

Speech by ABA President Robert J. Grey Jr.
On Preserving Judicial Independence
California Courts Of Appeal
100th Anniversary Celebration Dinner
Keynote Remarks (As Prepared for Delivery)
Sunday, April 10, 2005

Thank you, Chief Justice George, for that warm introduction.

I'm honored to be here, to share in the California Courts of Appeal centennial celebration.

Without our justice system, without jurors, without our judges, the much-touted but little understood organizational principle of our democratic government—separation of powers—could not exist. An independent judiciary—one free of intimidation and manipulation—is essential to our government of separate but equal branches, where cooperation and respect among the branches is vital.

In all of our endeavors, above all else, we must protect safe access to the courts and our legal system for litigants and the public. We must not allow those among us who would do harm, in any form, to destroy the very freedoms our legal system is entrusted to protect.

Let's get one thing straight: the ABA will not compromise or negotiate the independence of America's judiciary.

Tonight, we celebrate a century of judges performing their duties: carefully scrutinizing the cases before them, to uphold the law. Your work, your presence, stands for every citizen and for our justice system, which protects the least of us and assures us that principles, not prejudice, shape and govern our lives.

Your decisions have and will continue to touch on all aspects of Californians' lives, and will mark paths for the country to follow.

The variety of cases handled by the California Courts of Appeal reflect

- The intersection of internet use, "spam" messages and interstate commerce;
- Affordable housing
- Busing
- Reproductive rights
- Allocation of natural resources

To name only a few.

Your decisions shape and support California's communities because they deal with the full circle of life—issues affecting birth, business, health, hearth and home.

Making difficult decisions is what our courts do: shape and support our communities. In California, and throughout out country, judges are the dedicated public servants who serve as impartial arbiters in complex, oftentimes emotionally trying, cases.

The American Bar Association has long been concerned with the independence of our judiciary. Goal XI of the ABA is “to preserve the independence of the legal profession and the judiciary as fundamental to a free society.” Judicial independence exists for the benefit of the people, not for the personal benefit of judges or the lawyers who appear before them.

As set fort in Article III, Section 1 of the Constitution, the federal judiciary is established as an independent branch of government and guarantees federal judges life tenure during good behavior and an undiminished salary. These guarantees make it possible for a judge to protect individual rights and for the judicial branch to carry out its role in the system of checks and balances so artfully devised by our nation’s founders—even when doing so is contrary to public opinion.

We also know that independence is jeopardized without security. And so we must do everything in our power to make sure our judges, our court personnel and our courts are safe.

Under-funding threatens the independence and safety of our courts. Just last month, Chief Justice George sought support for a California measure that would provide funding for the repair and renovation of many of the state’s courts. As the chief justice accurately pointed out, courthouses must be safe harbors.

We must provide our courts with the means to ensure security. We must stop dragging our feet and engage in a wholesale examination of the adequacy of court security at both the state and federal level. Security must not be sacrificed to achieve economies. The public’s trust and confidence depend on decisive actions for adequate court funding. “be not penny-wise but pound foolish” has rarely had such gravity.

Later this month, the national center for state courts summit on court safety and security will convene. I’ve asked the ABA Justice Center coordinating committee to take the lead in analyzing security issues and in developing recommendations for actions that the ABA could take to address the problems.

In addition to addressing the funding and security issues, we must address the current atmosphere in which our courts operate—whether state or federal—and what can only be called a decline in civility and respect toward our justice system. Our worsening atmosphere is as deadly a weapon against an independent judiciary as is any individual assailant, and carries with it the potential to do greater harm because it uses stealth, not blunt force, to achieve its goals.

It eats away at and alters the public’s perception of judges and the justice system until the judiciary is neither understood nor respected.

The last several weeks have been challenging, difficult times for the U.S. judiciary.

The clamor rising in some quarters for retributive action against judges in the wake of the Terri Schiavo case, and the draconian stance against the judiciary of some of our country's lawmakers, is dangerous.

Not all politicians have indulged in such inappropriate rhetoric. Many, including the vice president and senate majority leader, have spoken up against the verbal assaults lobbied by some in congress against judges.

As the future lawyers and judges of our country, I know you share my concern over the public's confusion and misunderstanding of the judiciary's role as espoused by the politically motivated criticism stemming from the Schiavo case. Amid the escalating rhetoric, careful analysis, thoughtful leadership and measured response are needed.

Regardless of how one feels about the specific circumstances of the Schiavo—or any—situation, the role of the judiciary is clear. Federal and state judges are charged with weighing the facts of a case and following the law, responsibilities they carry out valiantly and with great dignity and sensitivity.

In this culture, legitimate skepticism and rigorous criticism are replaced by cynicism. Too often judges are characterized as political tools and the justice system merely an offshoot of politics, and not the independent leg of our democracy that they are.

Maintaining public confidence in the judiciary depends upon Congress and the courts interacting with restraint and common purpose.

Our national rhetoric and, sadly, that of some of our political leaders have combined to create an unsavory "us vs. them" attitude toward our justice system.

We can see it in efforts to strip the courts of their right to hear controversial cases, or in state election campaigns which target judges who made unpopular decisions or which seek to ensure particular outcomes in future cases.

And we can hear it in the harsh verbal assaults on judges on the airways over their decisions-- the din over the Schiavo case is only the most recent example.

The ABA is steadfast in its opposition to these actions.

Thank you for your time.