

Judicial Nominations Are Being Thrown Off-Balance

By Joette Katz | April 09, 2018 at 12:55 PM

f It is a fundamental principle that the judicial component of government is independent in order to insulate its members from punitive actions by the legislative and executive branches of the government. Only when the judiciary is independent can it make fair decisions that uphold the rule of law, an essential element of any genuine constitutional democracy.



Gavel on wood table

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 In fact, it is the judiciary that guards the rule of law in a constitutional democracy. I recognize the equally well-established tenet that the legislature must enjoy its oversight function through the confirmation and reappointment process, but that oversight must be exercised with caution and discretion, after extensive and careful deliberation, if healthy judicial independence is to be maintained. Nothing has more negatively impacted these fundamental precepts than this year's round of judicial confirmation hearings.

This editorial is not about the important decisions by judges regarding statutory construction or constitutional rulings about such weighty issues as the death penalty. Some of you will be relieved to know that this editorial is not about Justice McDonald, about whom much has already been written. Rather, it is about the witch hunt that began a few years ago against judges brave enough to sit on the family court, who some days make complicated decisions about pensions and other property interests but who mostly try to help sad and hurting people pick up the pieces of their fractured lives.

When asked years ago when I was a Superior Court judge if I would be willing to sit in Family Court, I replied "not even if it were a condition of probation." That was not because I did not think it had interesting legal issues (it does) but rather because I knew I did not have the patience of Job; I did not have the ability to sort through the land of broken toys deciding which litigants were genuinely concerned about their family and which ones merely wanted to continue to punish the person they could no longer control.

Those brave souls who stood up when called for duty have gotten nothing but grief when their time for reappointment came. Not only are those judges vilified for appointing GALs for parents who do not behave with their children's best interests in mind, but they are abusively disparaged for just trying to decipher the truth behind the allegations and for—God forbid—not always believing the assertions of litigants. Now they are second-guessed by some legislators, who have decided their role is to be fact finders, psychiatrists and ultimately judges. They chose to believe everything their constituents claim without benefit of hearing both sides or the threat under oath.

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This is bad enough and a complete bastardization of their role, but now some legislators have given voice to anti-Semitic propaganda by litigants who blog obsessively about the “Jew overlords,” King Solomon (Deputy Chief Court Administrator Judge Solomon) and other “mentally deranged person[s] of Jewish faith.” Once treated as the rantings of mad men, these blogs are now the Bible of some legislators who engage in public lynchings of fine individuals for hours while other legislators sit on the sidelines, seemingly afraid to interrupt lest they be the next target.

It is not the fact of oversight that creates a constitutional crisis, but rather it is the lack of standards along with the ad hominem attacks that threaten the calm, deliberative process meant to govern legislative oversight. So unless the Legislature stops trivializing the process through one that more closely resembles the Stalin show trials, we seriously jeopardize the democratic legitimacy of our constitution.

Joette Katz is commissioner of the state Department of Children and Families and a former associate justice of the Connecticut Supreme Court. She also co-chairs the editorial board of the Connecticut Law Tribune.

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