

Speak to American Values

A Handbook for Winning the
Debate for Fair and Impartial Courts



Justice at Stake
c a m p a i g n

About Justice at Stake

The Justice at Stake Campaign is a nonpartisan national campaign working to keep our courts fair and impartial. Across America, Campaign partners help protect our courts through public education, grass-roots organizing and reform. The Campaign provides strategic coordination and brings unique organizational, communications and research resources to the work of its partners and allies at the national, state and local levels.

Standing Up for Fair and Impartial Courts

Justice at Stake partners support projects to keep politics and special interests out of the courtroom, and to protect what the late Chief Justice William Rehnquist called one of the “crown jewels” of our democracy:

Educating Americans About Their Courts and Judges

- Public Education
- Voter Guides
- Judicial Evaluation Commissions

Reducing Special Interest Pressure and Improving Judicial Campaigns

- Monitoring Special Interest Pressure on the Courts
- Public Financing of Judicial Elections
- Merit-Based Selection of Judges
- Better Disclosure of Campaign and Interest Group Contributions

Protecting Courts and Judges From Partisan Attacks

- Rapid Response to Intimidation and Impeachment Threats
- Educating Political Leaders on the Unique Role of Courts
- Protecting Court Budgets from Political Attacks

Defending The Courts That Defend Our Rights

- Calling Attention to Attacks on the Power of our Courts to Uphold the Constitution
- Building a Network of Judges to Speak Out
- Developing New Messages and New Coalitions to Defend our Courts

The positions and policies of Justice at Stake campaign partners are their own, and do not necessarily reflect those of other campaign partners. Justice at Stake is currently funded by grants from the Carnegie Corporation of New York, the Joyce Foundation, the Open Society Institute, and the Public Welfare Foundation.



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Dear Reader:

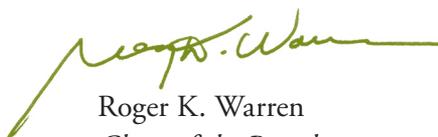
For several years, interest groups and political partisans have been trying to weaken the authority and legitimacy of our courts by painting them as the enemy of mainstream values. They respond to controversial decisions—or any decision they don't like—by calling judges “activists” and even “tyrants,” and by seeking to intimidate the judiciary and weaken Americans' access to justice. This drumbeat has gone unanswered for too long.

Now there's some good news.

Americans of all backgrounds are ready to reject these slogans and stand up for strong courts—*if* we talk about the values they care about most. That's what happened during the national debate over the Terri Schiavo case, when a bipartisan majority of Americans rejected attempts to politically interfere with our courts of law.

This handbook outlines a simple and powerful communications framework for defending fair and impartial courts from political interference. It is based on one of the largest opinion research projects ever conducted into Americans' attitudes on the courts. It presents the most effective messages available for rebutting attacks on judicial independence by reminding people why they care about strong courts that protect their rights under our laws and Constitution.

This handbook was prepared by the Justice at Stake Campaign, a nonpartisan national partnership working to keep courts fair, impartial and independent. We encourage you to read it, use it regularly, and distribute it to friends and allies. We also welcome your questions and ideas. Please contact us if you're interested in doing more to protect what the late Chief Justice William Rehnquist called one of the “crown jewels” of our system of government—our independent judiciary.



Roger K. Warren
Chair of the Board



Bert Brandenburg
Executive Director

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Executive Summary: How to Stand Up for Strong Courts

Americans are ready to reject political interference with our courts—if we use the right language to make our case:

- ***Stick to the core message:*** In order to protect access to justice for all and our rights under the Constitution, we must defend fair and impartial courts from political interference.
- ***Speak to American values:*** Connect with a bipartisan majority of Americans by talking about the role of the courts in protecting individual rights and ensuring everyone a day in court.
- ***Describe the threat:*** Americans grow concerned when they hear about political interference with the courts, but they need to be educated about those threats.
- ***Embrace accountability:*** People want courts to be accountable—but to the Constitution and the law, not to politicians and special interest groups.
- ***Don't be distracted:*** Don't get trapped debating controversial decisions or slogans like “judicial activism.”

About this Guide

In 2005, amid a growing tide of attacks on the courts that protect our rights, the Justice at Stake Campaign commissioned a major public opinion research package, including focus groups and a national telephone survey. This handbook summarizes this research. You'll find talking points and guidance on vocabulary as you develop speeches or respond to media questions. We also provide sample letters to the editor, opinion pieces and newsletter items using our findings. In the appendix, we have included the executive summary from the research report written by the public opinion research firm of Belden Russonello & Stewart.

Key Finding

Values Matter

The debate over the courts is a debate over values. Critics try to portray strong courts as the enemy of mainstream values. When they disagree with a decision, they accuse judges of being unaccountable. Their goal is to energize their political base and put defenders of checks and balances on the defensive.

