

Threats foreign and domestic

DAVID F. LEVI: As the framers foresaw and as social scientists who study the rule of law confirm, it is impossible to have the rule of law without independent judges and an independent judicial branch. It just doesn't exist. The study and support of the rule of law is what we do at the Bolch Judicial Institute. We're very glad to be here today, and we have a wonderful panel to discuss threats to judicial independence. Suzanne, please lead us off.

SUZANNE SPAULDING: Today I'll discuss what I've been doing at the Center for Strategic and International Studies, where I lead the Defending Democratic Institutions project. My work there really grew out of my experience at the Department of Homeland Security, where I had the honor and privilege of leading the men and women who protect our nation's critical infrastructure from physical and cyberattacks. And in 2016, of course, we devoted a tremendous amount of effort, energy, and resources to trying to secure our election.

Our work has largely focused on Russian information operations. Not because Russia is the only country engaged in information operations targeting America, but because they have by far the most vigorous and robust

information operations designed to undermine the public's trust in democracy and democratic institutions. But we see increasingly other countries taking a page from the Kremlin's playbook.

These information operations exploit weaknesses and vulnerabilities of our own making. They do this in the traditional cyber context, but they also do it in the context of information operations where they find and exploit preexisting divisions and declining trust. It's really important to emphasize the difference between the criticism, the disinformation, the lies that are being pushed by Russia, and what we see as legitimate criticism and efforts to bring about change. Some critics are trying to bring about change in our institutions to make our country stronger. That is not Putin's goal.

We started thinking about how this could threaten public confidence in the competency, independence, and impartiality of the courts, applying what we saw in 2016 in the run-up to the election — hacking and leaking emails and sensitive court documents, and altering data in court databases and preventing access to information. And we've certainly seen that with respect to ransomware attacks, for example, where courts have been locked up for quite a long time in terms of public access to those systems. Thus, traditional malicious cyber activity can, ultimately, undermine the reputation of the courts.

As we started looking for the kinds of activities that we saw in the election in the justice system, we immediately saw lots of evidence of Russian information operations designed to undermine public trust.

The first thing, oddly enough, that we came upon inside the United States was this case in Twin Falls, Idaho. In the summer of 2016, social media in Twin

Falls was rampant with allegations that two young Syrian refugees had raped a 5-year-old girl at knifepoint and were later seen high-fiving their dads. But these incredibly emotionally charged details were all fabricated.

There were two young boys and a young girl in a basement, something untoward had happened, and the officials did take the two young boys into custody. They were juveniles, so the ability of officials to get the facts out was slowed down and, of course, that is a recipe for conspiracy theory. When they finally were able to try to correct the public record, they pointed out that there were no Syrian refugees involved. There was no rape. There was no knifepoint. There was no high-fiving of dads. These were all fabrications designed to make this more emotionally charged and to feed a narrative that our justice system favors immigrants over citizens.

Tweets came out arguing the justice system was failing, that officials were sweeping this horrible rape of a girl by Syrian refugees under the rug. Two fake accounts, RedLANews and PatriotRaphael, went after Wendy Olson, the federal prosecutor in Idaho, because she spoke up and said, "Look, false information is being spread online. It's really important not to spread false information." They attacked Wendy Olson. These two accounts are fake accounts, set up by the Internet Research Agency in St. Petersburg, Russia, to spread disinformation.

These are just two of many examples of inauthentic accounts that weighed in on this. There was also a Facebook ad that was posted in an effort to get people out into the streets to protest against the officials involved. And we see this time and again, where these fake Russian accounts try to turn peo-

In 2018, we found some 11 million tweets and a number of Facebook posts that Twitter had attributed to Russia. . . . We looked at them to see if there was content aimed at undermining public trust in our justice system, and we found quite a bit. . . . **They push the narrative that the justice system tolerates, protects, and covers up crimes by immigrants, that it operationalizes the racist and corrupt police state, that it directly supports and enables corrupt corporations, and that it is a tool of the political elite. The narrative is that judges are just politicians in robes.**

ple out into the streets. Putin's military advisor wrote a document years ago about tapping into the protest potential of the population. Barenaked Islam posted a picture of the judge overseeing the case, calling him a corrupt judge and posting his home address and phone number on the internet. He received multiple death threats.

