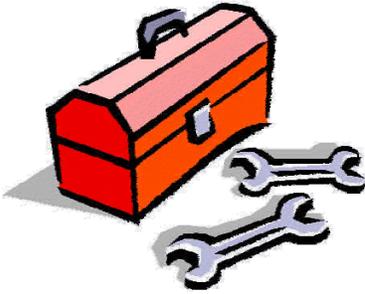


Independent Courts Toolbox™

created by the Constitution Project's
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Independent Courts Toolbox™

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Activists need materials that are easy to understand and use and that will give substance and structure to their work. It has been our experience that there are many dedicated individuals and local organizations who would like to work on behalf of independent courts but lack the information and materials, and the time and resources, to develop them. This puts them at a distinctive disadvantage, especially when facing well-funded opponents.

The Constitution Project created the Independent Courts Toolbox™ for activist organizations and individuals working locally to defend the independence of the judiciary. This multifaceted “toolbox” is divided into five “trays”: Media, Legislation, Speeches, Resources, and Blueprints.

The Tools



Working with the Media

- Sample letters-to-the-editor that can be forwarded to supporters for submission to local media
- Tips for dealing with the media effectively
- Sample op-ed pieces for submission to local media
- A sample news release illustrating appropriate form, format, and strategic style to gain media attention



Legislative Action

- Sample postcards to officials for letter-writing campaigns supporting or opposing legislation or particular actions involving court independence



Speeches

- A six-and-a-half-minute speech that can be used to make public presentations on behalf of judicial independence
- A four minute speech that can be used to address judicial independence



Informational Resources

- Glossary of terms for activists
- Interesting quotes from prominent people regarding judicial independence
- Fact sheets and talking points for constructing written and verbal presentations



Blueprints for Action

- A simple strategic plan to make sure that promotional efforts are cohesive and clear and that they stay “on message”

All tools are available for downloading from the Constitution Project web site. Visit www.constitutionproject.org to obtain a password to the Toolbox™. The Toolbox™ is also available on CD-ROM and in hard copy.

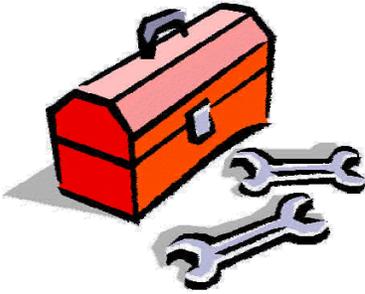
Along with this Toolbox, the Constitution Project has also created the Higher Ground Standards of Conduct for Judicial Candidates. The Standards are a set of guidelines created to help voters understand the unique limitations that apply to judicial candidates during their campaigns. The Standards apply to candidates for judicial office in states that select their judges through competitive elections. For further information regarding the Higher Ground Standards please contact us at the address below or visit our web site at <http://www.constitutionproject.org/ci/standards.html>.

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Working with the Media



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Working with the Media

Sample Letters to the Editor

Response to Hostile Op-Ed

To the Editors:

You are certainly within your rights to criticize judges for individual decisions from the bench. However, I would like to add some perspective. Judges do not represent us even when we elect them. They represent the law. They are meant not to respond to the popular will but to provide an impartial, knowledgeable interpretation of the laws enacted by representatives of the popular will.

By insulating judges from popular opinion, we guarantee the protection of individual rights against an over-reaching majority or political pressure from other branches of government or interest groups.

I don't always agree with judicial decisions either, but I am far more comfortable with independent judges who are honest and who decide cases by interpreting the law rather than by reading opinion polls.

Sincerely

For Areas Where Judges Are Elected

To the Editors:

Before we enter another judicial election cycle, we ought to give some serious thought to reforms that can insulate our judges from the influence of politicians and special interest groups.

When judges consider anything but the law and the Constitution in deciding cases, justice is highly suspect. And when justice is suspect, people lose respect for the law.

I recommend that in endorsing judicial candidates in the next election, your paper, and citizens in general, consider holding candidates to the Higher Ground Standards of Conduct for Judicial Candidates.

Conceived by the Constitution Project, a DC-based bipartisan nonprofit organization, the Standards:

- require prompt disclosure of campaign contributions so that voters can make informed decisions about potential conflicts of interest;
- discourage candidates from trying to attract votes by stating in advance how they would decide cases; and
- prohibit candidates from misrepresenting their opponents' records.

Judges are not politicians, or at least they shouldn't be. They must be held to higher standards than political candidates.

Sincerely,

Where Legislative Action Is Pending Regarding Judges

To the Editors:

I have a simple rule of thumb when it comes to legislation affecting the judiciary: I support any legislation that enhances judicial independence and insulates judges from political interference, and I oppose any that doesn't.

The judiciary is not a tool of political parties or agendas or servile to popular opinion. It is meant to defend the Constitution and individual rights against special interests or an over-reaching government.

We may think that judicial decisions are sometimes wrong, but we must know that political interference in judicial decision-making is *always* wrong.

Sincerely,

On Endorsements of Judicial Candidates

To The Editors:

Citizens would do well to remember that interest groups endorse a judicial candidate because they feel that his or her presence on the bench would be advantageous to their interests.

It is important to remember that judges do not represent people or groups of people. They represent the law and the Constitution. An evaluation or endorsement of a judge on any basis other than integrity, knowledge of the law, and impartiality subverts the purpose of the judiciary in our democracy. Any judge who accepts an endorsement on any other basis undermines public confidence in our justice system.

Sincerely,

On Call for the Removal of Judges

To the Editors:

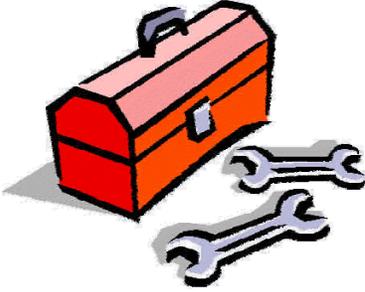
You are within your rights to criticize decisions by judges. But you are wrong to call for judges' removal simply because you disagree with one of their decisions.

