

PLAN & PREPARE

(coming soon in a jurisdiction near you)

A. Inventory the strengths and weaknesses of your Courts

1. Do you conduct judicial evaluations?
2. Why not?
3. It is important that judges get feedback
4. How do lawyers perceive judges conduct?
5. Treatment of witnesses, jurors, parties
6. Juror pay? Parking? Child care? Minimize “down time” for jurors.
7. Identify problems through **Focus Groups** (inexpensive and easily done)
8. Polling (expensive)
9. Coordinate response. For example, assume that focus groups show that the Terri Shiavo case is a problem for Courts in Florida. Forge a coalition of judges, laweysr and non-lawyers (doctors, hospice, hospitals, nurses, etc.)to promote living wills and durable powers of attorneys – everyone agrees that either would have avoided a court fight that divided the nation. In other words, be proactive and be part of the solution.

B. Don't wait for legislative or initiative to arrive – start today.

C. Build coalitions

1. Lobbyists list from Secretary of State.
2. Business, labor, agriculture, Chamber of Commerce
3. Insurance companies and banks have most to lose from unstable court system.
4. Round-table of advisers to Courts – can model after Chambers of commerce: Supreme Court should have state-wide board; Local courts could have local board. Need to educate these people that a stable court system is in their best interests. Make them part of the team of lawyers and judges. These non-lawyers will become ambassadors in their communities for the Court.

D. Public Education

1. Op-eds – informational – don't wait

2. Service clubs – get on the agenda – they’re always looking for programs
3. Get into the civics classes – citizenship in the school programs
4. Forge stronger relationships with executive and legislative branches
5. Master “spin control” – techniques are readily available. If you let “them” define the issue, you lose or at least make it much more difficult.

E. Get the right message

1. **Never, ever mention “independent judiciary”** - polls/focus groups show that voters translate this phrase to mean “activist judges”
2. This proposal (JAIL or whatever it is) **“interferes with the ability of our courts to fairly and impartially apply the law.”** Voters want our Courts to apply the law, not legislate from the bench, so this phrase reinforces what voters want and negates judicial activism.
3. All politics are local – personalize the message – what does it mean to your specific audience.
4. If you’re an initiative state, “it’s outsiders coming into our state...”
5. If it’s a legislative proposal, “we don’t want politicians running our Courts, nor do we want our constitutional and legal rights forfeited by the power of politicians and special interest groups. --- See the ABA Standing Committee on Judicial Independence – report issued late October, 2006. But remember, the time to forge stronger relationships with the executive and legislative branches is before a goofy proposal is submitted to the legislature.
6. Courts protect us from abuses of power.
7. Courts are already accountable - they are accountable to the law, the federal constitution and the state constitution.
8. Refer to “our courts” rather than judges. Courts are venerable institutions – by referencing judges, you invite individual anecdotal examples of unpopular decisions rendered by a judge – often in some other jurisdiction. The phrase “our courts” helps voters to identify with our side and, again, raises the inference that the attackers are outsiders.

F. Polls and focus groups show that judges are ineffective in defending themselves and the Courts against initiatives or legislative attacks/incursions. Lawyers are only minimally better. Lawyers have great credibility with his or her own clients but not the public at large. Thus, it is critical to forge relationships with non-lawyer individuals and

groups and to include them in responding to anti-court proposals. Further, it is essential that these non-lawyers be front and center, publicly, as part of the team. In South Dakota, while the State Bar was actively involved behind the scenes, all officers and public spokespersons were non-lawyers. The only exception was when there were too many public appearances/debates scheduled simultaneously, did Tom Barnett, the State Bar executive director take the podium (and took an official leave of absence during that portion of the campaign).

- G. If you are initiative state, take a close look at your existing laws. After checking with applicable law in your jurisdiction, Consider the following:
- a. Restrict petition circulators to residents only(i.e., Oklahoma)
 - b. While allowing compensation for paid circulators, forbid payment on a per signature basis (i.e., North Dakota & Oregon, pending in South Dakota)
 - c. If not already required, change law to require the ballot explanation to be printed on every petition to help insure voters know what they're signing.(legislation pending in South Dakota)
 - d. Require election financing reports to be filed for expenses incurred in the signature gathering process (allows voters to see who is behind effort).(Legislation pending in South Dakota).