We saw this same pattern when Judge [James] Robart [of the U.S. District Court for the Western District of Washington] issued the first nationwide preliminary injunction against what was known as the Muslim ban. Again, Twitter erupted with attacks on Judge Robart, accusing him of putting personal ideological preferences ahead of the safety of American citizens. Tennessee GOP and Tennessee Lone Star were two of the most active accounts, both set up by the Internet Research Agency in Russia. Judge Robart received upwards of a million threatening emails, phone calls, and letters, and at least two dozen death

threats, a number of which were so serious that he was given round-the-clock protection. We know that these kinds of attacks pushed online can lead to real-world violence. Judge Esther Salas of the U.S. District Court for the District of New Jersey tragically lost her son in a violent attack targeting her.

In 2018, we found some 11 million tweets and a number of Facebook posts that Twitter had attributed to Russia. They had been pored over by researchers looking for interference in the election, but we looked at them through a different lens. We looked at them to see if there was content aimed at undermining public trust in our justice system, and we found quite a bit. They all tended to challenge the independence and the impartiality of our justice system and, again, often pick up on legitimate grievances and weaknesses of our own making. They push the narrative that the justice system tolerates, protects, and covers up crimes by immigrants, that it opera-

tionalizes the racist and corrupt police state, that it directly supports and enables corrupt corporations, and that it is a tool of the political elite. The narrative is that judges are just politicians in robes.

We saw a lot of this online, but we also saw it in state-owned propaganda outlets. RT — Russia Today — is a cable news station with a robust online presence. RT has had to register as a foreign agent of the Russian government, and it has a number of programs that go after the justice system. But its most predominant is “America’s Lawyer,” a weekly program on RT. It’s hosted by a Pensacola trial attorney, Mike Papantonio. His weekly theme is that the justice system in the United States is broken, that corporations and corrupt politicians have taken control and have turned the once-impartial judiciary into a tool for the elite to use for their own gain.

The other source of these disinformation efforts is Russian officials ►

themselves, including Putin. In fall 2017, the U.S. government seized diplomatic facilities of Russia as part of sanctions being imposed. Putin gave a press conference saying this is a violation of our property rights, and I'm going to ask my envoy to sue in U.S. courts. And then he said, "We will see how effectively the much-lauded American judicial system works."

Putin has three key audiences for this disinformation. The first and most important is his own population. He wants to say, "Look, Western democracy is nothing to long for. It's just as corrupt and broken as our government is." That's also his international message to countries where we compete for influence, and RT broadcasts all over the world, in many different languages. Second, it's targeted to the American audience, too, pushing that Western democracy is not just flawed and in need of reform, but that it is irrevocably broken. And that's the key distinction. Russia's goal is to throw out so much disinformation that people give up on the idea of truth. That starts to move us to that post-truth world that causes folks to give up on the idea of being informed. And then, this narrative — that the system is irrevocably broken and individuals can do nothing to change it — causes people to stop trying to engage, and we lose the informed and engaged citizenry democracy depends on.

That is, I believe, Putin's goal. This continues today, and we saw it around the recent election, with lots of Russian propaganda claiming that the election was completely rigged. You can find our reports about the ways in which adversaries threaten democratic institutions, along with our deep-dive specifically into the threats to the justice system, at [csis.org](https://www.csis.org). Our project, in addition to research and analysis,

has been training state and federal judges to detect and defend against disinformation. We have talked about creating a rapid response and education network as part of that training. And finally, the promotion of civics as a national security imperative.

In our training, we emphasize the importance of building resilience in advance, and putting out as much information as you can, educating your community and leading with facts and values, not repeating disinformation. And, again, encouraging a robust civic education to build public resilience against the content of this messaging.