Judges should be evaluated on the basis of their knowledge of the law, their integrity, their fairness and their impartiality, not on disagreement with a good-faith decision based upon a credible interpretation of the law.

When you think of it, 50% of the litigants in a case are going to disagree with a judge's decision. That's a pretty high disapproval rate. Does that mean the judge should be removed?

When judges base their decisions on the law and you disagree, perhaps you ought to try to change the law, not the judge.

Sincerely,



Independent Courts Toolbox™ created by The Constitution Project's COURTS INITIATIVE



Working with the Media

Tips for Dealing with the Media

#1 A reporter is not your buddy.

A reporter's job is not to make you look good, but to gather information for his or her news outlet and write it in a way that is interesting and saleable. If you don't want to see it in print, don't say it.

#2 Reporters, particularly at smaller papers, are overworked.

They are also besieged by numerous petitioners. Do not waste their time. Package your story so that it is interesting. Know what you want to say and say it concisely and accurately.

#3 Narrow your message to the one or two most important points you want to get across and stick with them.

You cannot control what a reporter writes. If you bombard a reporter with several themes, the reporter chooses the message and, chances are, the article will be off the mark.

#4 Do not speculate.

Do not answer hypothetical questions. You get locked into an answer without knowing what all the variables will be.

#5 Respond quickly to a reporter's call (minutes, not hours).

If it's hard news, a reporter is on deadline. You don't want your opponents to have a news story all to themselves.

#6 Protect your credibility as a good source of information.

Always be truthful. Provide complete and sound information. Don't try to "snow" a reporter. "Spin" is okay; embellishment is not. If you don't know an answer, don't guess. Ask if you can round up the information and get back to the reporter.

#7 Prepare complete media kits.

The more back-up material that you can provide a reporter, the less research he or she will have to do. This increases your chances of coverage. Include fact sheets, graphs, charts, photos, etc.

#8 Make yourself available.

Check in with reporters from time to time to see if they are working on anything for which you might provide information.

#9 If you are ambushed by a negative story, buy time.

Simply tell the reporter you want to gather information to be accurate and that you will get right back to him or her. Use the time to regroup and prepare and then get back in a timely fashion.

#10 Only respond to published comments of your opponent, not those verbally relayed to you by a reporter.

If you are not sure of an opponent's comments or position, decline to comment on them other than to summarize your position on the issue. (e.g., "I haven't seen those remarks, so I can't comment on them. Our position is that...")

#11 Keep good notes on conversations with reporters.

#12 Don't let an error go unchallenged.

Stories are often complicated and (as we've said) reporters are overworked. They sometimes get the facts wrong. Correct it right away with the reporter. Even if they don't offer a correction, they'll get it right the next time.

#13 It's okay to disagree with an article.

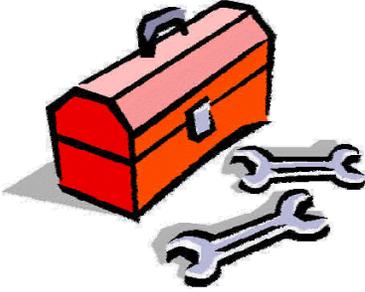
Keep it constructive, though. A wise person once said, "It's always a mistake to get into a fight with people who buy their ink by the barrel."

#14 Think of interesting ways to say dull things.

Often you can frame a story to make it newsworthy. Remember, you can sell sand in the desert with the right packaging.

#15 "No comment" is never a good response.

It indicates a weakness or evasiveness. If you're not comfortable crafting a response *extemporaneously*, see point #9.



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Working with the Media

Sample Op-Ed #1

Judicial Independence

During election campaigns, we often hear attacks, from one direction or another, against a judiciary that is supposedly unresponsive to the will of the majority. It is important to keep in mind a few important points about our system of justice.

First, judges don't represent us, even were we elect them. They don't represent our point of view on any particular case or criminal or civil issue. They represent the law. Their job is to dispense impartial justice based upon a thorough knowledge of the law and a good-faith interpretation of it.

In this respect, the judiciary is dramatically different from the executive and legislative branches. We expect the executive and legislative branches to be partisan representatives of the contemporary popular will. Popular will is irrelevant in a courtroom. Judges cannot decide cases based upon polls or editorials. They must be guided by protection of individual rights and the dictates of the law.

Second, because of this responsibility, different campaign standards apply. It is wrong for a judge to offer, or for the citizenry to demand, a judge's (or a candidate for a judgeship's) position in advance on specific issues that may come before the court. A judge must enter a courtroom every time with an open mind, deciding each case based upon a unique set of circumstances, and not predisposed to rule one way based upon a previously announced position. Asking how a judge would rule on a particular case is like asking an umpire to call a pitch before it's thrown.

Democracy requires full faith that justice will be administered with absolute impartiality. That faith is certainly challenged if we enter a courtroom knowing that our opponent has contributed substantial money to our trial judge's last election campaign, or that the judge was endorsed for election by a group or corporation that opposes our position in court. That these are both legal activities offers little comfort in view of their corrosive effect on public confidence in the court system.

Judges should be held accountable. Where judges are not elected directly, they are appointed or confirmed by officials who are, and are bound by the Constitution and laws enacted by the legislature. Judges are also subject to discipline, impeachment, and removal from office.

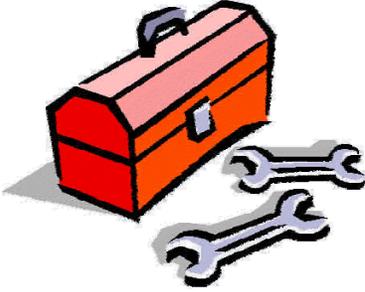
However, judges should be held accountable for their integrity and knowledge of the law, not because of popular disagreement with a court decision that was reached through a fair interpretation of the law. The citizenry should be outraged at the attempts of special interests to influence the course of justice by rating judges through the prisms of their own biases and vested interests.

