

# Speak to Values:

## How to Promote the Courts and Blunt Attacks on Judiciary

John Russonello

Americans think about their judicial system the way they think about the water departments in their towns: the local water department is absolutely essential, but only comes to people's minds when something appears to malfunction: a water main explodes, water restrictions go into effect because of shortages, or reports of contamination set off alarms. For the courts, it is usually a controversial decision that results in rising criticisms of judges.

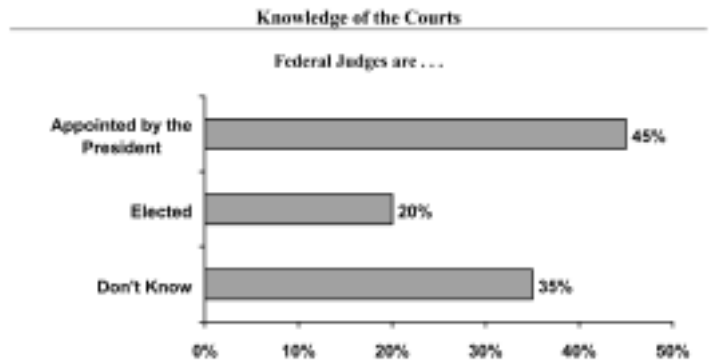
There is not much the courts can do to avoid rulings that will create hurt feelings and heated debate. Controversial decisions will always be with us. There are steps that court advocates can take, however, to minimize the impact that controversies have on long-term attitudes toward the courts.

This article will outline a number of ideas for communications that could help to promote stronger public support for the courts when they do come under attack. The ideas take into consideration the desires, motivations, and values of the American public that have been learned from years of conducting national and statewide public opinion research on the judicial system for clients such as the ACLU, Justice at Stake Project, the Youth Law Center, and the Open Society Institute, among others. Here are some of the observations on American public opinion that lead to suggestions for court advocates.

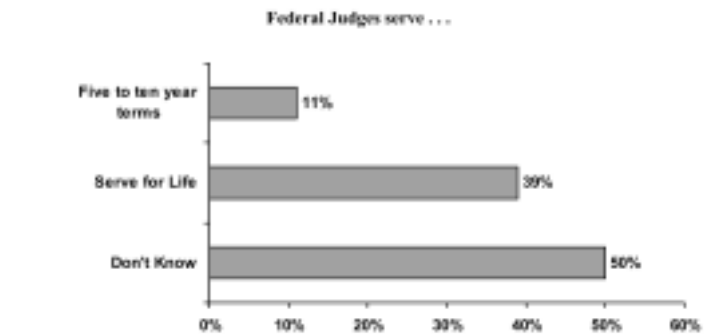
Most Americans do not follow the day-to-day workings of the courts, but they have a firm grasp on the purpose of our judicial branch. We hear it in the voices raised for the rights of women and minorities in cases of discrimination. We also hear it in the criticisms of provisions of the Patriot Act that water down judicial review of law enforcement actions. Americans cannot recite the Constitution, but in our ongoing research group discussions in every region of America, conducted for the ACLU, they demand a strong system of "checks and balances," even as the country is focused on fighting terrorism.

We have found that protecting constitutional rights is a place where conservatives and liberals meet on common ground. The secret searches of a person's home authorized by the Patriot Act evoke as strong a reaction among businessmen in Salt Lake City as with liberal women with whom we spoke in Chicago—and their reactions stem from lack of sufficient court review.

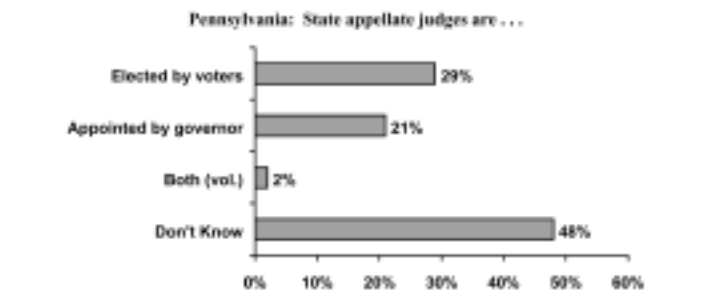
The generally positive attitudes toward the courts are built on a foundation of affirmative expectations and competing values, mixed with some ignorance and distrust. Americans hold generally favorable but soft opinions about both the state and the federal courts. In a national survey we conducted, we found that a healthy two-thirds majority of adults in the United States felt the federal courts are fair and impartial, but fewer than one in seven said these qualities describe the courts "very well." On the state level, we find similar attitudes. When we asked Pennsylvanians how much confidence they have in their state courts, three quarters expressed confidence, but only one in five said "a great deal" of confidence.