The fact that 43 percent of voters nationwide at least somewhat agree that the Constitution made sense in the 18th century but is irrelevant in the 21st century ought to give us all pause. Chief Justice Roberts, in 2019, highlighted this issue of disinformation and how important civics education is to overcoming it. We have to remind people that democracy is worth fighting for. Not because it's perfect, but because it is susceptible to change. That is the difference between us and authoritarian governments. To make that a reality, we have to educate the public about the ways in which they, as individuals, have a responsibility and the ability to hold our institutions accountable. We need to make the public resistant to this message that change is impossible.

The good news is that increasingly groups like the [National Commission on Military, National and Public Service] and the Cyberspace Solarium Commission on which I serve are emphasizing the importance of civic education. A recent poll shows that Republicans and Democrats agree civic education is the most important way to strengthen our sense of American identity. We have been holding "civ-

ics as a national security imperative" dialogues. We've had a number of programs — most recently with Justices Sonia Sotomayor and Neil Gorsuch — on the importance of civics education to the strength of our democracy as a national security imperative.

LEVI: That was absolutely frightening for me. And I'm sure for many of the panelists and others in the audience who have not come to realize just how active our international adversaries are in this space. This is extremely powerful and upsetting information. Implicit in what you've said is that you hope that civics education will also inoculate the public against jumping to conclusions during a crisis, and not be persuaded by this gloss that's put on it by RT or other actors. But that's a very big goal. It's not just about civics education. It's also about critical detachment in the receipt of information.

SPAULDING: It's a huge challenge, and obviously not something we're going to be able to put in place overnight. We need to take many steps to address the disinformation threat. Social media platforms have an obligation to do everything they can from a technology standpoint to address it. But ultimately, the only long-term, sustainable way to build public resilience against disinformation, from whatever threat actor — Russia, China, or domestic voices — is to strengthen America's confidence in its institutions. That is in part going to stem both from our institutions living up to our aspirations and the public feeling that they have a role in ensuring that that happens. That means educating the public in advance, not just having a response plan for disinformation.

One of the moments that concerned me the most was when election offi-

cials were making decisions about changes to adapt to COVID. We saw all of the lawsuits, which were a great opportunity for disinformation efforts. It brings together those two areas that Russia has particularly focused on: elections and the justice system.

What I always worried about was: Could we get to a point where a significant segment of the American population becomes convinced that judicial decisions are so lacking in legitimacy that they can be ignored? I worry that's what we saw on January 6th. The people who stormed the Capitol chose to ignore over 60 court rulings on the election, all of which rejected challenges to the fairness and legitimacy of the results. We are at a very serious point, and I think these kinds of conversations are all the more important because of the critical role the courts play, not only in our economy and in our social relations, but of course, in the peaceful transition of power.

LEVI: Thank you, Suzanne. That was riveting and deeply troubling. I'm going to talk now about threats to the

federal courts, picking up on some of the same themes that Suzanne raised.

I begin with the somewhat banal observation that the founders were quite perceptive. Judicial independence was front and center among their concerns. They thought of judicial independence in its two facets, the decisional independence of the judge from outside pressure when deciding a case, and the independence of the judicial branch as a whole. Article III reflects this view. It provides for a separate branch of judges insulated by lifetime tenure, during good behavior, and by a guaranteed livelihood. The framers did not provide that the judges would be entirely divorced from the ebb and flow of political life. They could be impeached, and their initial appointment was through the political branches. Nor were they autonomous. They were confined by law and by the assent of the other branches. Moreover, for much of their activity, they would share the judicial power with citizens through the jury trial. In this way, independence did not then — and does not now — equate to

unlimited or unaccountable power, nor should it.

Given Article III's protections, what threats could there be to the independence of the federal judiciary? Two kinds: external threats and internal threats. Both kinds have the potential to undermine our faith in fair and neutral adjudication, which is the purpose of judicial independence. The external threats come from different quarters, but their overall attack follows a familiar theme: Judges are biased, self-interested partisans, politicians in black robes, usurpers of democracy, bought and paid for by the elites. Ms. Spaulding has discussed foreign efforts to undermine the judiciary. Domestic voices are similar. They also paint particularly federal judges as partisans and do so in vitriolic language, designed to demean and perhaps intimidate.