Over time, the rights of farmers, gun owners, women, minorities, environmentalists, parents, businesspeople, property owners, consumers, the sick, the elderly, religious denominations, children, teachers—in short, all of us—have been protected by an independent judiciary against an overreaching or neglectful executive branch or legislature.

We all disagree with court decisions at one time or another. But as tempting as it might be, we should resist the urge to evaluate judges based on the popularity of individual decisions.

Judicial protection of unpopular causes or people is sometimes the price we pay to safeguard our constitutional rights against political whim.

Independent judges are the Constitution's last line of defense.



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Working with the Media

Sample Op-Ed #2

Appointment vs. Election of Judges

Many voters are distressed over the controversy and rancor that surrounds judicial election campaigns and may wonder what it all means for the future of the judiciary. The solution may be to abandon judicial elections and join the 29 states that appoint judges to their appellate courts. Other states are now considering proposals to adopt such a system.

Americans hold strong, and seemingly contradictory, opinions of what they expect from their courts. For instance, a 1998 public opinion survey about federal judges found that 64% of respondents rejected lifetime appointment for judges because it resulted in judges who are “out of touch.” Yet only 28% think that public opinion should be considered by judges in deciding a case, and 67% believe it is more important for judges to protect the rights of individuals than to follow what the community as a whole wants.

These contradictions may exist because we have never fully grasped the difference between the roles of judges and those of our representative officials. We have been well served by democracy and popular control of government. Perhaps that’s why we resist insulating the judiciary from the kind of public influence exerted on the legislature and the executive branches.

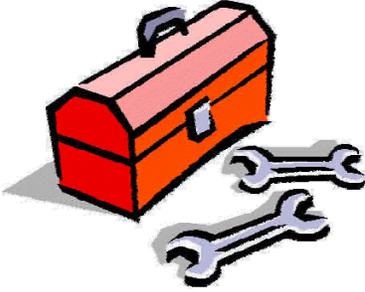
Under our system, legislators and the chief executive are our representatives, which gives us the right to know how they will vote on issues before we elect them. Under the same system, the judiciary is fundamentally different. Judges must be guided not by majority will but by law, precedent, and ultimately, the state and U.S. constitutions.

Because judges have to choose a winner and a loser in every case, they usually leave at least some people dissatisfied. This is especially true with divisive and controversial issues, such as abortion and the death penalty. Decisions that protect individual rights against popular wishes may well be seen by some as “bad” decisions. But the framers intended that our courts provide a check and a balance, to safeguard our individual rights and liberties against the majority and government overreaching.

In any system where judges run for election, solicit and accept campaign donations, and pursue the electoral support of one group over another, it may seem that their judicial

decisions are being influenced by matters other than their legal knowledge and a good faith interpretation of the law.

Taking electoral politics out of our courts by appointing judges instead of electing them will allow us to hold them accountable solely on their competence, fairness, and integrity.



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Working with the Media

Sample Op-Ed #3

Unpopular Decisions

As we debate the performance of the courts on various issues, we must remember that cases must be decided on a good-faith interpretation of the law and the Constitution, and popular opinion must ultimately be a bystander.

Even though the judiciary forms the third branch of government equal to the executive and legislative branches, it differs fundamentally from both. Unlike either, it was never meant to reflect the public will, or even to consider it. In fact, it was designed to protect constitutional principles against the vicissitudes of popular opinion and the wishes of the majority political party at any given time.

For anyone who believes that popular opinion never runs counter to constitutional principles, recall that there was a time in our past when the majority of Americans felt that women shouldn't vote or own property; when a majority tolerated slavery; and when legislators required people to pay poll taxes for the right to vote. These actions were perpetrated or supported either by the majority of citizens or by elected representatives who claimed to represent the majority.

Over time, the rights of farmers, gun owners, women, minorities, environmentalists, parents, businesspeople, property owners, consumers, the sick, the elderly, religious denominations, children, teachers—in short, all of us—have been protected by an independent judiciary against an overreaching or neglectful executive branch or legislature.

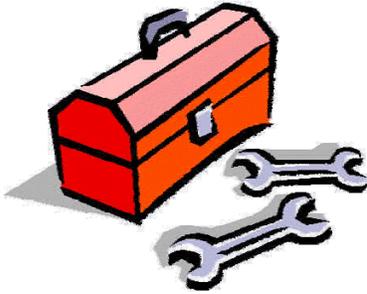
We all disagree with court decisions at one time or another. But as easy as this tendency is, we should resist the urge to evaluate judges on the popularity of individual decisions. The law cannot be ignored, nor rights abridged, simply because the parties involved and their actions may be unpopular or even odious. If the rights of one are denied, the rights of all are threatened. And in that case, our constitutional rights may be taken hostage to demagogues and well-heeled special interests.

When legislators, disagreeing with court decisions, vote to cut the budgets of courts or to limit judicial powers, they place their own actions beyond the scrutiny of the courts, eliminating a check on government and dissolving important protections for all of us.

Judges should be evaluated. But they should be evaluated on their impartiality, knowledge, and good faith application of the law. Their role is not to determine the popularity of the law but to apply it; to determine that popular will and legislation are compatible with the Constitution, not the other way around; and to make decisions using their best judgment, not the best available polling data.

Judicial protection of the rights of unpopular causes or people is the price we pay for constant and inviolable rights that cannot be denied because of changing fashions, leadership, or special interests.

Independent judges are the Constitution's last line of defense.



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Working with the Media

The News Release

The news release is the conventional means of conveying news to the media. It follows a particular form that organizes basic information and presents it in a concise, professional manner.

There are certain guidelines to remember in creating releases:

Be concise.

