



## *From the Executive Editor:*

### *The Role Of Judicial Accountability In Achieving Institutional Independence*

**By Markus Zimmer**

The successful pursuit of institutional independence by judicial systems worldwide is contingent on how effectively and persuasively their cause is articulated in the political corridors of government. There the veiled processes of formulating law and allocating resources often play themselves out behind closed doors. The consequences, as often as not in today's uncertain times, seek to aggrandize executive or legislative power at the cost of judicial authority, frequently under the presumptive claim that elected representatives more accurately reflect the will and intent of the people and are more responsible. A critical element that factors into the success of these processes is judicial accountability and the extent to which negative public sentiment, national partisan campaigns, local political opportunism and media skepticism question its viability.

Judges in many countries share the burden of operating in a public and increasingly shrink-wrapped, social-media-driven environment. That environment may dwell on lingering perceptions of them as government officials for whom the distribution of justice as a social value is driven more by personal ideology, compromise, intimidation, and comparative deal-making than by the objective, disinterested, and informed interpretation and application of the law. Such perceptions undermine judges' professional status, cast doubt on assertions about the importance of an independent judiciary, and spawn cynicism about the achievement of justice as a bedrock civil society objective. Such perceptions are frequently nourished by histrionic media dispensing sound-bytes anchored in fragmentary evidence which become ammunition for political assaults on judges and judicial systems. In developing countries, as the sophistication and professionalism of the media evolve, the reporting increasingly is based on legitimate investigations into allegations of corruption that range from accepting bribes to serious ethical lapses, from questionable asset gains to multiple standards of justice based on variances in wealth or social or political standing, from influencing decision-making by younger colleagues to launching into judicial careers the children of relatives and acquaintances.

In developed countries, responsible media certainly play an important role. What is alarming, however, is the extent to which the growth in ideological polarization in legislative chambers and in political campaign cycles has spawned partisan campaigns to intimidate and to unseat judges. Such campaigns, fueled by enormous contributions from extraordinarily wealthy magnates in sectors such as gambling, energy, building products, etc., skillfully orchestrate national agendas designed to undermine and dispense with term-service judges whose judgments fail to mimic the ideological model those campaigns have embraced. Those campaigns are particularly potent in countries like the United States, currently plagued by an embittered polarization, where dual systems of legislatures on the state and federal levels enable well-oiled partisan stealth crusades. Legions of zealous behind-the-scenes attorneys draft reams of model legislative initiatives and distribute them to key players in state legislatures where they are tailored to local requirements and introduced into law-making sessions in state after state, creating partisan tsunamis that sweep the country. Frequently, federal judges serve as the sole guardians who review and stem the impact of such excesses whose range and audacity often astonish. Here are examples taken from the National Center's 2014 issues of *Gavel to Gavel* that reviews state legislation affecting courts.

- Missouri Senate committee approves bill that nullifies federal gun laws and prohibits state courts from enforcing them; allows for suits against state judges who enforce such laws
- Bans on court use of sharia/international law introduced in Ohio, Pennsylvania and Florida
- Kansas Senate approves more funding for courts provided they don't find laws unconstitutional
- Bills to prohibit state court enforcement of federal laws/executive orders introduced in Louisiana, advanced in Missouri
- Plans to drug test judges making a comeback; Pennsylvania and Missouri bills would specify impeachment and/or bar judges from ballot for positive tests
- Missouri constitutional amendment would require state judges use originalist approach to interpreting the U.S. Constitution

- 
- Arizona bill would let city/town governments decide when to close municipal courts

Similar examples exist in other countries where executive power rather than ideology-driven funding fuel judicial intimidation and control initiatives. Judicial leaders do not always acknowledge the institutional stake they have in these battles and, where appropriate, to police their members and proactively rebuild damaged reputations in the minds of citizens. Such leaders frequently wax indignant in public appearances about allegedly gratuitous attacks by the media, politicians, political commentators, anonymous social-media addicts and others in the public arena on the judiciary, inferring that they are unprovoked and undeserved. Such defenses often strike the media and the public as contrived and artificial because they invoke excuse, pretext, and ruse to evade accountability. In recent decades, judicial independence has become the rallying mantra for cadres of judges in all countries. Public criticism of judges frequently is deflected by judicial leadership as assaults on and efforts to undermine that hallowed status. What rarely is infused into these heated exchanges by the judicial leadership is the acknowledgement that achieving judicial independence depends on demonstrating judicial accountability and professionalism that, collectively, are above reproach.

The equation for achieving judicial independence and self-governance begins with the value of judicial accountability. The public and the government cannot be expected to grant to the judicial power the self-governance authority it seeks until that power categorically demonstrates the compulsory maturity, individual character, moral courage, and professional accountability. Far too often, judicial leadership proceeds with deliberate sluggishness when instituting meaningful reforms in the pursuit of judicial accountability, reforms that would merit the esteem of the media and the public. Such reforms and the speed with which they are undertaken more typically are externally imposed either by executive order, legislative mandate, media exposure, or public outcry. Codes of judicial conduct are accepted and implemented as aspirational, lacking coercive enforcement or disciplinary sanctions attached to violations of their canons and/or effective protocols for enforcing such sanctions when allegations are confirmed.

Although many judges endorse, support, and help to initiate such reforms within their sphere of influence, far too frequently judicial leadership balks at the prospect of advancing the type of systematic and progressive innovation at the institutional level that would serve to transform public perceptions of the machinery of justice. Often this reluctance reflects a failure of moral courage by the judicial leadership to acknowledge its role and to follow through with the difficult initiatives that such institutional change entails.