President Donald Trump accused federal judges of racial and political bias. Senator Sheldon Whitehouse also used strong language to accuse Republican appointees on the Supreme Court of being in league with the Republican Party. The President and ▶

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the Senator seemed to agree that there are Trump judges and Obama judges. Much softer in tone, but nonetheless damaging, is the drumbeat from academics, equating judicial decisions with the party of the appointing president. In this reductionist version of legal-realism scholarship, there is often a suggestion of partisan judging — that is, a purpose by the judge to assist or please a political office holder, candidate, or party.

Similarly, members of the media often write about judges as partisan actors, and who can blame them when the confirmation process for federal judges consists of senators treating the nominee as a fellow politician? This view of judging is quite wrong in my view, but the discussion is complex. The judges in our system exercise discretion and judgment in a particular kind of limited policy-making power. If judges had no discretion and no call for the exercise of judgment, they would not find themselves under attack for bias or partisan purpose. But we want our judges to exercise a degree of discretion and judgment. And this leads to the criticism.

Some critics of the courts conflate the kind of restrained policy-making the judges must do with partisanship. As Judge Michael Boudin has explained, “Leeway is often present in cases in which public policy issues are at stake. Judges ought to put aside personal preferences, but they can hardly avoid bringing a worldview to the choices that many such cases present.” As Boudin goes on, “To call judges’ subsequent choices in public policy cases ‘political’ is mere provocation. One can reply blandly that these decisions are political in the sense that they relate to public policy, but few lay readers or judges will take it that way. Policy often matters in deciding cases,

but it is usually policy attributable to Congress or to public policy reflected in case law, common sense, and the values of the community.”

Judge Boudin calls upon us to be more careful in how we describe what judges do and how we use the term “political.” While we must defend our judges against the charge that they are politicians in robes, we must and should acknowledge that judges are human beings in robes, and they will exercise discretion and judgment in different ways. This does not make them partisans.

The second threat is internal, and I see two primary kinds of internal threats. The first is that, in a highly divided and partisan society, the judiciary itself will eventually surrender its strong culture of neutrality and become divided and partisan. This is a complex topic that includes how judges are appointed and promoted, how they interact with one another, the tone of their opinions and rulings, and how deeply and quickly courts become involved in the controversies of our time.

Judges’ responses to external attacks can also affect judicial culture. I acknowledge that thoughtful judges may not agree with this. But in my view, judges should not answer specific attacks. They should speak through their opinions, in an appropriate judicial voice, and say no more. We are in a new era of social media in which interlocking networks may be mobilized in an instant. Engaging in these communications is not something any of us are trained to do. There are significant dangers here because judges do not have crisis managers and communication specialists. Then there is the issue of appearance: When a judge squares off outside the courthouse against a political person or entity, the public may well see a partisan judge.

More subtle and equally important is the risk to their own heart and soul, to their spirit of detachment and impartiality. Responding to criticism can become a full-time preoccupation. If judges enter this ring, they risk changing who they are. Judges must rely on the bar to do the heavy lifting in this respect. This doesn’t mean that there’s nothing judges can do. They can do so much, but not by responding to specific attacks. It is too late by then. Judges can and do connect with their communities by holding court in high schools and other places, by giving talks on the rule of law and judicial independence, by discussing how they decide cases and why they became a judge, by writing their opinions so that a layperson can understand them, and by avoiding accusatory rhetoric when writing. Every opinion is an opportunity for civic education on the role and ways of the judge. Judges are doing this important work every day.

And this brings me to my last threat, which I characterize as internal, but is really a composite. We must have a justice system that works for the people of this country. If it is too slow, too expensive, or too distant from the people, if it doesn’t provide access to justice to the increasing number of unrepresented parties, then the system will be broken and the public will lose confidence. And so will judges. More than anything else, we must preserve this country’s strong judicial culture. If the judicial culture is strong, then whatever the threats, whatever the challenges, we will have fair and impartial judges, animated by the spirit of independence and committed to a justice system that works for the people. We saw just this kind of judging in the aftermath of the 2020 election. I think our state and federal judges are among the unsung heroes of the republic.