Reporters are busy people. They do not have time to wade through a lot of unnecessary information to determine if they are interested in a story. If they have to work too hard to figure out what the story is, your release will more than likely be "deep sixed." Therefore, a release should never be more than two full pages (fewer, if possible). Give them the basics in a release and then provide supplemental information on separate sheets that reporters can use if they want to. Additional or supplemental information can be provided in the form of background sheets, fact sheets, Q&As, graphs and charts, etc.

Be creative and interesting.

Reporters and editors get scores, perhaps hundreds, of releases each day. Give them a reason to read and run yours.

Include visuals.

The chances of getting a story in the print media go up dramatically if you include visuals such as photography, charts, and graphs.

Include directional information.

This includes information such as the name and phone number of the primary contact, the date, and whether the information is for immediate release or embargoed until a later date. The phrase "---more---" appears at the bottom of the page when there are additional pages to the release. (Pages do get misplaced.) The phrase "---30---" appears at the end of a release to designate that it is, in fact, the end. (Don't ask. We have no idea how it originated.)

Consider embargoing material.

In order to give reporters more time to plan and prepare articles prior to an event, a release may be embargoed. This means that you can send out a release to reporters with the understanding that it will not appear in a news article until after a specific future date. For example, a release dated January 1, 2000, can go out with the notation "Embargoed Until January 7, 2000." Reputable reporters generally respect embargoes as a matter of honor but, other than that, there is no means of enforcement.

Make your headline a hook.

A boring headline is a missed opportunity. Often reporters will not get beyond the headline. Pique their interest with it to get them to read further.

The first paragraph is your executive summary.

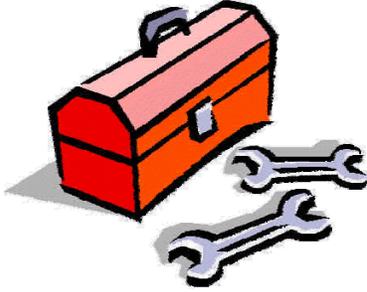
It should immediately convey the most basic information about the event. Obviously, however, it should be presented in a way that keeps reporters or editors reading. For effective promotion, the name of your organization must be in the first paragraph; in the first sentence is best.

Include quotes.

Include quotes that can be included in news articles. Your quotes should be at least as exciting as your news. If the principals responsible for the release don't sound excited about it, how will you interest a reporter? Therefore, these should not be bland boilerplate quotes. They should be creative and articulate, written "sound bites."

Include a positioning statement.

Releases should close with a brief statement about the purpose and identity of the issuing group. This gives credibility to the document as the effort of a legitimate organization. It also provides the opportunity to say a little bit about the sponsoring organization that would not be appropriate earlier in the release.



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Working with the Media

Sample News Release

The following pages illustrate a sample news release.

Bipartisan Group to Settle Verbal Wrestling Between President and Congress Over Federal Judgeships

New Research To Determine Responsibility for Lengthy Vacancies on Bench

For Immediate Release

September 15, 1999

Contact: Tim Kolly
(202) 662-4244

Washington—Citizens for Independent Courts (CFIC), a high-level panel of the Constitution Project, will soon publish new research that will settle the battle between the Clinton administration and the Senate over who is to blame for the current crisis in filling federal court vacancies. The data, the most definitive to date, will be presented in September by co-chairs Lloyd Cutler, former Democratic presidential counselor, and Mickey Edwards, former Republican congressman from Oklahoma.

The president has blamed Senate leaders for dragging their feet on confirmation hearings; the Senate blames the president for not nominating individuals in a timely manner. "This is a consumer issue," said Executive Director Virginia Sloan. "The president and the Senate can point fingers at each other but, at the end of the day, it's ordinary Americans, like seniors seeking Social Security benefits, who suffer hardship having to wait years for their cases to be heard."

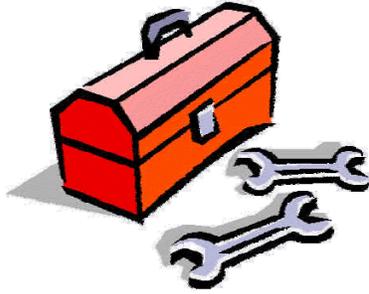
Until now, comprehensive information was unavailable because 1) partial records were scattered throughout a number of government agencies and 2) despite their being public, Congressional intervention was sometimes required for their release. The new data were gathered by CFIC's Task Force on Federal Judicial Selection.

"We're a bipartisan organization," said Thomas Sargentich, reporter for the task force and professor of law at the Washington College of Law at The American University. "We have no political agenda. We'll gather the data and let the chips fall where they may."

The **Constitution Project** seeks to develop bipartisan solutions to contemporary constitutional and legal issues by combining high-level scholarship and public education.



Legislative Action



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Legislative Action

Postcard Writing Campaign

In Response To Legislation

Dear Representative or Senator:

An independent judiciary being necessary to the functioning of a strong democracy, I am opposed to any legislative limitations on the prerogatives or powers of individual judges or the judiciary generally.

While I do not agree with every judicial decision, I feel that my interests are better served in having a judiciary that is free to rule on the basis of law and justice rather than in response to popular opinion, political pressure, or narrow interest groups.

I therefore urge you to oppose (support) (bill number).

Sincerely,

In Response To Attacks on the Judiciary

Dear Representative or Senator:

An independent judiciary being necessary to the functioning of a strong democracy, I take issue with your recent attacks on (the judiciary) (Judge _____).

While I do not agree with every judicial decision, I feel that my interests are better served in having a judiciary that is free to rule on the basis of law and justice rather than in response to popular opinion, political pressure, or narrow interest groups. Judges should be subject to criticism on issues involving their integrity and knowledge of the law, not on a "good faith" interpretation of the law in individual decisions.

Sincerely,

On Legislative Action Detrimental to Judicial Independence

Dear Representative or Senator:

I am opposed to any action to limit judicial independence or access to the courts, including reduction of judicial budgets or seats, stripping courts of authority to hear certain types of cases, and legislative impeachment of judges on any basis other than a lack of integrity or competence.

