President's Perspective

Ralph J. Lamparello

Tenure Appointments Support Independent Judiciary

Since May, I have had the opportunity to travel our state and attend regional bar meetings, meetings of county bar associations and specialty bars. From Vineland to Atlantic City, from Jersey City to Basking Ridge, the discussion at each of these meetings has invariably focused on the paramount issue facing our profession and, in fact, our society—the continuing drumbeat of threats to co-opt the independence of the Judiciary and its status as an equal branch of government. The groundswell of support from our brothers and sisters in the profession, combined with the sense of urgency they have conveyed to address this crisis, has guided my term as President.

Earlier this fall, for the second time in recent years, our Supreme Court unnecessarily lost another justice in the name of political expediency. Just as Justice James H. Wallace Jr. was denied the opportunity to receive tenure, so was Justice Helen E. Hoens.

The granting of tenure to a judge was never meant to be a pawn in the Trenton chess game. Rather, it was a compromise position meant to bolster the independence and integrity of the Judiciary, but preserve the ability to remove a judge in limited circumstances where he or she has proven to be unfit to serve.

As we search for the path ahead, I have found it instructive to look back to the wisdom of our nation's founders.

The concept of tenure was integral when the federal Judiciary was first formed. In The Federalist No. 78, Alexander Hamilton wrote of the Judiciary that it would always be the "least dangerous" and "weakest" of the three branches of government, since it had "no influence over either the sword or the purse." In quoting Montesquieu, Hamilton maintained "that there is no liberty, if the power of judging be not separated from the legislative and executive powers." This is the very essence of why our Judiciary must be independent.

Hamilton further wrote that if the courts were to be "the bulwarks of a limited Constitution" then there must be permanent tenure of judges. That protection would allow judges to guard the Constitution and also the rights of individuals, he argued. "Nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty." Hamilton concluded that "all judges who may be appointed by the United States are to hold their offices during good behavior." He asserted that "the standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government…. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws."

The spirit of that standard is what the framers of New Jersey's 1947 Constitution also envisioned. While New Jersey judges are not eligible for tenure until after a seven-year term, the guiding principle was that tenure should be granted unless a judge has proven to be unfit for the position through his or her actions. On the floor of the Constitutional Convention, one delegate said it was only fair that new judges go through a trial period term, but if they proved to be qualified the judge should have "no fear of not being reappointed," according to published reports.

That common sense approach is exactly what is missing today when it comes to the reappointment of Supreme Court justices. Grandstanding by government officials and politicians has corrupted what tenure is all about—fortifying a fair and independent judicial system. It is time to get back to the good behavior standard for the sake of our Judiciary and for the sake of our citizenry. ⚖