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And now I turn it over to one of those unsung heroes, Chief Justice Hecht.

NATHAN HECHT: I endorse everything you've said, and it applies as much in the state system as the federal. I do think that we are not good at explaining the importance of judicial independence. The last thing in the world you want to do is to walk into family court and have your lawyer tell you that because the judge favors your opponent for whatever reason — they go to the same club together, their kids are in sports together, somebody contributed to the judge's campaign — that it is going to have anything to do with the issues that are heart-and-soul important to you as you stand there. You want to know that this is going to be right and fair.

And it is an enormous issue for the state court system. There are some 30,000 state judges. In 2019, which was a normal year, we have 85, maybe 90 million cases. They're family cases, eviction cases, car wreck cases, everything imaginable. These cases are very important to the people who are charged. They want to know that these judges are independent, are following the rule of law. In this increasingly

partisan age, it's hard to convince the public of that.

I gave a speech recently at a law school class in Texas. One of the students asked, "Why should judges be independent? Isn't the reason that we vote for them that we want them to decide it our way?" That's a very scary criticism coming from a law student.

Often the faults of failed judicial independence are laid at the feet of judicial elections. Frankly, when I have visitors from outside the United States come to study and look at the state courts, they're just astonished that the judges are selected in this country by elections, many times by partisan elections. They're especially astonished that political contributions, which are necessary to run for office, are allowed for judges. Doesn't that impair their judicial independence?

But practically speaking, that's not where the issues are. It can be a threat when the politics of a region are unstable. But for example, here in Texas, when the politics of an area favor one side or the other, the judges all come from that side. If you want to be a judge, you don't care much about the partisanship anyway, then you run on that ticket. There's not a lot of controversy.

But there is a lot of controversy over issues: death penalty, gay marriage, business versus plaintiffs, masks, the power of the governor to curtail activities in the name of protecting the public. So there is a lot of pressure on judges to go one way or the other, and because of our increased divisions among us, these pressures can be very powerful, not only on judges but on judges' families as well.

If we're going to make any progress, we have to get the public to buy into this protection of the rule of law and not take the position of my law student friend who says "why shouldn't we have judges that are going to rule our way?" And there are ways of doing that. David talked about things that judges can engage in, and civics education and classes and all sorts of ways of trying to educate the community. But it is a constant struggle.

I've been elected seven times in Texas. I know you can be unfairly attacked, and it's very difficult to sit quietly and listen. Normally we rely on our friends to come out and say, "This is unfair, and you shouldn't be punishing this judge for just doing his or her job." I think the solution for keeping judicial independence strong lies with bet- ►

ter public education and making sure that they understand and buy into the importance of judicial independence as protective of the rule of law.

We get no help from our friends in the other two branches. The framers intended for the branches to be competitive, and they accomplished that. But that makes the task all the more important.

LEVI: Thank you, Chief Justice Hecht. We're going to shift to the international side of things, and who better to speak next than Judge Allyson Duncan, who will cover judicial independence from a global perspective.

ALLYSON DUNCAN: I have been involved [in matters of international judicial independence] as the former chair of the International Judicial Relations Committee of the U.S. Judicial Conference and now as a regional president of the International Association of Judges (IAJ), the region that includes Asia, Australia, and North America.

I've traveled extensively and communicated with judges from around the world, and I have constantly been impressed by the extent to which judges share a commonality of concern. By design, we tend to be counter-

majoritarian. We have the power to override the laws that reflect the rule of the majority. That creates a tension that has played itself out across time and geography and is as acute today as it has ever been.

I'll try to speak broadly about types of threats to judicial independence as they are likely to manifest in particular regions. One such threat, which has played itself out in Eastern Europe in particular, is that of an overreaching executive. Two exemplars are Poland and Hungary.

Both are members of the European Union. The European Union enshrines the right to an independent and impartial judiciary in the European Convention on Human Rights and the European Charter on Human Rights. And of course, the principle of judicial independence is also enshrined in the national charters and constitutions of EU member states. Although in some regions, it's accorded more lip service than actual deference.