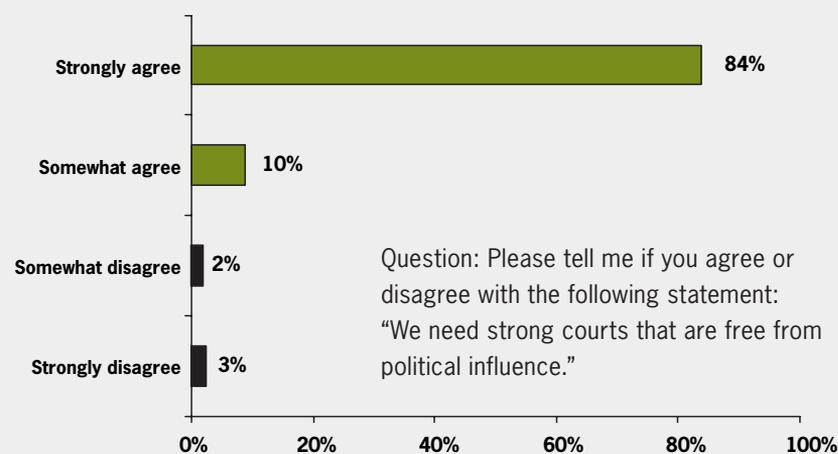
“Representatives are only in office for a short period of time, and the Constitution has been around for hundreds of years. So let’s go with something that has been there for a while instead of someone who just got into office.”

—Moderate man, Raleigh focus group

The good news is that we can win a debate over values.

A bipartisan majority of Americans treasures the role of our courts in protecting individual rights and providing access to justice. They want courts to be fair and impartial and accountable to the law and the Constitution—not political pressure and special interests.

We Need Strong Courts That Are Free From Political Influence



When we focus on these widely-shared values, instead of being distracted by the other side’s attacks, we’re on our way to winning the debate.

When asked which values matter most, Americans choose protection of Constitutional rights and fairness and impartiality.

Key Finding

Americans Need to Be Reminded of Political Threats to Independent Courts

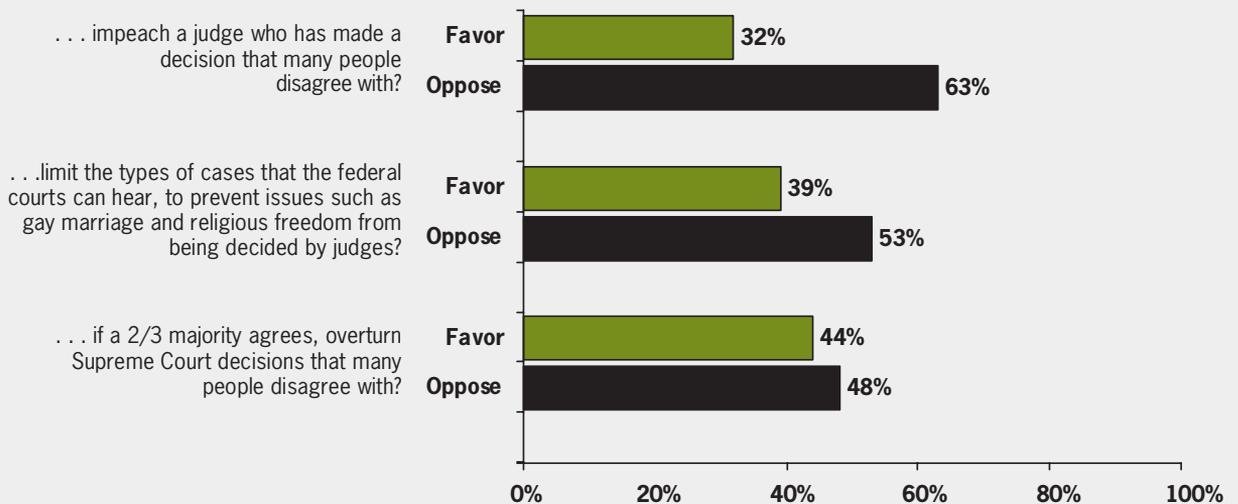
A purely positive message can't carry the debate by itself. Americans won't stand up for the independence of our courts unless they understand it is being threatened.

Americans are offended when they hear that legislators want to weaken the power of our courts to protect individual rights, or deny someone their day in court. That's why Republicans, Democrats and Independents alike rejected attempts to tamper with the court system during the Terri Schiavo end-of-life case.

“It just seemed like that was one of the main purposes of having the courts there, as part of the checks and balances. And if you get the legislature to start telling them what they can and cannot do then you lose that.”

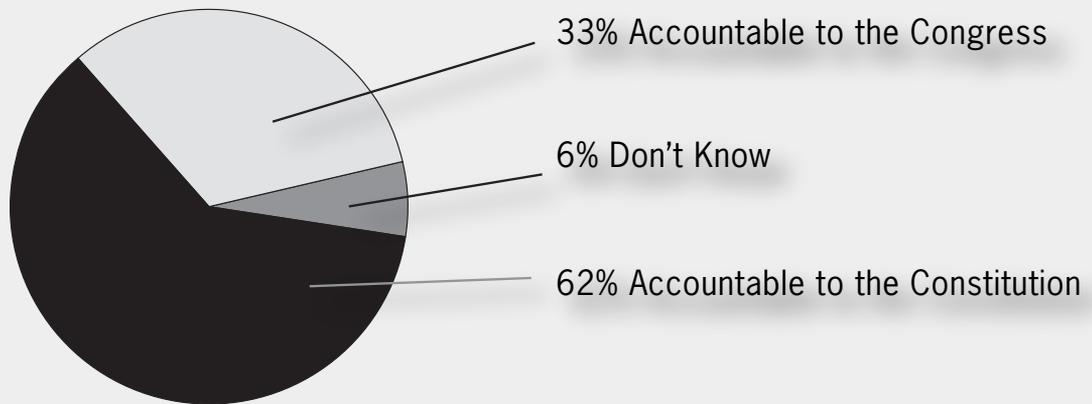
—Moderate man, Raleigh focus group

Should Congress Be Allowed To . . .