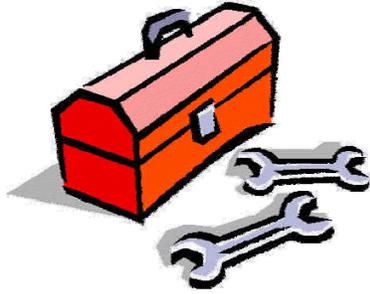
The judiciary is the third, co-equal branch of government. The other two branches should not subject it to any coercive action designed to punish or to compel judicial decisions.

Sincerely,

5/28/2001



Speeches



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Speeches

Judicial Independence

Length: 6.5 minutes

Let me begin by reading something to you that many of you will recognize.

“The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world...

There follows a list of grievances against the king, including the following:

“...He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.”

These are words taken from the American Declaration of Independence, one of the most universally revered documents ever written.

So important was judicial independence to them, that the fifty-five illustrious men, united behind the pen of Thomas Jefferson, enumerated it among the grievances that inevitably necessitated war with one of the globe’s most powerful countries.

The republic was founded upon, among other things, judicial independence. And since the war for independence was fought for the principles scribed in the Declaration, then the signers pledged their lives, their fortunes, and their sacred honor to the principle of judicial independence.

Today, over 200 years later, the independence of our courts is being relentlessly eroded by the lapping waves of legislative overreaching, partisanship, and the pandering pursuit of an electoral majority. This calls into question, in some cases, the ability of our courts to administer justice impartially.

Make no mistake: Justice is the lynchpin of democracy. It is the great equalizer of society that allows the rich and the poor, the educated and the uneducated, the strong and the weak to stand without distinction in the leveling light of the Constitution and our body of laws.

When impartiality, or the perception of it, is compromised through intimidation, special interests, predisposition, or campaign contributions, democracy just doesn't work because individuals no longer come before the law as equals.

A few characteristics need to be remembered about the judiciary. They can be disquieting because they seem almost undemocratic.

Specifically, the judiciary, although a third equal branch of government, is very different from the executive and legislative branches. Judges, even when they are elected, do not represent us. They represent the law and the Constitution. Their decisions must be based upon a good faith interpretation of them even if the law is unpopular. Public opinion is irrelevant in the courtroom.

Let's try an example. If all of your neighbors petition their elected officials to ban certain house colors from your neighborhood, chances are the representatives will yield to the wishes of the majority. That's appropriate.

On the other hand, if it is perfectly legal to paint your house blue, but all of your neighbors petition the court for an injunction, no matter how powerful, loud or large the majority, the court has to decide in your favor. That's appropriate — even in a democracy. Judges represent the law, not popular opinion.

Additionally, if judges are to remain independent and the administration of justice impartial, we must demand a few things of ourselves, of judges, and of the other two branches of government.

First, judges should be evaluated based upon their knowledge of the law, their fairness, and their demeanor, not upon individual decisions.

We all disagree with judicial decisions at times. When you think about it, half of the people who enter a courtroom are going to disagree with a judicial decision. The question is not whether we like a decision but whether it is based upon a reasonable and knowledgeable interpretation of the law.

Judges have to work within the framework of the law. If we dislike a decision, it may very well be that we need to change the law, not the judge.

Also, judges should not be asked, and should not declare, in advance how they would decide certain types of cases. This is like asking an umpire to call a pitch before it is thrown. Each case has to be decided on its own merits, not on some pre-announced, politically correct position.

Second, where judges are elected, we must demand full disclosure of campaign contributions and strong disqualification requirements where those contributions give rise to even the perception of a conflict of interest.

Third, within limits, legislatures have the right to set the powers and funding levels for the courts. These decisions, however, should be based upon logic and efficiency. They should not be used as an expression of legislative pique or as punitive tools for unpopular court decisions. That kind of political interference in the justice system would violate our system of separation of powers. It would be, in essence, a usurpation of judicial powers by the legislative branch.

Finally, although independent, judges are democratically accountable. They must apply democratically enacted laws and they are subject to removal through democratically responsible processes. Judges are not beyond criticism of their performance. They should, however, be beyond criticism designed to intimidate or influence court decisions.

Courtrooms are the inviolable sanctuaries of our rights. All of us, whether we are farmers, gun owners, women, minorities, environmentalists, parents, businesspeople, property owners, consumers, the sick, the elderly, religious denominations, children, teachers—all of us—have been protected by an independent judiciary against an over-reaching government or an ill-advised majority.

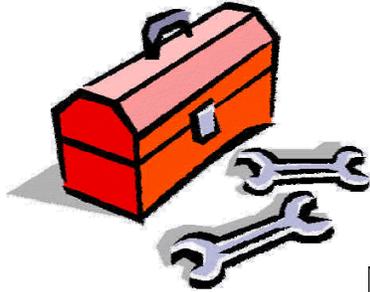
James Madison, the author of our Constitution, thought an independent judiciary absolutely essential to individual rights.

If a declaration of rights was “incorporated into the constitution,” he observed, “independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislature or executive...”

Strong words. Strong words from one who had experienced the abuses of a judiciary whose authority derived more from princes than principles. In his footsteps, we should not merely concede the independence of the judiciary, we should demand it— from judges, from legislators, from executives and from ourselves.



