

Judicial Independence as Enterprise Risk: A CLO’s Action Plan

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Key Takeaways from a Conversation between ACC CLO Members and Former Article III Judges

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Judicial independence and the rule of law have long been understood as essential foundations of a stable business environment — principles that underpin everything from contract enforcement to the fair resolution of disputes. These are not abstract ideals but practical conditions that enable companies to operate, invest, and grow with confidence.

Against that backdrop, a recent roundtable hosted by the Association of Corporate Counsel, in collaboration with members of the Article III Judges Coalition, brought together chief legal officers and former federal judges to examine how the current environment is evolving. The conversation

focused on a critical question: What happens when these foundational elements begin to erode — and what that means for enterprise risk, corporate decision-making, and the role of today's CLO.

The discussion surfaced a set of emerging developments that are reshaping the judicial landscape and, in turn, the operating conditions for business. The following takeaways highlight those insights and outline how CLOs can respond.

The shifting risk environment

While the rule of law has long been viewed as the basic background "infrastructure" of a well-functioning market and a standard component of the US legal system, the discussion focused on the rapid erosion of judicial independence as an active, high-priority business risk and potentially something that corporate boards of directors should be informed about.

For CLOs and their organizations, threats to judicial independence mean that the legal landscape is no longer defined by predictable dispute resolution. The resulting uncertainty will directly impact a company's ability to plan and invest accordingly.



Three emerging risks reshaping the judicial landscape

The March 2026 discussion identified three specific trends that have fundamentally altered the judicial operating environment:

- **Shift in threat scope (family targeting):** Security threats against judges have expanded in

volume and scope over the last two decades and, particularly in the last several years. A significant and concerning new development is the direct targeting of judges' family members, a departure from historical patterns.

- **Social media as a force multiplier:** Unlike past risks and threats tied to specific litigants, today's threats are amplified through polarized narratives and social media. This makes actors less predictable and threats much harder for the US marshals or local law enforcement to identify and mitigate.

- **The recruitment and retention crisis:** The cumulative weight of political pressure and security concerns is beginning to affect judicial recruitment and retention. This creates a long-term risk of a "brain drain" on the bench, leading to a less experienced or more ideologically driven judiciary.

How judicial instability translates into business risk

The erosion of judicial independence translates into several immediate "bottom-line" risks for the enterprise:

- **Loss of contractual reliability:** A weakened judiciary reduces the enforceability of contracts, property rights and regulatory decisions.

- **Arbitrary government action:** Diminished judicial independence increases corporate exposure to inconsistent or arbitrary government interventions.

- **Operational uncertainty:** Without neutral, objective and credible dispute resolution processes, companies face higher transaction costs and diminished long-term planning capabilities.

Strategic action plan for CLOs

The conversation underscored that CLOs have a meaningful role to play in reinforcing rule of law principles. Roundtable participants concluded that CLOs must transition from passive observers to active protectors of the legal systems they rely on.

1. **Frame as enterprise risk:** CLOs should educate boards and executive teams on the business implications of a weakened judiciary, framing it as a core enterprise risk rather than

a political or legal topic.

2. **Challenge unlawful overreach:** Companies must be prepared to challenge unlawful government actions, prioritizing long-term legal integrity even when faced with short-term costs.

3. **Drive internal ethical culture:** Use internal communications to promote high ethical standards and respect for the legal system, reinforcing the organization's commitment to the rule of law.

4. **Leverage collective industry influence:** Build and join coalitions with industry peers to amplify the voice of the business community in supporting judicial independence and conformance with the rule of law.

5. **Invest in civic understanding:** Support community and educational efforts that build public appreciation for the role of the courts, helping to restore the voluntary compliance on which the system very largely depends.

The stakes for business and the legal system

Judicial independence is not a self-sustaining principle; it requires active institutional support and public confidence to function. For the modern CLO, defending this independence is central to the company’s ability to compete and grow in a stable market environment.

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