Question: Please tell me if you favor or oppose each of the following proposals concerning the courts.

Should Courts Be Accountable to Politicians or the Constitution?



Question: With whom do you agree with more, those who say: a) It is the job of Congress to hold the courts accountable and reduce abuses by judges, or b) judges should be accountable to the law and the Constitution and not to Congress?

Key Finding

Talk About Courts Being Accountable to the Constitution & the Law, Not to Politicians and Special Interests

Too often, those who defend the courts are afraid of talking about accountability. That's a huge mistake, because Americans insist that courts be accountable. Court-bashers understand this: that's why they claim that judges impose their own views instead of following the law.

The other side is abusing the concept of accountability. And in political debates, if you don't define the issue, the other side will.

"I feel anyone who is held accountable will probably do a better job."

—Conservative man, Chicago focus group

Defenders of strong courts should embrace accountability—to the Constitution and the Bill of Rights, not to politicians and special interests. Remind Americans that court decisions must be published, and that they can be appealed to higher courts.

By providing the right definition of accountability, we can disarm the other side and demonstrate how radical their goals really are.

Key Finding

Don't Waste Time Debating Slogans Like "Judicial Activism" or Controversial Decisions

When opponents of strong courts attack "judicial activism" and controversial rulings, their goal is to distract us from our strongest messages. If we don't get distracted, we can move to a discussion of broader values that Americans care about most.

"I just think Congress represents people and judges represent the Constitution; that is where everything balances out."

- Conservative man, Chicago focus group

Terms like "judicial activism" do energize those who already dislike the courts. But our opinion research finds little evidence that slogans like these resonate with most Americans. We shouldn't let these catchphrases distract us, or get bogged down in discussions of individual decisions. If we're debating their slogans, or specific cases, we're losing.

"Part of being an American is having the constitutional right to have my hearing, whatever it may be, heard."

- Conservative woman, Raleigh focus group

Instead, defenders of strong courts should focus on our core message: that Americans want strong courts to protect individual rights and offer equal justice for all.



Communicating with Americans

We've outlined our key findings: connect to Americans' values, describe the threat, embrace accountability and don't be distracted. Now we incorporate the findings into an effective framework for everyday communications with Americans. The research findings are clear: Americans find our messages on behalf of strong and independent courts to be more persuasive than calls for weakening their power.

This section provides:

- talking points to help you develop speeches and respond to media questions
- tips on vocabulary, including words and phrases to use and avoid
- sample letters to the editor, opinion pieces and newsletter copy using the communications framework

By integrating these ideas into your communications, and using them regularly to educate Americans, you'll be defending the courts that defend our Constitutional rights.



Overall Message

To protect access to justice for all and our rights under the Constitution, we must defend fair and impartial courts from political interference. The courts are an important part of our democracy and provide essential balance in our government. We cannot let politicians limit access to justice by allowing them to decide the cases the courts can and cannot hear. We cannot allow political intimidation of judges to undermine our system of fair and impartial courts. The courts are accountable to the Constitution and Bill of Rights and not to politicians or special interest groups.

Talking Points on Key Findings

Courts Uphold the Constitution and Protect Our Rights

We depend on strong courts to uphold the Constitution, and to rule on cases fairly and impartially, based on the facts and the law. Strong courts are an essential part of our democracy and provide vital balance in our government.

Access to Justice Is Under Threat From Politicians

When partisans and special interest try to deny Americans a day in court because they disagree with specific rulings, they weaken the institution that we all rely on to protect our rights. We cannot stand by and allow political intimidation to undermine the fairness and impartiality of the courts that have been part of our democracy for over two hundred years.

Courts Are Accountable to the Constitution and the Law, Not to Politicians

The courts are accountable to the Constitution and the law - and not to politicians with an eye on the next election. Courts follow precedents. If errors in judgment are feared, cases get appealed to higher courts for review. These established mechanisms of accountability have worked well for hundreds of years. Politicians who think they can decide which cases courts may hear threaten all of our rights.

Responding to “Hot Button” Issues or Controversial Cases

There will always be decisions by the courts that some people will not agree with. That is the job of courts in our Constitutional structure. We should reject political interference by special interest groups who want to tear down our courts. We must defend strong courts so they can continue to protect the rights of all Americans and uphold our Constitution.



Communicating with Americans

Choosing the Right Vocabulary For Your Audience

Our in-depth research with Americans of all political stripes sheds light on why choosing the right vocabulary to communicate is so vital. Too often, advocates for the courts choose terminology that works well within legal circles, but those same words and expression fall on deaf ears when delivered to a wider audience. Research for this project reveals that certain terms and expressions connect better to Americans' values. Here are some suggestions:

Do Say	Don't Say
Fair and impartial courts	Judicial independence
Upholding the Constitution	Interpreting the Constitution
Politicians, political intimidation	Congress
Access to justice	Individual cases or decisions
Courts	Judges
Protecting individual rights	
Checks and balances	

Letter to the Editor

A letter to the editor is less labor intensive than an op-ed and is generally easier to get placed into a newspaper. For space reasons alone, short letters have a better chance of being chosen than longer ones, so try to keep your letter to fewer than 200 words.