Informational Resources



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Informational Resources

Glossary of Terms

acquittal: Judgement that a criminal defendant has not been proved guilty beyond a reasonable doubt.

affidavit: A written statement of facts confirmed by the oath of the party making it, before a notary or officer having authority to administer oaths.

affirmed: In the practice of the appellate courts, the decree or order is declared valid and will stand as rendered in the lower court.

answer: The formal written statement by a defendant responding to a civil complaint and setting forth the grounds for defense.

appeal: A request made after a trial, asking another court (usually the court of appeals) to decide whether the trial was conducted properly. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the appellant.

appellate: About appeals; an appellate court has the power to review the judgement of another lower court or tribunal.

arraignment: A proceeding in which an individual who is accused of committing a crime is brought into court, told of the charges, and asked to plead guilty or not guilty.

bail: Security given for the release of a criminal defendant or witness from legal custody (usually in the form of money) to secure his appearance on the day and time appointed.

bankruptcy: Refers to federal statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may discharge their debts, perhaps by paying a portion of each debt. Federal bankruptcy judges preside over these proceedings.

bench trial: Trial without a jury in which a judge decides the facts.

brief: A written statement submitted by the lawyer for each side in a case that explains to the judges why they should decide the case or a particular part of a case in favor of that lawyer's client.

chambers: A judge's office.

capital offense: A crime punishable by death.

case law: The law as laid down in cases that have been decided in the decisions of the courts.

charge to the jury: The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

chief judge: The judge who has primary responsibility for the administration of a court but also decides cases; in the federal systems chief judges are determined by seniority.

circumstantial evidence: All evidence except eyewitness testimony.

clerk of court: An officer appointed by the court to work with the chief judge in overseeing the court's administration, especially to assist in managing the flow of cases through the court and to maintain court records.

common law: The legal system that originated in England and is now in use in the United States. It is based on judicial decisions rather than legislative action.

complaint: A written statement by the plaintiff stating the wrongs allegedly committed by the defendant.

contract: An agreement between two or more persons that creates an obligation to do or not to do a particular thing.

conviction: A judgement of guilt against a criminal defendant.

counsel: Legal advice; a term used to refer to lawyers in a case.

counterclaim: A claim that a defendant makes against a plaintiff.

court: Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

court reporter: A person who makes a word-for-word record of what is said in court and produces a transcript of the proceedings upon request.

damages: Money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries.

default judgement: A judgement rendered because of the defendant's failure to answer or appear.

defendant: In a civil suit, the person complained against; in a criminal case, the person accused of the crime.

deposition: An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.

discovery: Lawyers' examination, before trial, of facts and documents in possession of the opponents to help the lawyers prepare for trial.

docket: A log containing brief entries of court proceedings.

en banc: "In the bench" or "full bench." Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting en banc.

evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

federal question: Jurisdiction given to federal courts in cases involving the interpretation and application of the U.S. Constitution, acts of Congress, and treaties.

felony: A crime carrying a penalty of more than a year in prison.

file: To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

grand jury: A body of citizens who listen to evidence of criminal allegations, which are presented by the government, and determines whether there is probable cause to believe the offense was committed. As it is used in federal criminal cases, "the government" refers to the lawyers of the U.S. attorney's office who are prosecuting the case.

habeas corpus: A writ that is usually used to bring a prisoner before the court to determine the legality of his imprisonment. It may also be used to bring a person in custody before the court to give testimony, or to be prosecuted.

hearsay: Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay is usually not admissible as evidence in court, although there are exceptions.

impeachment: (1) The process of calling something into question, as in "impeaching the testimony of a witness." (2) The constitutional process whereby the House of Representatives may "impeach" (accuse of misconduct) high officers of the federal government for trial in the Senate.

indictment: The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

in forma pauperis: In the manner of a pauper. Permission given to a person to sue without payment of court fees on claim of indigence or poverty.

information: A formal accusation by a government attorney that the defendant committed a misdemeanor.

injunction: An order of the court prohibiting (or compelling) the performance of a specific act to prevent irreparable damage or injury.

instructions: Judge's explanation to the jury before it begins deliberations of the questions it must answer and the law governing the case.

interrogatories: Written questions asked by one party of an opposing party, who must answer them in writing under oath; a discovery device in a lawsuit.

issue: (1) The disputed point in a disagreement between parties in a lawsuit. (2) To send out officially, as in to issue an order.

judge: Government official with authority to decide lawsuits brought before courts. Other judicial officers in the U.S. courts system are Supreme Court justices.

judgement: The official decision of a court finally determining the respective rights and claims of the parties to a suit.

jurisdiction: (1) The legal authority of a court to hear and decide a case. Concurrent jurisdiction exists when two courts have simultaneous responsibility for the same case. (2) The geographic area over which the court has authority to decide cases.

jury: Persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.

jurisprudence: The study of law and the structure of the legal system.

lawsuit: A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, resulting in harm to the plaintiff.

litigation: A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

magistrate judges: Judicial officers who assist U.S. district judges in getting cases ready for trial, who may decide some criminal and civil trials when both parties agree to have the case heard by a magistrate judge instead of a judge.

misdemeanor: Usually a petty offense, a less serious crime than a felony, punishable by less than a year of confinement.

mistrial: An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.

nolo contendere: No contest. It has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

opinion: A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment.

oral argument: An opportunity for lawyers to summarize their position before the court and also to answer the judges' questions.

panel: (1) In appellate cases, a group of judges (usually three) assigned to decide the case; (2) In the jury selection process, the group of potential jurors.

parties: Plaintiffs and defendants (petitioners and respondents) to lawsuits, also known as appellants and appellees in appeals, and their lawyers.

petit jury (or trial jury): A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute. Federal criminal juries consist of 12 persons. Federal civil juries consist of six persons. State juries differ depending on the state.

plaintiff: The person who files the complaint in a civil lawsuit.

plea: In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges, a declaration made in open court.

pleadings: Written statements of the parties in a civil case of their positions. In the federal courts, the principal pleadings are the complaint and the answer.

precedent: A court decision in an earlier case with facts and law similar to a dispute currently before a court. Precedent will ordinarily govern the decision of a later similar case, unless a party can show that it was wrongly decided or that it differed in some significant way.

procedure: The rules for the conduct of a lawsuit; there are rules of civil, criminal, evidence, bankruptcy, and appellate procedure.

pretrial conference: A meeting of the judge and lawyers to discuss which matters should be presented to the jury, to review evidence and witnesses, to set a timetable, and to discuss the settlement of the case.

