

# Countering the Critics II: Suggested Responses to Tough Questions



## Least Understood Branch Project



Copyright 2007 © American Bar Association

This pamphlet has been prepared for the Least Understood Branch project, a joint effort of the American Bar Association Standing Committee on Judicial Independence and Judicial Division.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

The graphic on page five was designed by Margie Elsberg and is reprinted with her permission.

## **Table of Contents**

<b>I.</b>	<b>Opening/Sample Transition from DVD</b>	<b>4</b>
<b>II.</b>	<b>6 Important Tips</b> .....	<b>4</b>
<b>III.</b>	<b>POTENTIAL RESPONSES TO TOUGH QUESTIONS</b> .....	<b>6</b>
<b>IV.</b>	<b>Conclusion</b> .....	<b>11</b>
<b>V.</b>	<b>Message Platform</b> .....	<b>12</b>
<b>VI.</b>	<b>Notes</b> .....	<b>13</b>



The ABA Standing Committee on Judicial Independence and the Judicial Division, joint partners in the Least Understood Branch project, are printing this pamphlet in response to the many requests from readers of our first pamphlet *Countering the Critics* for examples of responses to the tough questions about our courts.

In this pamphlet, we have drafted sample responses to these “tough” questions in an effort to prepare speakers for talks and discussions with the public on the topic of our nation’s courts. By no means are these the perfect responses in whole or in part. They are a starting point, something to help get you to the “safe island” introduced in *Countering the Critics*. Used in conjunction with the techniques introduced there, these responses will prepare you to respond to a wide array of questions on the subject of fair and impartial courts.

Where you see a reference to the DVD, we are referring to the DVD entitled *Protecting Our Rights, Protecting Our Courts*. We recommend that speakers use this DVD as a companion to our guides.

If you have any questions relating to any of our materials, please contact Tina Vagenas at [VagenasK@staff.abanet.org](mailto:VagenasK@staff.abanet.org).

Good luck! We hope you find these materials helpful.

ABA Standing Committee on Judicial Independence

ABA Judicial Division

## I.

### Opening/Sample Transition From DVD: *Protecting Our Rights, Protecting Our Courts*

We recommend starting your presentation (after a brief introduction) by playing the DVD, *Protecting Our Rights, Protecting Our Courts*. The DVD serves as a good conversation starter. You could tell the audience that the DVD is meant to depict what our courts do, what people should expect, and what they have every right to expect. Thereafter, you could segue into the question-and-answer period in the following manner:

“So, what should we expect from our courts?”

- Do we want to know that a judge has not decided our case before hearing the evidence? Of course.
- Do we want to know that we can bring our disputes to a court where we will be heard? Yes.
- A recent study by Justice at Stake found that 84% of Americans agree that we need courts free from political influence and 62% agree that courts should be accountable to the Constitution. The fact is that, in most cases, this is exactly what we get from our courts – a fair and impartial review of our disputes.
- So what is it that **you** want from **your** courts?

## II.

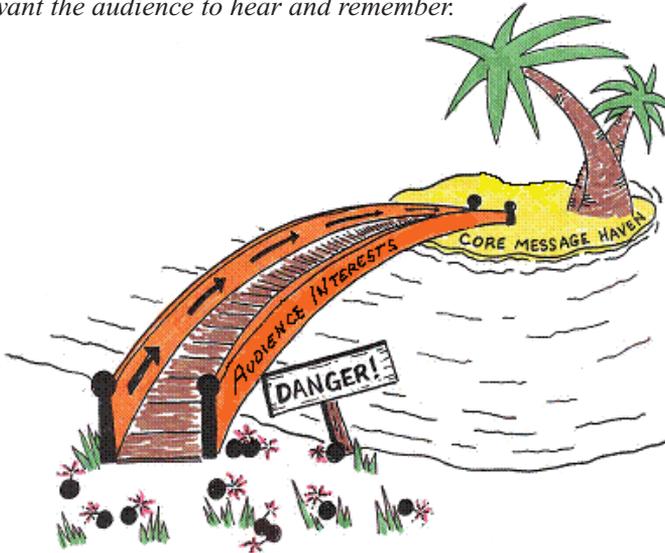
### 6 Important Tips

As you prepare to respond to any questions that might come your way, you should revisit the tips in *Countering the Critics*. Before we move on to potential responses, here is a brief refresher course and some additional tips:

1. Tailor responses to specific audience make-up:
  - Religious Organizations
  - Minority Community
  - Business Community
  - High Schools
  - Civic Organizations
  - Media
  - Legislators
2. Keep answers brief yet respectful.