Letters to the editor should always be written in response to something covered by the paper within the past few days. Back up your argument with examples and statistics, where available.

While you can still mail in a letter to the editor, most newspapers prefer to receive them either by fax or by email. Be sure to include a contact phone number at the end of your letter so the paper can confirm that you are the author.



To the editor:

Your editorial, "Decision Shows Abuse of Power," misrepresents the role that we expect our courts to play in our democratic structure.

We depend on strong courts to uphold the Constitution, and to rule on every case fairly and impartially, based on the facts and the law. Strong courts are an essential part of our democracy and provide vital balance in our government.

There will always be decisions by the courts that some people will not agree with. That is the job of courts in our Constitutional structure. They should not bow to the concerns of special interest groups who want to tear down our courts, or pander to political partisans who only want courts to rule a certain way.

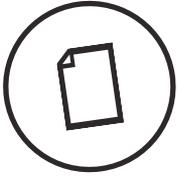
Courts exist to protect the rights of all Americans and uphold our Constitution.

The courts are accountable to the Constitution and the Bill of Rights—and not to politicians with an eye on the next election. This system of accountability has worked well for hundreds of years.

Sincerely,

Jane Doe

Jane Doe



Communicating with Americans

Writing an Op-Ed

Guest columns usually appear opposite the editorial page (thus “op-ed”) and offer members of the community an opportunity to share their views at greater length than a letter to the editor will permit. Unlike a letter, which is usually offered in response to something the paper has already covered, your op-ed will have a much better chance of being printed if it is current (for instance, if your state legislature is in the midst of considering a piece of legislation). Newspapers have varying word lengths, so check with your local paper before you submit. As a general rule, 600-700 words is about right. Here is a sample op-ed:

Politicians read polls like the rest of us read the sports scores, but here’s a figure that may surprise them. Despite a recent wave of political attacks on our courts, it turns out that a substantial majority of Americans still believe that the courts are fair and impartial. Additionally, most Americans feel strongly that we need to protect the courts from political interference. This is good news for the court system, for our constitution—and for individual liberties.

The courts are an important part of our democracy and provide essential balance in our government. We cannot let politicians limit access to justice by allowing Congress to decide the cases the courts should hear. We cannot allow political intimidation of judges to undermine our system of fair and impartial courts.

The courts are accountable to the Constitution and Bill of Rights not to politicians in Washington. This means that the courts should be insulated from political intimidation that might reduce their ability to be fair and impartial.

In the last several years, we have seen politicians racing to limit Americans’ right to day in court by preventing courts from hearing certain types of cases. The most infamous example of this was when Congress took the Terri Schiavo case out of the Florida courts because the judges there were rendering decisions some politicians didn’t like.

The political tinkering was a disaster. The American public saw right through the transparent political posturing and rejected this attack on their system of checks and balances, and many Americans stood up against it. In the spring of 2005, more than 150 Law School Deans sent a letter to the congressional leadership assailing the sorry state of debate in the halls of Congress.

Yet for some, judges have become fair game as politicians seek to turn the court system into a political free-for-all. One member of Congress, Rep. Tom DeLay, made this ominous statement several months ago: "We set the jurisdiction of the courts. We set up the courts. We can unset the courts." This is directly contrary to what our country's founders had in mind. The courts are part of the checks and balances that make our American system strive to be fair, impartial, and offer equal access to justice for all.

By undermining the impartiality of the courts, elected officials, especially members of Congress, are putting equal access to justice in jeopardy. Especially at a time when we are promoting democracy abroad, we need to reinforce the standards of our court system, not undermine them. Strong courts are necessary to balance the power of the Congress and President and it would be a mistake to upset this balance.

Emerging democracies look at us, and at our Constitution, as a model. The public wants the courts to be fair and to guard our Constitutional rights. The congressional attacks imperil our rights even more than they imperil the judiciary. We are, after all, a nation of rights.

The courts are a vital part of our democracy that has worked well for hundreds of years and we should not weaken it now. To protect access to justice for all and our rights under the Constitution, we must defend fair and impartial courts, and reject political interference in in our judiciary, which the late Chief Justice William Rehnquist called one of the "crown jewels" of our democracy.



Writing for a Newsletter

In addition to reading newspapers, watching television and surfing the Internet, opinion leaders and ordinary Americans rely heavily upon community-based newsletters, both print and electronic.

Below are some suggestions for how to blend an effective message for strong courts into a format that will capture readers' attention immediately, and offer them resources for how they can learn more. Here is a sample newsletter article:

Partisans and special interests are waging a war against the courts that protect our rights. But because we depend on strong courts to uphold the individual rights of all Americans, we cannot let these attacks go unanswered.

Research from the Washington-based Justice at Stake Campaign has shown that the debate over the courts is a debate over values. Court critics try to portray strong and independent courts as the enemy of mainstream values. When they disagree with a decision, they accuse judges of being unaccountable. But the survey found that 62% of Americans want the courts to be accountable to the law and the Constitution, while only 33% thought that they should be accountable to politicians in Congress. A bipartisan majority of Americans treasures the role of our courts in protecting individual rights and providing access to justice.

