



## An Independent Judiciary

O'Connor speaks out against those who threaten judges.

**R**ETIRED SUPREME COURT JUSTICE Sandra Day O'Connor visited the Law School last fall to celebrate the formal dedication and renaming of the Dwight D. Opperman Institute of Judicial Administration (IJA). She and IJA Executive Codirector Oscar Chase, Russell D. Niles Professor of Law, discussed "The Importance of Judicial Independence."

As the first woman confirmed to the U.S. Supreme Court, O'Connor has been scrutinized and second-guessed. Often characterized as the "swing vote," she remained resolutely principled and pragmatic, and exhibited an independent judicial streak.

Now that she has retired, it is fitting that she has applied herself to protecting the independence of the judiciary, which she persuasively argues is under attack. During the conversation with Chase, O'Connor ventured opinions as to what is fostering this antagonism and how the imperiled third branch of government might be protected.

"Angst about judges," as O'Connor called it, seems to be encouraged by those who believe that judges should be political, instead of serving as checks and balances for the legislative and executive bodies.

The justice ticked through a list of state actions that she felt impinged upon the

independent nature of the judicial branch. Judicial elections topped her list of threats to independence. Colorado, for example, has cut the terms of appellate judges in half so elections and reshuffling occur more often to suit political groups' agendas. "Our country can do better on judicial selection," O'Connor said. Most disturbingly, however, she cited JAIL 4 Judges, the purposefully menacing name for a California-based interest group that had placed on South Dakota's November ballot an amendment that would eliminate judicial immunity and allow judges to be censured. Judges could even be subjected to jail time for making "wrong decisions." It was overwhelmingly rejected by voters.

What can be done to defend the judicial branch and to combat the stripping away of its equal standing with the legislative and executive branches? Bring back civics class, said O'Connor. She believes that ignorance of how our government works is the root of the problem: Only one-third of Americans are aware of the judicial branch, she noted. "No one knows what we do," she said.

O'Connor seemed confident that a review of the Court's historic cases would demonstrate the value of independence. Take *Brown v. Board of Education*. By deciding that "separate but equal" should not apply to public education, the Court created a domino effect that overturned racial segregation laws. "It was an unbelievable, necessary step, and trying to enforce it was hard," she said. "But today, it's history." □

## A Resolute Advocate for the European Union

IN 2005, FRANCE AND THE NETHERLANDS dealt a blow to the European Union when they voted down a proposed constitution in national referenda. Other nations followed suit, and many doubted Europe would ever be able to unite.

One person who has not faltered in his support of the E.U. is European Commission President José Manuel Barroso, who gave the Hauser Global Law School Program's Emile Noël Lecture in April. He spoke candidly about the challenges of ratifying the constitution.

Barroso chastises skeptics who called the French and Dutch "no" votes the death of the European Union. "We have 27 countries united in peace, democracy and the rule of law," Barroso said. "Should we be pessimistic because we cannot approve the constitution? Come on!"

But it is those E.U. supporters who voice their doubts about the constitution that do real harm to the ratification

process, Barroso said. Their constant pessimism emboldens those who challenge the constitution's legitimacy. "Do you think we can get people to vote for something on a Sunday, when we attack it from Monday to Saturday?" Barroso asked.

The fear of losing national identity is yet another impediment to ratification, says Barroso: "Before being European, they are Portuguese or French or German." Such nationalism may have led to low voter turnout for the 2004 European Parliamentary elections, despite an increase in the number of countries represented.

Institutional changes such as streamlining decision-making, increasing accountability through national representatives and repositioning the vice president of the E.C. as the E.U.'s foreign minister, Barroso said, would help define the union and quell smaller nations' fears that their interests might get lost among those of their more powerful peers. He referred to his



experience as the former prime minister of Portugal, which stands in the shadows of larger European nations, to reinforce that all countries would retain their unique identities and enjoy unfettered, equal representation within the union.

"I'm not here defending a corporatist approach to the E.U.," Barroso said. □