3. Always *bridge* back to your key message platform.

*Bridging: Use the question only as a starting point to get to your Core Message. Remember, the point that you want your audience to take away is that the United States and our Constitutional democracy need “Fair and Impartial Courts,” so pause to reflect and decide on how the question or comment relates to that point. When you start to respond, spend a little time talking about the questioner’s specific issue, then broaden your point so you can bridge to your Core Message and finish with confidence. Remember the message we want the audience to hear and remember.*



4. Do not ignore problems. Be honest by admitting and facing them. Then bridge your way back to the safe island!
5. Have both *Countering the Critics* and *Countering the Critics II* with you during your presentation. Both pamphlets are small, and you can easily refer to them if you need to refresh your memory on a suggested response. Make notes in the margins and use the last pages for more extensive notes. In this way you will have everything you need within arm’s length.
6. Finally and very importantly, familiarize yourself with the burning judicial issues in your state and community before speaking and think about challenging questions you may receive *before* you arrive at your talk. Read your local newspapers, watch the news, and the political talk shows—all of them! In other words, tune into everything across the wide spectrum of concerns and ideas.

### III.

## POTENTIAL RESPONSES TO TOUGH QUESTIONS

### SOCIAL ISSUES

#### **Abortion, Stem cell research, Adoption/Custody, Same Sex Marriage:**

*Q: The legislative branch of our government regularly examines issues that affect our everyday lives. Legislators strive to enact laws for the overall good of society. Sometimes they enact unpopular laws. But why do the courts meddle in matters such as these? Shouldn't they leave these to the legislative branch and also let people rely on their religious leaders for guidance on such matters?*

**A:** Our courts don't 'meddle'. Unlike legislatures, and with the exception of the U.S. Supreme Court which typically decides less than 100 cases per year, courts don't pick and choose cases or issues to address. Millions of cases are filed by individuals or companies in our state and federal courts every year, some of which present these sometimes difficult issues for courts to decide. These are all highly charged, emotional issues for many Americans. In a democratic society, we value diverse viewpoints. We pride ourselves on being able to have our own ideas and beliefs, and when there are honest disagreements about how to balance those rights, fair and impartial courts are where these disputes are often aired and decided, free from political or religious intervention. Very few cases present these controversial issues to our courts. You rarely hear anything about the millions of other cases that are routinely resolved by our fair and impartial courts without any controversy.

#### **Medical Malpractice/Tort Reform:**

*Q: We all hear about frivolous lawsuits and run away verdicts. The lawyers get a big fee and the clients end up with very little. We need to protect doctors and keep health care available. Why do lawyers and judges allow frivolous suits to go on?*

**A:** People who study lawsuit patterns across the country tell us that the facts don't back up claims of abuse of the system. In fact, most people filing lawsuits believe they have legitimate claims and they want to be heard. Most lawyers take these cases because they believe they have merit, and most settlements are well within the bounds of reason. The place for these matters to be heard is fair and impartial courts.

Can more be done to improve the way some of these disputes are handled? Absolutely. That's why the courts and the legal profession are developing alternative dispute resolution outlets – systems for airing some disputes that can be resolved without more formal court proceedings. That's in everyone's best interest.

## **CONSTITUTIONAL ISSUES**

### **Activist Judges/Accountability:**

**Q:** *How can we handle activist judges who legislate from the bench?*

**A:** Most people define “activist judges” as those with whose decisions they disagree. People who like judicial decisions hail those judges as champions. We all need to remember what a judge is supposed to do: examine the facts and apply the law in a fair and impartial manner. As long as a judge does this free from outside influences, we should take pride in the proceedings and respect the judge's role in the process.

### **Death Sentence/Appeals:**

**Q:** *If the law is so fair, how do you explain the disproportionate number of minorities on death row and in jail?*

**A:** We've come far in terms of civil rights and race relations since the 1950s and 1960s—in and out of the courts—yet we clearly have a long way to go. This is a problem that has many parts, and the solutions need to come from lots of people since they all have an impact on the way justice is meted out. We need the help of governors, county executives and police as well as legislators, prosecutors, lawyers, judges and juries. Additionally, we need pressure from our citizens. The goal, of course, is that our justice system must treat everyone the same, and while that happens a great deal, I have to agree that there is far too much inequality today. Courts cannot address these issues alone.