probation: A sentencing alternative to imprisonment in which the court releases convicted defendants under supervision as long as certain conditions are observed.

pro se: A Latin term meaning "on one's own behalf"; in courts, it refers to persons who present their own cases without lawyers.

prosecute: To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

record: A written account of all the acts and proceedings in a lawsuit.

remand: When an appellate court sends a case back to a lower court for further proceedings.

reverse: When an appellate court sets aside the decision of a lower court because of an error. A reversal is often followed by a remand.

sentence: The punishment ordered by a court for a defendant convicted of a crime.

service of process: The service of writs or summonses to the appropriate party.

settlement: Parties to a lawsuit resolve their difference without having a trial. Settlements often involve the payment of compensation by one party in satisfaction of the other party's claims.

sequester: To separate. Sometimes juries are sequestered from outside influences during their deliberations.

sidebar: A conference between the judge and lawyers held out of earshot of the jury and spectators.

statute: A law passed by a legislature.

statute of limitations: A law that sets the time within which parties must take action to enforce their rights.

subpoena: A command to a witness to appear and give testimony.

subpoena duces tecum: A command to a witness to produce documents.

summary judgement: A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgement as a matter of law.

temporary restraining order: Prohibits a person from an action that is likely to cause irreparable harm. This differs from an injunction in that it may be granted immediately, without notice to the opposing party, and without a hearing. It is intended to last only until a hearing can be held.

testimony: Evidence presented orally by witnesses during trials or before grand juries.

tort: A civil wrong or breach of a duty to another person, as outlined by law. A very common tort is negligent operation of a motor vehicle that results in property damage and personal injury in an automobile accident.

transcript: A written, word-for-word record of what was said, either in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral deposition.

uphold: The decision of an appellate court not to reverse a lower court decision.

U.S. attorney: A lawyer appointed by the President in each judicial district to prosecute and defend cases for the federal government. Prosecutors in the state systems may be appointed or elected.

venue: The geographical location in which a case is tried.

verdict: The decision of a petit jury or a judge.

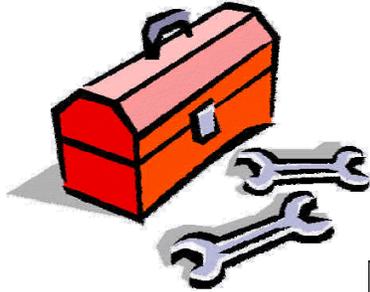
voir dire: The process by which judges and lawyers select a petit jury from among those eligible to serve, by questioning them to determine knowledge of the facts of the case and a willingness to decide the case only on the evidence presented in court. "Voir dire" is a phrase meaning "to speak the truth."

warrant: A written order directing the arrest of a party. A search warrant orders that a specific location be searched for items, which if found, can be used in court as evidence.

witness: A person called upon by either side in a lawsuit to give testimony before the court or jury.

writ: A formal written command, issued from the court, requiring the performance of a specific act.

writ of certiorari: An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal.



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Quotes

- If a declaration of rights was incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights.

James Madison

- “In the arguments in favor of a declaration of rights (included in Madison’s letter of October 17, 1788)”, Jefferson wrote, “you omit one which has great weight with me, the legal check which it puts into the hands of the judiciary.”

Thomas Jefferson

- There is no accepted test of civilization. It is not wealth, or the degree of comfort, or the average duration of life, or the increase of knowledge. All such tests would be disputed. In default of any other measure, may it not be suggested that as good a measure as any is the degree to which justice is carried out, the degree to which men are sensitive as to wrongdoing and desirous to right it?

Sir John MacDonnell, *Historic Trials*

- There is hardly a political question in the United States which does not sooner or later turn into a judicial one.

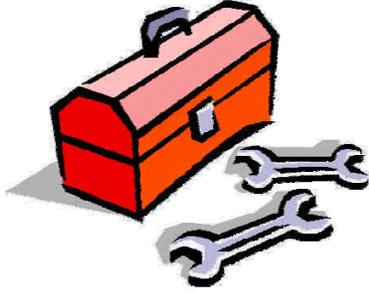
Alexis DeTocqueville

- Heaven is above all yet; there sits a judge,
That no king can corrupt.

William Shakespeare, *Henry VIII*

- We cannot ask a man what he will do on the court, and if we should, and he should answer us, we should despise him for it.

Abraham Lincoln



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Talking Points

Judicial Independence and the Constitution

- Madison realized the fault of the British system under which judges were appointed by the Crown and served at the pleasure of the Crown. He therefore sought to establish the judiciary as a third, equal branch of government that would enjoy independence from the other two branches and constitute a check on their power.
- Article III of the Constitution establishes the federal courts, their authority, and their independence by giving judges life tenure, making them removable only through impeachment, and stipulating that their salaries cannot be diminished during their tenure in office.
- Judges hold their offices during "good Behaviour," and like the president, vice president and "all Civil Officers of the United States," federal judges can be impeached for treason, bribery, or other high crimes and misdemeanors.

Checks and Balances (federal)

- Checks on the judiciary: Federal judges must be appointed by the president and confirmed by the Senate. The Congress must pass funding for the court system (with the provision that judges' salaries cannot be reduced) and it holds the power of impeachment. By law, judges are also subject to discipline for misconduct.
- Checks by the judiciary on the executive and legislative branches: Federal judges rule on the lawfulness and constitutionality of legislative and executive actions.

Checks and Balances (state)

- There are myriad systems by which state judges are governed. Unlike federal judges, very few state judges are appointed for life. If appointed, they may be responsible to the appointing authority for re-appointment, subject to retention plebiscites, state disciplinary procedures, or impeachment.
- If elected, judges are still subject to disciplinary procedures and the voters ultimately and periodically evaluate a judge's performance with their votes.