Q. Do you know if federal judges are appointed by the President, are they elected, or are you not sure? Source: BRS national survey; n=1,200 adults; February 1998; Attitudes Toward the Federal Courts; for the ACLU.



Q. Do you know if federal judges serve five year terms, ten year terms, do they serve for life, or are you not sure? Source: BRS national survey; n=1,200 adults; February 1998; Attitudes Toward the Federal Courts; for the ACLU.



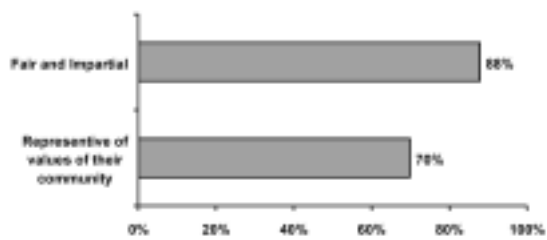
Q. The state courts are divided into courts that hear trials, and courts that hear appeals, called appellate courts. From what you know, are state appellate court judges mostly appointed by the governor, or elected by the voters, or are you not sure? Source: BRS statewide Pennsylvania survey; n=1,091 adults; March 2002; for Justice at Stake and Pennsylvanians for Modern Courts.

Attitudes about the courts are grounded in the values of fairness, independence, accountability, and the sense that the courts should reflect the nation's beliefs. Sometimes these values compete. For example, one of our national polls showed that a sizeable majority (68%) believed that federal judges

## Important Qualities of Courts and Judges

### Pennsylvania: Important Characteristics of State Judges

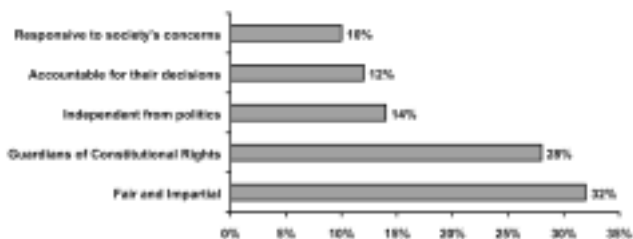
(Percent saying very important)



Q. How important is it to you that state court judges have the following characteristics: Is it very important, somewhat important, not very important, or not at all important for state judges to be: [answers in chart above] Source: IRES statewide Pennsylvania survey; n=1,001 adults; March 2002; for Justice at Stake and Pennsylvanians for Modern Courts.

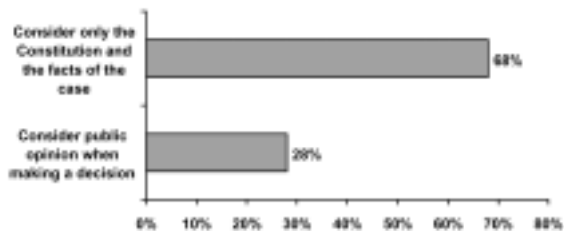
### Most Important Quality of the Federal Courts

(Choose one)



### Consider the Constitution

Federal Judges should . . .



Q. With whom do you agree more: those who say federal judges should consider ONLY the Constitution and the facts of the case, or those who say federal judges should also consider public opinion when making a decision? Source: IRES national survey; n=1,200 adults; February 1998; Attitudes Toward the Federal Courts; for the ACLU.

should only consider the Constitution and the facts when deciding a case, without any attention to public opinion.

In our statewide survey for Pennsylvanians for Modern Courts, 88% of the state said it was “very important” for state judges to be fair and impartial, while a lesser 70% described as very important that judges be representative of the values of their community.