But Americans won't stand up for fair and impartial courts unless they see the courts threatened. Americans are offended when they hear that legislators want to weaken the power of our courts to protect individual rights, or deny someone their day in court. That's why Republicans, Democrats and Independents alike rejected attempts to tamper with the court system during the Terri Schiavo end-of-life case.

Based on the research, Justice at Stake has produced a handbook on how citizens, lawyers and judges can defend the courts from the current political assault. Contact Justice at Stake for a copy of the handbook by email at info@justiceatstake.org

Access to Justice and Constitutional Rights Versus Political Pressure: Defining the Battle for the Courts

Executive Summary and Communications Recommendations from a National Survey

*Conducted by Belden Russonello & Stewart for Justice at Stake
September 2005*

Introduction

The recent Supreme Court nominations and debates over the role of the courts, as well as a number of high-profile cases about marriage of gay couples, separation of church and state, abortion and Terri Schiavo, have resulted in increased attention to, and criticism of, individual judges and the courts.

In an effort to enhance the communications of organizations working to keep intact a strong court system, the Justice at Stake Campaign asked Belden Russonello & Stewart (BRS) to conduct public opinion research. The goals of the research are to develop an overall message on the importance of maintaining strong courts and to craft responses to the current attacks on the judiciary.

BRS designed a two-phase research project that included focus groups and a national survey. Phase one of the project, a series of six focus groups, was completed in Spring 2005 and phase two of the project consisted of a national survey. BRS conducted the survey among 1,286 adults living in the U.S. The interviewing took place from July 20 to July 30, 2005. The data have been weighted by race and age to bring them into proper proportions with the U.S. adult population. The margin of sampling error is 2.8 percentage points for the entire survey.

The following report looks at the values driving public opinion on the judiciary, the connections the public makes with key phrases used in the debate on the courts, the impact of specific court issues such as marriage of gay couples and separation of church and state, and reactions to recent congressional attempts to reduce the power of the courts and judges.

In reading the report, tables and graphs in the text highlight selected survey findings and are expressed in percentages. The base for each table is all respondents (n=1,286).

Executive Summary

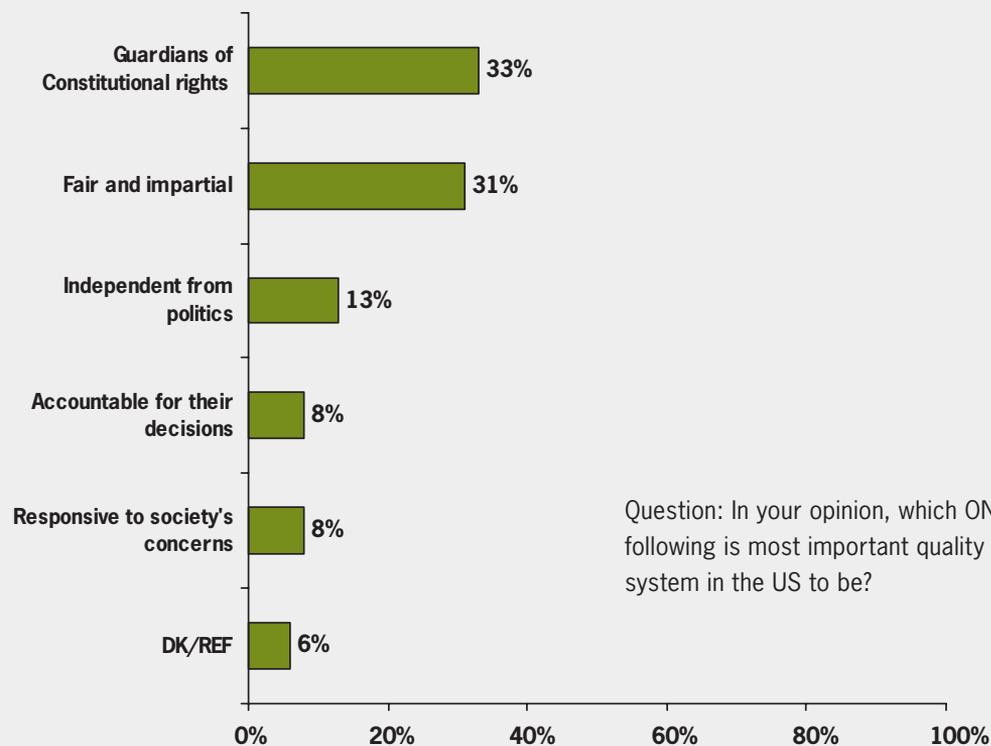
A. Overview analysis

The 2005 national survey on attitudes toward the judiciary finds that the American public continues to hold favorable but soft opinions about the courts and that the public's knowledge of the courts remains rudimentary.

A real battle over values

Core American values underlie opinions of the judiciary across the nation: fairness, responsibility, and preservation of one's rights. These values manifest themselves in a number of ways in the opinion research:

Most Important Quality for the Court System



- A strong belief in the courts' role in protecting individual rights by upholding the Constitution;
- The priority of guaranteeing access to justice for all Americans;
- Desire for the courts to be fair and impartial, which means free from political influence or pressure once on the bench; and
- The need for accountability to ensure judges follow the law and Constitution and not their own personal beliefs.

Those who would like to weaken the role of the courts in the U.S. make headway when they are able to assert, unanswered, that judges are violating these values, either by ruling according to their own personal views or because they are not free from political influence.

