



President's Message

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The IDC's promotion and support of a fair, unbiased, and independent judiciary ranks first among its core values. The independence of the judiciary is enshrined through the Constitution's separation of powers, which recognizes that judges must have the freedom to decide cases impartially and without political pressure or influence; our democracy and the rule of law depend on it. The IDC's declaration and commitment to an independent judiciary is not new: a past President, Steve Puiszis, authored an editorial opinion that appeared in *The IDC Quarterly* (Vol.23, No.2) in 2013 in which he highlighted the need for lawyers to protect judicial independence. Steve spoke knowledgeably and with passion on this issue, having chaired DRI's Judicial Task Force and served as editor of DRI's report, "Without Fear or Favor," which identified nationwide threats to an independent judiciary in 2011.

Unfortunately, threats to an independent judiciary have only increased in today's heated political climate. The 2016 presidential campaign saw repeated, personal attacks on the impartiality of a federal judge and his ability to decide a particular case based on the judge's Mexican ancestry (the judge was born in Indiana). The attacks have not abated since last year's presidential election. A different federal judge found himself under attack and referred to disparagingly as a "so-called judge" after he stayed an executive order mandating a travel ban; the suggestion was made that the courts were "political" and that they should be blamed for any act of terrorism that takes place as a result of the judge's decision to stay the travel ban. Whether intended or not, these and similar statements and tweets undermine public confidence in our judicial system.

To be sure, it is a time-honored American tradition and constitutional right for citizens to disagree with court decisions on controversial issues. And not just ordinary Americans—Presidents Jefferson and Jackson had their differences with Chief Justice Marshall; Lincoln with Chief Justice Taney; Roosevelt with Supreme Court decisions striking down early New Deal legislation; and more recently, Obama with *Citizens United*, to name a few of the better known disputes in our history. Judges can and should be criticized for their decisions on the merits. Judicial opinions are not sacrosanct; reviewing courts overturn their previous decisions as well as lower court decisions frequently. But today, many people across the political spectrum believe that personal attacks on judges are fair game when they simply dislike a judge's decision. Such personal attacks intended to intimidate judges threaten their ability to perform their sworn duty and discharge the duties of their office.

Closer to home, judicial independence in Illinois is threatened by the unprecedented sums of campaign money spent to target judges. In 2010, special interests and advocacy groups spent over \$3 million in an *uncontested* Illinois Supreme Court retention election. In 2014, in the most recent judicial retention election of an Illinois Supreme Court justice, a group of trial lawyers funded an eleventh-hour television campaign ad (with two lawyers alone donating \$1.2 million) that suggested that the Illinois Supreme Court justice had sold his vote to overturn multi-million dollar judgments against Phillip Morris and State Farm in return for their contributions to his 2004 election campaign. That attack ad stirred up last-minute support (and money) for the justice, who received 60.7% of the vote and was narrowly retained. At the time, our President, David Levitt, wrote about the late infusion of money in that election in *The IDC Quarterly* (Vol.25, No.1) in 2015, and how it threatened judicial independence in Illinois.



According to a column recently appearing in the Chicago Daily Law Bulletin, “Attack on Courts, Judges Grow as Money Pile Gets Higher and Higher” (Vol.163, No.214), the flood of outside money in the most recent election cycle in 2015-16 for state judicial races topped \$19 million nationwide. Ten state judicial races across the country each exceeded \$1 million. As the spending arms race escalates, the state judicial selection process has become more partisan and politicized with each cycle. Regardless of which candidate wins, the loser every time is the public’s confidence in a fair and independent judiciary.

Judges by their Code of Judicial Conduct cannot effectively answer when politicians and special interest groups attack them on social media and through expensive advertising campaigns; we, as lawyers and officers of the court, must answer unwarranted attacks. The Illinois Rules of Professional Conduct encourage lawyers to defend judges who are unfairly criticized (“[A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority”) (Ill. R. Prof. Conduct (2016), Preamble)). Moreover, as a matter of public education, we can author op-ed articles for newspapers on the importance of a fair and independent judiciary and write letters to the editor and correct misconceptions regarding the role of the judiciary. We can accept speaking engagements to educate the public. Finally, we can find ways to improve campaign funding, disclosure and spending limits for judicial elections, and work with other organizations and bar groups to support open lines of communications between bench and bar. All of us must be prepared to protect the independence of the judiciary and respond to unfair attacks on judges; the stakes are too high for us to remain silent.

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org.