In Poland and Hungary, you see challenges flowing primarily from the reach of an overly aggressive executive branch. *Judicature* recently published an article about the executive assault on the independent judiciary in Poland since a very strong nationalist govern-

ment took over the presidency and the parliament in 2015. You also see this play out in Georgia, Ukraine, and other countries that have strong potential to be American allies.

In 2018, the Polish government lowered the mandatory retirement age, allowing it to unseat about half of the sitting judges. It has publicly financed a massive media campaign to discredit the judiciary. Of even greater concern, Poland's lower house, dominated by loyalists of President Andrzej Duda's party, passed legislation that would discipline judges for taking any stand or even questioning the legitimacy of the government's judicial reforms.

In an unprecedented action, judges and lawyers from almost every EU member country joined hundreds of their Polish colleagues in Warsaw to take part in a demonstration called The March of 1000 Togas. It was called that because the judges wore their black robes to protest the law.

The EU launched an equally unprecedented proceeding against Poland over what it called the systemic threats there and said that those actions could lead to the suspension of Poland's voting rights. That's quite a threat, but it is largely an empty one because suspension would require a unanimous

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vote of the membership, and Poland's neighbor and close ally Hungary has said it would never support a decision of that kind. That I think is due at least in part to the fact that Hungary, too, lacks clean hands.

According to a report by the Council of Europe, the independence of Hungary's judiciary is also seriously threatened by recent reforms. Prime Minister Viktor Orbán's government has also sought to concentrate power within the executive branch by lowering the mandatory retirement age and, more disturbingly, creating a judicial system that would give a body dominated by the executive the power to appoint judges. No other EU member state has that kind of power. The situation in Turkey is particularly dire. The IAJ's efforts to support Turkish judges has led to Turkey labeling it a terrorist organization.

An exemplar in Africa is Chad. Chad is a civil system patterned on the French model. It has the structural prerequisites of independence, but it is faced with endemic problems of warfare, tribal conflict, corruption, and of course, the recent assassination of its president.

One last broad category is physical violence as a threat to judicial independence. You see that in particular in Latin America, where you see judges living in fear of threats from mobs and drug cartels. For example, judges in Brazil are trying very hard to obtain protection from security forces after they leave the bench because they've been threatened to such an extent while in office.

Finally, the EU is very concerned about the possible impact of measures taken to combat the coronavirus on the rule of law and the independence of judiciaries because the resulting encroachment on human rights

and liberties would not be considered acceptable in ordinary times. It has published about actions that cannot take place in the name of protection against the pandemic that would encroach upon the independence of the judiciary.

LEVI: What can a U.S. judge, state or federal, do to support their colleagues internationally?

DUNCAN: Vigilance should not be limited to countries where the rule of law is under more direct assault, because we do have problems of our own. The Federal Judges Association has been very interested in making sure Congress acts to provide physical protection for judges who have been under assault. District Court Judge Esther Salas and the recent assault on her family shows that is an issue here.

However, looking broadly, there are institutions that we can participate in. The ABA Rule of Law Initiative is a critical one. The Federal Judges Association has an international committee that interacts extensively with the IAJ. The United Nations Office on Drugs and Crime has a judicial integrity initiative that people can participate in and follow the results of. The World Justice Project. There are a lot of ways to stay abreast of what is happening and participate.

LEVI: Nathan, are the state courts involved in international initiatives as well?

HECHT: Not very much. Several years ago, when there were the threats against the Turkish judges, the Conference of Chief Justices passed a resolution supporting the judges and condemning the Turkish government. It felt a little bit out of our league to be

doing that, but we do feel and many times have expressed a lot of concern about what Allyson's talked about in Poland and other places in the world.

LEVI: Could you say a few words about the committee of the Judicial Conference that deals in international judicial relations?

DUNCAN: It is primarily reactive because that committee responds primarily to requests from other governments and NGOs, universities, etc., to come and make presentations on issues of particular concern. When I was chair, people were considerably interested in counterterrorism and how to conduct safe national security litigation while maintaining the participants' security and parties' rights.