The challenge for court advocates is to consistently communicate relevant examples of the courts honoring the positive values listed above, and at the same time show how opponents would undermine those core beliefs. Court advocates should not become distracted by controversial issues of the day or slogans such as “judicial activism.”

Do hot-button issues and claims of “activist judges” matter?

Evoking controversial issues like displaying the Ten Commandments in the courtroom and legalizing the marriage of gay couples are useful to opponents of strong courts because they incite and activate – not expand – the base of court opponents. Alone these issues do not provide a sustainable message for weakening the courts nor do they resonate much beyond

opponents' core supporters. In fact, support for checks on the courts does not increase over the course of the survey among those who are strongly in favor of displaying the Ten Commandments and strongly oppose the marriage of gay couples.

A message that does resonate with supporters and opponents alike asserts that judges follow their own views rather than the law and Constitution. Opponents of strong courts have more resonance with the public at large when they communicate about the values of upholding the Constitution and accountability and how these values are violated by individual judges who follow their own personal views.

The term “activist” judge is a label that opponents of the courts use as short-hand for judges who rule according to their personal views rather than the law and the Constitution. It is this threat, not the “activist” label, that is most troubling to people. Adding the term “activist” to this concept increases worries about the judiciary with some groups but not with others.

Therefore, in developing communications strategies on the courts, organizations should not focus on the phrase “activist” judges, nor on answering attacks on specific controversial issues. These are distractions. There will always be issues for opponents of strong courts to use. Focusing on these individual cases detracts from an overall message about the need for a strong judiciary and places organizations working on these issues in a constant defensive posture.

A positive message combined with the threat to the courts

Proponents of a strong judicial system have an opportunity to educate and build a broader constituency for the courts if communications focus on the values Americans hold toward the courts, how the courts are upholding those values, and the current threats to those values. All three of these components are necessary in communications.

Do not get lured into a debate on the controversial issue of the day. Now is the time to move from answering attacks on the courts to communicating a strong pro-courts message and force opponents to answer why they oppose strong courts.

An overall message on courts, therefore, has the following elements:

First, reinforce the values Americans hold with regards to the courts:

- 1) The belief that the courts are protectors of individual rights and serve as the guardians of the Constitution and law;
- 2) Keeping the doors of justice open to all in our country – access to justice; and
- 3) The importance of courts that are fair and impartial.

Second, remind the public of what they consider some of the main threats to these values – politicians and political influence.

This type of message progression will blunt criticisms of the courts, put opponents on the defensive, and lead people to oppose Congressional checks on the courts. It is essential that the message include the threats to the courts, as well as reinforcing the positive role of the courts. Without highlighting current

threats to the courts, the issue will not become a concern for the public.

B. Survey highlights

The following summary highlights key findings from the survey followed by specific recommendations for communications.

1. More confidence in the Supreme Court than in state courts or individual judges, but knowledge of the courts remains rudimentary.

- In general, Americans continue to hold favorable but soft opinions about the courts.

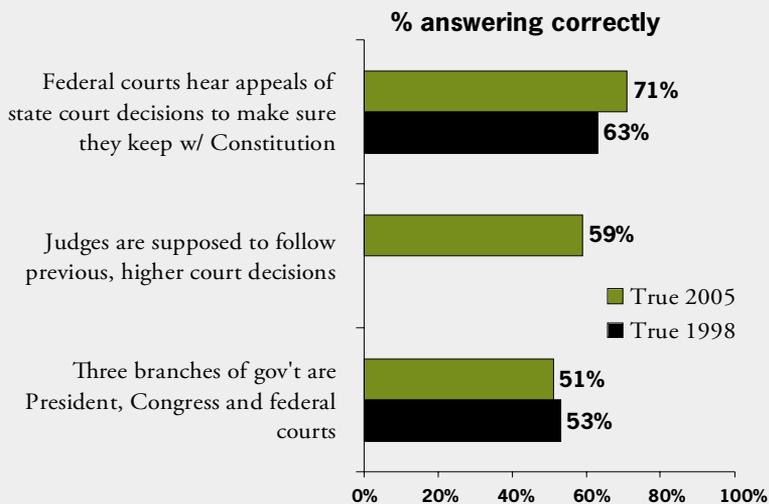
As an institution, the courts enjoy more of the public's confidence than does Congress. The Supreme Court receives the strongest vote of confidence (30% "great deal;" 46% "some" confidence) followed by federal courts (23%; 51%) and state courts (20%; 51%). Even individual judges (20%; 55%) garner more public confidence than Congress (12%; 52%).

Some surveys conducted this summer did show a slight drop in confidence in public attitudes on the Supreme Court. Whether these are real trends or not, only time will tell.

- The public exhibits limited knowledge about the workings of the courts.

Americans generally understand the Constitutional role of the courts, the opportunity for appealing court rulings, and a small majority is aware that judges are bound by precedent in their decisions. Majorities, however, do not know that federal judges are appointed, or that they serve for life terms. Only half of Americans

Knowledge of the Courts



correctly identify the three branches of the government.

Americans' opinions of the courts are based on high expectations, general lack of knowledge about how the courts function and the sometimes competing values of wanting fair and impartial courts free from politics, while expressing concern that individual judges need to be held more accountable. As we have found in the past, knowledge of the workings of the courts is a strong predictor of wanting to protect strong courts.