Accountability

- Judges should be held accountable. However, they should be held accountable for their integrity and knowledge of the law, not because of popular disagreement with a court decision arrived at through a fair and good faith interpretation of law.

Independence and Public Confidence

- Democracy requires full faith that justice will be administered with absolute impartiality. That faith is certainly challenged if we enter a courtroom knowing that our opponent has contributed substantial money to our trial judge's last election campaign or that the judge was endorsed for election by a group or corporation that opposes our position in court. That these are both legal activities offers little comfort in view of their corrosive effect on public confidence in the court system.

Judiciary Different from Other Branches

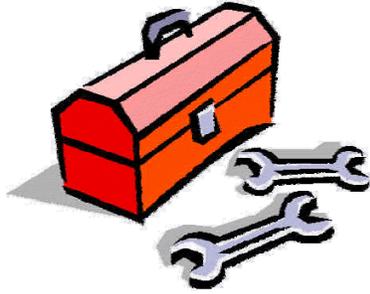
- Judges don't represent us. They represent the law. Even where we elect them, they don't represent us. They don't represent our point of view on any particular case or criminal or civil issue. Their job is to dispense impartial justice based upon a thorough knowledge of the law and a good faith interpretation of it.
- The judiciary is dramatically different from the executive and legislative branches. We expect the executive and legislative branches to be partisan representatives of the contemporary popular will. Popular will is irrelevant in a courtroom. Judges must be guided not by polls or editorials but rather by the law and their duty to protect individual rights.
- It is wrong for a judge to offer, or for the citizenry to demand, a judge's position in advance on specific issues that may come before the court. A judge must enter a courtroom every time with an open mind, deciding each case based upon a unique set of circumstances and how the law governs it, and not predisposed to rule one way based upon a publicly announced position. Asking in advance how a judge would rule on a particular case is like asking an umpire to call a pitch before it's thrown.
- Even though the courts are not inherently democratic institutions, they are still effectively linked to democracy indirectly. Where they are not elected directly, they are appointed or confirmed by officials who are, and the framework for their decisions is democratically enacted laws. Judges are also subject to impeachment, removal from office, and discipline for misconduct.

Special Interest Groups

- The public should be cautious about attempts by special interest groups to subvert the courts for their own economic or political purposes through rating systems (based on their narrowly defined issues) and campaign contributions.



Blueprints for Action



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Blueprints for Action

General Strategic Plan

All campaigns, regardless of the cause, need to invest a bit of time in creating a strategic plan. Whether your organization is focused indefinitely on the issue of judicial independence, whether you want to conduct a short-term public education campaign, or whether you are working with other organizations on a coordinated effort, a strategic plan can help. It will provide you with an assessment of your strengths, weaknesses and resources; help you to develop an effective message; and enable you to target it effectively. Without it, your campaign can become improperly focused, disorganized, and over-extended.

There are several elements that are common to all strategic plans.

I. Positioning

Your campaign needs a strategic statement of, ideally, one sentence and certainly no more than two that describes who you are and what you do, and that differentiates you from other similar efforts. Sound impossible? It's not. The exercise will help you to reduce your organization or campaign to its essence. Once you have created it, commit it to memory, attach it to all your promotional materials and press releases, and above all, let it guide you in avoiding distraction from your main purposes.

Example: The Judicial Alliance (fictitious) is an Ohio-based membership organization that works to educate community journalists on the importance of judicial independence and is the oldest organization of its kind in the country.

II. Critical Audiences

Determine who your critical audiences are for your messages. They could be the media, elected officials, corporate executives, affinity groups, trade organizations, the general public, etc. In short, a critical audience is the public or any sub-group that needs to hear your message in order for you to effect change. Once you have a list of them, prioritize them. This will help you in developing effective messages and the best conduits for delivering them.

III. Opposition

Determine who comprises your most formidable opposition. Know how they operate. Know their strengths and weaknesses. This will help you develop a tactical program for conveying your messages and blunting theirs.

IV. Message

Once you have your positioning statement and know your critical audiences, develop messages that are compatible with your strategic statement and ones that will resonate with each of your critical audiences. It's not easy to form these in a vacuum, so, if possible, test your messages through research and the utilization of focus groups. Polling research has shown that messages relating to the protection of the Constitution, the protection of individual rights, and the right to a fair and impartial trial are most effective in promoting judicial independence.

V. Resources

Assess your resources. Determine the level of financial commitment your organization can make in promoting judicial independence. Assess non-financial resources: availability of prominent individuals for speaking and promotion, volunteers, shared resources of affinity groups, personnel skills, equipment (computers, fax machines, phones), etc. An honest assessment will give you a good idea of what you can reasonably accomplish and how to prioritize your activities for the greatest impact. If resources are tight, consider forming alliances or coalitions with affinity groups.

VI. Reaching Audiences

Materials: Determine what materials you will need to effectively convey your message and accomplish your mission. These will probably include stationery, brochures, issue backgrounders, fact sheets, credible outside research, graphs, charts, tables, bumper stickers, etc. These do not have to be expensive glossy items. In fact, in some cases, a glitzy, deep-pockets image can work against you. Better to appear the David than the Goliath.

Tactics: You need to reach your audiences on the "highways" they travel. Therefore, you might consider reaching them through:

- Operation of a web site
- Guest opinion articles or letters-to-the-editor
- Feature articles in newspapers, magazines, and trade publications
- Guest speaking appearances
- Advertising
- Staged special events
- Direct mail
- Door-to-door campaigns
- Petitions
- Legislative letter-writing campaigns
- Lobbying
- Educational videos
- School curricula

The final mix of tactics will be shaped by your critical audiences and your budget. The important thing is not how many activities you can engage in, but how effective you can be. If you can only afford one activity, acknowledge it, concentrate your resources and execute that activity well.

A strategic plan will not guarantee success but it is hard to succeed without it. It will help you organize and focus your resources for optimal effect and develop messages that are meaningful and effective.

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