LEVI: We've been using the term judicial independence, and one of the judges in our audience has asked whether this is a good term to use because it may suggest that judges think they are above the law. Is there a better term?

DUNCAN: I take the point. I really do. But my somewhat cynical reaction is that the answer is education. If that is what the term judicial independence brings to people's minds, I think they need to have a better understanding of how our Constitution was created and what separation of powers is.

HECHT: I think the same thing. It is a real problem, particularly with legislators because they all have constituents. They operate in a system where they are representative of the people who put them in office and judges just aren't. They don't get that. I think there's some resentment sometimes, but I do think the feeling among them, and in the public, is "Why should you ►

be independent? Why shouldn't you be accountable just like everybody else?"

LEVI: Rodney, the floor is yours.

RODNEY ACKER: As we've heard and as we've seen, attacks on the judiciary are increasing. According to a story on *60 Minutes*, in the last five years threats to federal judges have jumped 400 percent, to more than 4,000 a year. There are approximately 30,000 state court judges. So you can only imagine how many threats there have been against them.

As David said, the question is: What can the bar do, and what should it do to protect judges? First, they can speak up in response to particular attacks. By my count, the ABA has issued six statements since November of 2019. The American Board of Trial Advocates has issued a protocol for responding to unfair criticism with judges. Over the last 20 years, the American College of Trial Lawyers has regularly addressed attacks on the judiciary. In the last 18 months, the College's national office has issued eight statements when there were direct attacks against judges from both sides of the aisle. Our state and province committees have also issued statements. In fact, our policy and procedures manual identifies the responsibilities of each of the 53 state chairs of our state committees and province chairs in Canada to challenge threats to judicial independence and unfair criticisms of judges and of the judicial system.

Our state and province committees are the boots on the ground to quickly identify threats and make a response to the local media, ideally within 24 to 48 hours. To address the increased frequency of those attacks, two years ago, the College made our Judicial Independence Task Force into a per-

manent committee. Their charge is to monitor developments related to judicial independence and to coordinate, publicize, and track the College's timely response to threats to the judiciary or attacks on judges. The problem is it is hard to keep up with the increased number of attacks.

Also, the problem with speaking up is that it is reactive and retrospective. So the College is using an education program developed in conjunction with the National Association of Women Judges and our Judicial Independence Committee. That program uses a PowerPoint program to explain to civic groups and nonlawyer audiences the judiciary's role and the importance of fair and impartial courts.

This is a growing problem, and our Judicial Independence Committee is very active. We hope we can continue to work with the judges to support the judiciary in both education and in direct responses.

LEVI: Let me shift your gaze to a slightly different part of the landscape. In the last few years, we've seen virtually every organization that's dedicated to judicial independence go out of business. The American Judicature Society, which I joined in 1990 when I became a judge, does not exist any longer. Justice at Stake, which was Justice Sandra Day O'Connor's organization to protect and defend the judiciary and for civic education, filed for bankruptcy a few years ago. The American Bar Association's standing committee on the American judicial system has been defunded by the ABA and has no staffing at all.

So we're now in a situation where we seem to have made ourselves really vulnerable at a time when these attacks are intensifying, and we are relying on what little bits of spare time busy lawyers and judges can spend. Don't we

need to do more? Don't we need dedicated staff and experts and people like Suzanne engaged in a coordinated response? I mean, we're in a serious situation here.

ACKER: It is a serious problem. These attacks are mostly identified by lawyers who are aware of the issue. That's why we charge our state and province committees with identifying the attacks when they arise. I know we have spoken about the idea for a group funded jointly by a number of bar associations. Will that come together? Who knows. I do know that this is on our own agenda to explore.

SPAULDING: It's a challenging area in which to fundraise. It's not something that philanthropy committees are focused on, and it doesn't fit neatly within any existing programs. We've gotten very modest funding from Democracy Fund. I do think that it's an area where we ought to think about organizing philanthropy to look at this and figure out whether they are doing enough for this absolutely critical pillar of democracy.

LEVI: Thank you all. I think we have a richer understanding now of the problem and how we might approach it moving forward.