2. Mixed reaction to increasing congressional checks on courts.

- Most Americans agree it is necessary to hold the courts accountable and a slim majority support some increase in congressional checks on the courts.

Large majorities of Americans believe the courts should be accountable to the Constitution and law (62%) rather than Congress (33%).

Also, when communications focus on “political interference” by Congress most Americans feel strongly (83%) that we need to protect the courts from this interference.

- Despite the cries for accountability, the public is not rushing to reduce the power of the courts.

Currently, the public is mixed but leans in favor of increasing congressional limits on the power of the courts. Half of the public (54%) agrees that we need more congressional checks to reduce the power of the courts and individual judges, and four in ten disagree (40%). Those who strongly agree outnumber those who strongly disagree by more than ten points – 31% to 20%.

After hearing messages both for and against a strong court system, the percentage of Americans supporting increased congressional checks drops to less than half (49%) and the percentage opposing them increases to 45%.

- Tepid response to proposed accountability measures.

The survey looked at four potential ways that Congress may reduce the power of the courts. Overall, the public is mixed on each but leans against stripping jurisdiction (39% favor; 53% oppose), and threatening impeachment based on a single decision (32%; 63%).

They are split on giving Congress the authority to overturn Supreme Court decisions (44%; 48%).

Americans lean in favor of summoning a judge to hearings before Congress to answer questions (51%; 40%), and threatening impeachment of a judge based on a series of decisions that many people disagree with (51%; 42%).

3. Court advocates' strongest case: Courts as guardians of individual rights under the Constitution and access to justice.

Opponents' strongest case: Judges imposing their own views.

Messages that stress the importance of the courts to protect Constitutional rights and that assert that we need strong courts to ensure access to justice for all Americans are the most persuasive for maintaining strong courts.

Other powerful messages to build opposition to congressional checks refer to the courts' value within a successful democracy. Two messages that hold more limited appeal, but reflect opinions that are highly predictive of a person enthusiastically upholding strong courts are: "Strong courts are necessary to balance the power of the Congress and President and it would be a mistake to upset this balance," and "The courts are part of our democracy that has worked well for hundreds of years and

we should not weaken it now." Indeed, every reason for opposing congressional checks on the courts drew more support than every reason for supporting such checks.

The widest opening for those who want to limit the judiciary's power plays on fears that judges are imposing their own views rather than following the law and Constitution.

Those who attack the courts are in the strongest position to make their case when they attack individual judges for misinterpreting the Constitution. This does not need to be tied overtly to a hot button issue, such as the Ten Commandments or abortion or marriage of gay couples, to be effective. These specific issues, however, do fan the flames of anti-court fires. More important than the effect of these specific issues is that for the core of Americans that is highly susceptible to the "misinterpreting the Constitution" argument, almost any issue can be used to argue that judges are damaging the Constitution.

4. Knowledge of the courts drives support for a strong judiciary.

As we found in prior research on the courts, building long-term public support for a strong judiciary will require the public to become better informed about the courts. Our survey finds that those Americans with the most knowledge of the ways the courts function tend to be among the most likely to reject attempts to reduce the courts' powers. Having an understanding of the role of precedent, appeals, Constitutional review, and other aspects of the courts appears to reinforce an appreciation for the courts and their role as Constitutional guardian.

C. Audiences

The Justice at Stake 2005 survey reveals that Americans' attitudes toward the courts do not follow conventional patterns, or lend themselves to easy answers for communicators and organizers. The survey tells a story with a number of uncommon characteristics.

One story line is that the two most reliable predictors of a person's views on most social issues – political party affiliation and political ideology identification— give way to education when it comes to the courts. A highly educated person, whether that person is a Democrat or Republican, liberal or conservative, is more likely to be a core supporter of the courts, while a person with very little education is likely to be a court critic, regardless of other characteristics.

When we look at responses to the survey, we can identify three key groups:

- Core supporters of maintaining the power of the courts are those who are most likely to take this position without hearing any information. A majority within each of these groups opposes increased congressional checks when initially asked and almost three in ten strongly disagree with increased checks:
 - *College educated or more*
 - *Earn \$75,000 per year or more*
 - *Rarely/Never attend religious services*
 - *Knowledgeable about the courts*
- Most persuadable are those who become more likely to support the courts after being exposed to the arguments. By the end of the survey,

a majority in each of these groups opposes increased congressional checks:

- *Men over 40 years old*
- *Older boomers, those between 50 and 59 years old*
- *Liberals*
- *Independents*
- *Northeasterners*
- *Suburbanites*
- The court skeptics or the least persuadable are those who are the least likely to support the courts after being exposed to the arguments:
 - *Blacks*
 - *Hispanics*
 - *Less Educated*
 - *Lower Income*
 - *Less knowledgeable about the courts*

Conservative frequent church attenders, who initially express strong support for weakening the courts, soften their position after hearing messages for and against congressional checks. While they continue to support congressional checks, the percent saying they strongly agree with increased congressional checks drops 11 points (39% to 28%). The pro-courts messages which resonate with this segment remind them of the important role the courts serve as guardians of the Constitution and individual rights and in providing access to justice for all.

The patterns of public opinion identified in the survey may complicate outreach strategies, but this task is not impossible. The more that

Americans are educated about the courts and given stories of hope about access to justice or defense of a right, the less likely they will be drawn into side issues such as marriage of gay couples or display of the Ten Commandments. By focusing on the contribution of the courts and political threats, court advocates will build strong public support for the institution.

