

Midyear Meeting News

Judicial Independence Under Siege

Although attacks on the independence of our judiciary are fierce, it is not the first time in America’s history that such enmity has occurred—nor is it likely to be the last.

“We have a level of antagonism that is not going to go away overnight,” with complaints against the judiciary coming from both the political left and right, Law Professor Charles Gardner Geyh, Indiana University Law School, told an audience of national bar executives gathered Thursday for the program “Judicial Independence Under Siege: Is Our Message Getting Through?” during the ABA Midyear Meeting in Miami.



Panelists discuss attacks on judicial independence before bar association leaders (Left to right: Charles Gardner Geyh, Virginia E. Sloan, Gina Holland, Martin Dyckman and Thomas C. Barnett Jr.)

Harsh criticisms of the judiciary arose during various historical “realignments” of the country, such as the reconstruction in the aftermath of the Civil War, during President Franklin D. Roosevelt’s New Deal years, and most recently when control of the Congress shifted to the Democratic majority, said Geyh.

The drumbeat of complaints that judges are not doing their jobs has left the public unsure about judicial impartiality and deeply conflicted in their confidence in a fair and impartial judicial system, he said, citing a poll that indicated 46 percent of the public perceive judges as “arrogant and out of control.”

As bar associations and their leaders continue to apply themselves to countering these complaints, several strategies might help clarify the message. Geyh recommends “a change in our vocabulary” when addressing the public, from defining the issue as one of judicial independence under attack to one of defining the value of fair, impartial and strong courts. The public is more comfortable with such language, and the message will resonate more effectively with them.

Panelist Virginia E. Sloan of Washington, D.C., president of The Constitution Project, concurred, stressing that the public needs to hear, citing personal examples, how their lives would be directly affected by the loss of an independent judiciary.

Outreach by bar associations and executives to news reporters in their area can help build a rapport early so that later these reporters might be more open to being “pitched” to cover stories on judicial independence, noted panelist Gina Holland, Associated Press U.S. Supreme Court reporter. Martin Dyckman, former columnist for the St. Petersburg Times, stressed the value of reaching out to the media via editorial boards, even if at first they are not interested in the issue.

“Outreach, outreach, outreach! Make a pest of yourself to the media,” he advised.

The program was sponsored by the National Association of Bar Executives, the National Conference of Bar Presidents, and the National Conference of Bar Foundations.

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