### **Free Speech/flag Burning or Pornography:**

**Q:** *Why are the courts so concerned about protecting the free speech rights of those who burn our flag and distribute pornography? These people wound our democracy and denigrate our society.*

**A:** Our forefathers sought to protect the right of free speech for all Americans. That means that each of us is entitled to our opinions, and we have a Constitutional right to express those—but it is not absolute. We, as Americans, also have a protected right to disagree with the

opinions of others, including our president. Even campaign rhetoric is protected. Community standards determine what is or is not pornography. When disagreements or disputes arise on these and other important matters, fair and impartial courts are where these disputes are heard and resolved. Judges and juries are provided with the tools they need to maintain that delicate balance between individual rights and the protection of the community at large.

### **School Prayer:**

**Q:** *With violence and drugs all around them, our children need God in their everyday school lives. We prayed every morning in public school when I was growing up and that's what should happen today. Why do courts interfere with our right to instill these same values in our children?*

**A:** America is a melting pot of many cultures and religions. The Pilgrims came here to escape religious persecution. Our forefathers sought to provide for freedom of religion while making sure that the government didn't favor one religion over another. Public schools—which are, after all, local government institutions—may very well be a place for studying and comparing religions, but they are not the place for religious practice. When there are questions or disagreements about where the line between church and state is drawn, fair and impartial courts are the place for that discussion to take place. The law provides judges and juries with the tools they need to maintain that delicate balance between individual rights and the protection of the community at large.

**Alternate Response:** The exposure of our children to violence and drugs and the danger this creates for them is a serious issue that many people worry about. For people of faith, prayer is one way that parents can help protect their children from these problems. Our laws protect the right of each of us to practice our own beliefs, including the beliefs of those who do not believe in religion or faith. People in our country have very different beliefs about religion and faith and prayer. When issues like these are brought to the courts, our courts must decide them by fairly and impartially applying our Constitution and laws to the issue at hand. Every argument that is made must be carefully considered, and the decision must be based upon the law. While we may not always agree with every decision, I think that all of us will agree that our best protection is for our courts to continue to fairly and impartially apply our laws to the difficult issues of our day.

## THE COURTS

### **Corruption, Election Campaigns, Cronyism:**

**Q:** *How can Americans trust a system where lawyers and lobbyists contribute enormous sums of money to judges' campaigns? Don't you agree that those contributions are sure to sway rulings in cases where the contributors are involved?*

**A:** A recent study by Justice at Stake found that 84% of Americans agree that we need courts free from political influence and 62% agree that courts should be accountable to the Constitution. The fact is that most judges, whether elected or appointed, take their responsibilities seriously and do not allow political or financial influences to color their decisions. Various jurisdictions are examining their systems in an effort to limit financial and political influences in elections. In some states, judges are appointed through a merit selection system (where they are chosen by appointed community members and lawyers with the final decision made by the Governor and subject to retention elections). Some believe that judges should be elected directly by the voters. A number of states are limiting the impact of campaign contributions through public financing. Whatever system is used, we certainly want to know that it is the law, and not money or politics, that affects a judge's decision.

### **Evidence Rules that Hide the Truth from Judges, Juries:**

**Q:** *We all know of cases where the judge was too lenient and didn't throw the book at an obviously guilty defendant. How can we hold judges accountable?*

**A:** Let me start off with a question. Do you want a judge to walk into a courtroom with a decision already made, or would you prefer that he or she listen to the case as presented by the lawyers? We all want our day in court, and we all want to be heard. However, the judge is limited to ruling on the facts PRESENTED (not those he or she may have gleaned from other sources). That's the way the system works. So while we may have heard something that tells us a defendant is guilty, the judge may have more limited or different information. Sometimes evidence rules or other forces preclude the introduction of certain information. Our system of justice—allowing us to be heard in fair and impartial courts—may not always provide us with the result we want, but we can take pride in the fact that the system works—and has for more than 200 years.