Communications Recommendations

Communications about the courts need an overall message framework, as well as a strategy to blunt specific attacks on the courts. The following are recommendations for developing messages:

1. Make the case for strong courts by evoking values and threats to the courts from politicians.

Defenders of strong courts make the best case when they 1) lead with the importance of the courts as defenders of Constitutional rights; 2) communicate the threat to the courts as a threat to access to justice; and 3) when they talk about the threat of politics undermining the courts' role to uphold the Constitution and ability to be "fair and impartial."

The enemy of these positive values is political interference by members of Congress. Placing congressional efforts to check the courts in this context is both a positive reminder of the courts' relevance and of the violation of their values by those who attack the courts. Advocates of strong courts need to present a positive message on the courts and highlight the political threats.

Both parts of the message are essential to raise the saliency of this issue for the public.

2. Define accountability.

Court advocates should define judicial accountability by communicating that courts are accountable to the law and Constitution and not to politicians in Washington. The American people believe this but they need reminding. If court advocates do not define accountability, it will be defined by their opponents.

3. Responses to specific attacks should rely on overall message frame. Do not get distracted by attacks based on current issues.

In answering the attacks on the courts, the strategy should be to connect the courts with their role of protecting Constitutional rights, access to justice, and the need for courts to be fair and impartial.

Specifically, in countering a push for congressional checks on the courts such as jurisdiction stripping and threatening impeachment, messages should focus on the need for strong, impartial and fair courts that are free from political interference. The other side will try to draw court defenders into a debate on specific issues, and your answer should be that proposals to reduce judicial power will hurt the rights of all individuals, take away access to justice, and allow politics to interfere with the courts when judges should be accountable to the law and Constitution and not to politicians.

4. Communicate about courts, not judges.

As we found in a 1998 survey, it is more advantageous for us to describe attacks on the courts as attacks on the Constitution, than to describe them as attacks on judges. The public wants the courts to be fair and to guard our Constitutional rights. Americans are more likely to care about their rights than the comfort of judges.

In addition, focusing communications on courts rather than judges reminds voters of the ideal—a fair and impartial judiciary that upholds the Constitution. Conversely, when the focus is on judges, the public is more likely to say it is hard for individual judges to always be fair and impartial and not allow their own personal views to come into play in the decisions that they make. As a result, the public begins to question whether judges can be impartial and are more open to arguments about the need for increased accountability of individual judges.

5. Build knowledge of the judiciary.

A person's knowledge of the courts is a key indicator of likelihood to support the courts, but educating greater numbers of the public about the role of appeals, precedent, and other checks on judicial decisions will take a long time and should be considered a secondary goal. The public must become better informed about accountability measures already in place to have faith that the system is fair. Among those tested in the survey, the public is most likely to place its faith in the appeals process.

6. Reaching out to black Americans requires emphasizing the courts as “protectors.”

Black Americans express some of the strongest support for congressional checks on the courts. Initially, more than a third (36%) strongly agrees that congressional checks should be increased, and this number hardly changes by the end of the survey after hearing messages in support of strong courts.

Support for these checks seems rooted in lack of confidence in the courts. The messages in favor of strong courts that resonate most share a common theme: protection from abuse by government.

For black Americans, courts are at their best when they provide access to justice, protection from abusive action by law enforcement, and most important, when they protect the Constitution and Bill of Rights.

7. Key terms and phrases

Both the focus groups and national survey provide useful insights into the best words and phrases to employ in communications and those to avoid because they either confuse or help the opponents of strong courts.

- **Do** talk about “politicians” and “political interference;” **do not** talk about “Congress” because this lessens the threat and urgency of the issue.
- **Do** stress that the role of the courts is to “uphold the Constitution and law.” **Do not** talk about “interpreting the Constitution” or the “decisions of individual judges.” These phrases

provide openings for opponents of strong courts to send their message about individual judges following their own beliefs.

- **Do** talk about:
 - *Access to justice/day in court*
 - *Strong courts*
 - *Courts as part of our democracy*
 - *Fair and impartial*
 - *Free from political interference*
 - *Balance of power/checks and balances*
 - *Protecting individual rights*

Other terms, such as “judicial independence,” do not resonate with the general public as well as talking about “strong” courts that are “fair and impartial.”

8. Overall message

The following is a suggested overall message developed from the analysis of the focus groups and survey findings. For this message to be effective in raising concerns about the courts it needs to include both the positive reminder of the role of the courts and the current threats to fair and impartial courts. The positive message on its own will not be enough:

To protect access to justice for all and our rights under the Constitution, we must defend fair and impartial courts from political interference.

The courts are an important part of our democracy and provide essential balance in our government. We cannot let politicians limit access to justice by allowing Congress to decide the cases the courts can and cannot hear. We cannot allow political intimidation of judges to undermine our system of fair and impartial courts.

The courts are accountable to the Constitution and Bill of Rights, not to politicians in Washington.

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The Justice at Stake Campaign is a nonpartisan national partnership working to keep our courts fair, impartial and independent. Across America, Campaign partners help protect our courts through public education, grass-roots organizing, coalition building and reform. The Campaign provides strategic coordination and brings unique organizational, communications and research resources to the work of its partners and allies at the national, state and local levels.

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