protect judicial independence. That is why I hope many of you will read DRI’s report that our Task Force issued, *Without Fear or Favor* in 2011. It outlines a number of today’s pressing challenges to judicial independence. It is a wonderful resource.

What are the types of challenges we are seeing today:

- Federal judgeships are sitting vacant.
- Judges being threatened with impeachment over their decisions.
- A funding crisis that is closing our courthouse doors around the country.

DRI has quietly worked behind the scenes to attempt to assist state defense organizations like the IDC on these types of judicial independence issues.

But the focus of my comments is on another threat to judicial independence—the unfair criticism of the judiciary, which is having a corrosive impact on the public’s perception of our courts and the judiciary.

Video clip from the [Iowa 2010 Supreme Court election campaign](#)

Iowa is a merit selection state, and three Iowa Supreme Court judges lost a retention election in 2010 due to the Court's unanimous vote on same sex marriage. Note what you did not hear in that TV ad: There was no challenge to the qualifications, competence, or ethics of the Iowa Supreme Court judges, nor was the reasoning of the Court's decision challenged. The criticism was purely political in nature.

It is not unusual for lawyers to disagree with a court's decision. Debate can be healthy; and if a court's decision is wrong on the facts or the law, it is fair to criticize it. However, today we are seeing attacks on the judiciary that are purely political in nature, having nothing to do with the facts or applicable law.

Courts are being asked to decide cases involving sensitive social and political issues. And it does not matter whether the losing side is conservative or liberal, Democratic or Republican, when a case involves a hot-button social issue, the losing side will criticize the decision as a way to galvanize their members. A court will be labeled as a group of "activist judges" when all the court did was decide a dispute presented to them.

The Iowa 2010 Supreme Court election was a "game changer." Politicians from around the country went to Iowa to make the court's unanimous decision on same-sex marriage a campaign issue. What special interests wanted to do, and what they did was to send a message, not just to the Iowa Supreme Court, but to every judge in the country saying that if you decide a politically or socially sensitive case contrary to our views, we are coming after you. It empowered opponents of a fair judiciary to try and impose their will on the courts, and frankly, to intimidate them. Today, many citizens believe that judges should be criticized and held accountable simply for making a decision they do not like or agree with.

The judiciary is that thin black line that protects our rights and the rights of our fellow citizens. It is where we have always turned to ensure the protections we hold dear. The last thing we can have in a democracy is a judiciary concerned with public opinion polls. As lawyers, we need to defend judges so they will fearlessly follow the rule of law, base their decisions on the facts and the law, even when doing so will lead to a politically unpopular result or one on which we disagree.

So what can the lawyers do about unfair criticism? First, understand that a judge must abstain from publicly commenting about a pending or impending proceeding in any court. Unfortunately this allows groups challenging judicial fairness to gain traction with the public.

The Illinois Rules of Professional Conduct encourage lawyers to defend judges and courts that are unjustly criticized. Remember one of the lessons we learned from Iowa in 2010 is that help from the organized bar came too little and too late. We cannot let that happen again.

How many times have you as a lawyer made a representation as an "officer of the court?" There are three

branches of government, and you are an officer of the judicial branch. As such it is our responsibility to protect the independence of the judiciary.

So I am asking lawyers to break some mirrors. And, by that I mean do not fall prey to the notion that there isn't anything we can do to protect judicial independence. There is plenty we can do. We can educate members of our community about what the separation of powers really means, how a judge goes about deciding a case, what qualities make up a good judge, and we can tell them when criticism of a judge, or a court, or a decision is unfair and why. We can write op eds or letters to the editor correcting misperceptions about the role of the judiciary in our society. When you have the opportunity to speak to members of an community group, stress these points and the role that the judiciary plays in protecting all of our rights.

Lawyers can no longer ignore the issue, we all need to protect the independence of the judiciary.

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