## **Alternate Response:**

A judge considers a substantial amount of information in reaching a sentencing decision. The judge hears from the state and the victim and receives information on behalf of the defendant. Additionally, the judge is provided a great deal of material regarding the crime and the defendant's background that the public does not have. While you may not always agree with a judge's decision, it is made after considering a significant amount of information and within the parameters established by the law.

*Q: Judges often rule that evidence is not admissible for some arcane technical reason, and after the trial is done jurors feel they would have decided differently had they heard all the evidence. Why should we trust a court system that does not allow jurors to hear all the evidence?*

**A:** I can understand that jurors might feel that it's not fair for judges to exclude some evidence in a trial. Our judges are required to fairly and impartially apply the Constitution and laws when deciding cases. When jurors decide a case, they are acting as judges, and they too must fairly and impartially apply the law when deciding a case. The rules of evidence help make sure that all parties get a fair hearing at trial. One of the ways judges do this is to keep out evidence that is not relevant to the legal issues or that will apply the rules of evidence, and they do this to help the jury fairly and impartially apply the law to decide the case.

## **Jury Duty:**

*Q: When I was on jury duty, the place they kept us was dirty and dingy, and no one told us what was going on. Why does the government allow the courts to turn our lives upside down and then treat us like cattle?*

**A:** I'm sorry you had such a dreadful experience. Jurors are part of the essential foundation of our system of law. Unfortunately, in a number of states the government provides inadequate court funding to properly maintain or modernize the courthouses. Our court facilities also lack important security protections. Nevertheless, the judges and court personnel do their best to work within these limitations. Courts have taken a serious look at conditions for jurors and in recognition of the important job that jurors do, have made some tremendous strides to improve conditions. I hope that you will remember your experience and support increased court funding if you have the opportunity to vote for such measures, or vote candidates into office who support adequate funding for the courts.

After all, how we treat our jurors is important.

### **Alternate Response:**

We believe that the best way to get a fair and impartial decision in a case is to have it decided by a jury made up of citizens with no personal interest in the outcome of the case. You perform a critically important job when you decide a case as a juror. Fortunately, I know from personal experience that your experience is not the norm in most of our courts, like the \*\*\*\*\* court where I have served as a juror. Most judges and courts treat jurors better than you were treated. Jurors are given information about their jury service and what it will entail. Judges also try to treat the jurors well. They respect the jurors' time by trying to avoid interruptions or delays so that the jury can hear all the evidence and decide the case. Our courts appreciate the important work that jurors do in deciding cases fairly and impartially under the law.

## **IV.**

### **Conclusion**

We hope the responses we have suggested will help you field questions with confidence when you speak in support of fair and impartial courts. Our responses to the tough questions you will likely get have been used successfully by experienced speakers and are offered as an aid. We would be delighted if you would contact us to suggest messages you have found effective as well.

Thank you for taking the time to read our pamphlet.

Don't forget the island!!!

## V.

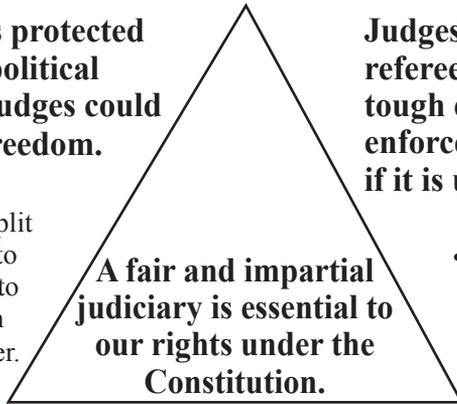
### Message Platform

You may wish to incorporate this useful tool below into your discussion or as a power point:

#### MESSAGE PLATFORM ON A FAIR AND IMPARTIAL JUDICIARY

**Our founders protected courts from political influence so judges could protect our freedom.**

- The founders split government into different parts to protect us from abuses of power.
- In our system, courts consider the facts and the law, not politics.
- We must defend fair and impartial courts so they can protect our rights.



**Judges are accountable.**

- Checks and balances apply to all parts of government, including courts.
- Decisions can be appealed.
- Judges are subject to ethics rules and codes of conduct.

**Judges are like referees. They make tough decisions and enforce the rules, even if it is unpopular.**

- Just like with referees, we do not want judges who can be bought, bullied or fired when someone is unhappy with a decision – it would make the whole justice system break down.
- When people disagree with a decision, it can be appealed.

**VI.**  
**Notes**