This 70% score makes the point that we cannot ignore the public’s desire for courts not to stray too far from community norms, and the desire for some form of judicial accountability. These values will dominate the public debate unless people have heard another message on the need for fair and impartial courts that follow the law and the facts.

The sense that there should be some accountability in our

courts leads many Americans to oppose lifetime appointment of federal judges, and in our experience in Pennsylvania, to favor electing state judges over appointing them.

Lifetime judicial appointments are problematic to the public for several reasons. In our national survey on judicial independence in 1998, we found majorities of Americans believed lifetime judicial appointments too often lead “to incompetent judges who are difficult to remove from the bench” (76% agree), or to judges who are “out of touch with the will of the people” (64% agree). The public’s concern over accountability was also reflected in the widespread belief that there are “not enough remedies for correcting bad decisions by federal judges” (70% agree). In focus groups in Pennsylvania, we heard voters say that appointing state judges would be “more political” than electing them.

These doubts are fed somewhat by the public’s limited knowledge about the courts. While Americans generally understand the constitutional role of the federal courts and the opportunity for appealing court rulings, we found a majority (51%) unaware that judges are bound by precedent in their decisions. Majorities also did not know that federal judges are appointed (55% did not know), or that they serve for life terms (61% did not know). In Pennsylvania, nearly seven in ten adults (69%) did not know that they elect state appellate court judges.

Critics of the judiciary, particularly those seeking to restrict access to the courts, have played on these public sentiments and lack of information. They portray judges as not being fair or reflective of national norms, and they criticize so-called liberal activist judges who they claim make rulings that follow their own views rather than the law.

Our research suggests that attacks on activist judges sometimes ring true to the public unless countered with another point of view. That alternative point of view to bolster public appreciation for the judicial system should have at least four elements.

First, the public must hear a constant drumbeat of messages from court advocates about how the courts defend the rights of all Americans. Pretend the courts are a candidate for office and you need to tell your constituents why your candidate is qualified. For the courts, it would be stories of individuals who have been wronged by big institutions—government, industry, business—and who used the courts as a last resort for justice. An elderly woman gaining the right to stay in her apartment, a veteran using the court to obtain health care that was denied by government bureaucrats, communities like Woburn, Massachusetts, and Anniston, Alabama, which held W.R. Grace and Monsanto accountable for the poisons dumped in their ground, to prevent the same thing from happening to other communities. These are the types of affirmative stories that make the case for fair and independent courts.

Second, make your stories contemporary. Americans remember historical allusions, but we are a society that values change, rarely looks back, and believes that yesterday’s solutions should not be expected to fit today’s problems.

Third, always remember that your cause is not to defend judges, but to strengthen faith in the courts. The judiciary’s point of salience with the public is the courts’ role to defend individual rights. Protecting the institution that is the

defender of rights is more important than focusing on individual judges. The reason for Americans to care about the courts is that the courts work for them.

Fourth, building long-term public support for a strong judiciary will require a better informed public. Our research indicates that those Americans with the most knowledge of the ways the federal courts function are among the most likely to reject attempts to reduce the courts' powers. Having an understanding of the role of precedence, appeals, constitutional review, and other aspects of the federal courts reinforces an appreciation for the courts and their role as constitutional guardian and protector of individual rights.

The unifying theme across these points is that the courts are special places where the powerless in society can challenge the powerful on a more equal footing than anywhere else. Making the case for the courts can be woven into programs carried out by state judges associations, state bar associations, and civic and civil rights organizations from the League of Women Voters and AARP to the ACLU and the NAACP.

These programs may be run by lawyers and judges, but they do not need to be about judges and lawyers. Instead, they should let ordinary people tell their stories of hope.

By extending these programs to schools to give students in junior high and high schools a picture of how the courts are relevant to our lives, we will begin to build a stronger base of

public—and ultimately political—support for an independent judiciary.

Even if we tell the flesh and blood stories of the courts as champions of fairness, it will not prevent individuals or interest groups from protesting specific decisions or vilifying specific judges. There will always be cries of a water main break at some point or other. But a program of positive communication can enable the public to see with ever more clear vision that the system works.



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