



# losing faith

**WHY PUBLIC DISTRUST IN THE JUDICIARY MATTERS  
— AND WHAT JUDGES CAN DO ABOUT IT**

**BY RAYMOND J. LOHIER JR.,  
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—JEFFREY S. SUTTON

*In June,* Gallup released its annual survey on public confidence in the United States Supreme Court. The Court’s rating hit a historic low, with just 25 percent of Americans reporting “quite a lot” or “a great deal” of confidence in the Court, down from 36 percent in 2021. Data show that the Court is not the only institution in which the American people are losing confidence. Faith in institutions across the board — from organized religion and public schools to news media and big business — sank in 2022. And the Court remains the most trusted of the three branches of government. But this year marked the largest one-year drop in the Court’s rating since the poll began in 1973 and the third decrease in a row. Of note: The poll was conducted before the Court issued its major rulings for the 2022 term.

Polls are just one imperfect measure of public sentiment. And judges must administer justice impartially, without favor or bias or concern for which way the winds of public opinion may blow. But the rule of law largely depends on the willingness of ordinary people, as well as political actors, to abide by court rulings. How does declining faith in the courts affect respect for the judiciary as a whole? And what can judges do to help reverse the trend?

**DAVID F. LEVI**, director of the Bolch Judicial Institute and president of The American Law Institute, asked three judges of the United States Courts of Appeals — Judge **RAYMOND J. LOHIER JR.** (Second Circuit), Chief Judge **JEFFREY S. SUTTON** (Sixth Circuit), and Judge **DIANE P. WOOD** (Seventh Circuit) — to consider these questions. Excerpts of their conversation, recorded in August 2022, follow. A podcast of the full discussion is available on The American Law Institute website at [ali.org](http://ali.org).

**DAVID F. LEVI:** I’ve known all of you for many years, some of us going way back in time. I asked you to have a conversation today about judging and the perception of the Supreme Court, because of the troubling poll numbers from the most recent Gallup poll about the loss of confidence by the American people in the Supreme Court.

I think it’s fair to say that the Court is in the middle of things right now. It’s received a lot of criticism from all sides of the political spectrum. From my point of view, the Court’s been under fairly continuous attack from conservatives at least since the 1970s, and it’s now under fairly continuous attack from progressives as well. Even well before the decisions of the last term, which were so consequential, there have been serious calls for court-packing, for jurisdiction stripping, for other kinds of devices that would either limit the Court or change its direction. From whatever vantage point these critical assessments are launched, the basic point that the critics seem to make is that the Court is a political — perhaps even partisan — institution, and that it is making decisions on a host of pressing issues facing the country that ought to be left to the political branches. And this characterization is intended as a challenge to the Court’s essential legitimacy: Why should nine people have that kind of authority to make political decisions? They presumably have that authority to make legal decisions, but the critics would say that many of these decisions aren’t legal.

So why don’t we start with why this is of concern. The reality is that there’s been a loss of confidence, as revealed by the Gallup polls. Should that concern us?

**JEFFREY S. SUTTON:** Perhaps a few caveats are in order about the poll

numbers. I’m skeptical about looking at one set of data points. I think to the extent that the Court should be concerned about public support, public credibility, one year doesn’t seem like a very good way to do it. In fact, one year of poll numbers seems much more likely to be used by the opponents of the Court’s decisions, as opposed to people trying to assess whether the Court is performing like a court.

Then we have another complication. The Court sometimes rightly does exactly what the public does not want. You could imagine a horrible murder in which the U.S. Supreme Court correctly reverses a conviction on legitimate constitutional grounds. In that setting, the public understandably would be agitated that the crime went unpunished. But I suspect the four of us would agree that that is a setting in which public disapproval would not legitimately undermine the Court’s credibility and reputation for principled decision-making. That’s why we have a Bill of Rights. Sometimes the federal courts are supposed to act in a counter-majoritarian way, which, no surprise, sometimes leaves the people frustrated by case outcomes.

If someone had told me 10 years ago the Court was going to overrule *Roe* and *Casey*, I would have expected a significant response — not because one side is right, but because Americans have long had strong feelings about the issue in both directions. No matter how you look at it, that decision is quite consequential and is likely to generate strong views.

**LEVI:** Ray, what’s your thought on this? I think Jeff is saying we should take these numbers with a note of caution. I don’t hear him to say that we shouldn’t be concerned about a loss of confidence in the Supreme Court. ►

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**RAYMOND J. LOHIER:** I don’t dispute at all the caveats that Jeff mentioned, about, for example, the counter-majoritarian role of the courts, and also about polls generally. But I do worry. One reason that I think we should all worry about a loss of confidence and support in the courts, or even a reported loss in confidence and support, is that — this is almost cliché — but we really have nothing other than public confidence to protect the branch.

I do think that we should pay attention when there’s any indication of flagging confidence or support in the judiciary. What’s important in my view is that there has to be at least the perception of some connection — and a judicial appreciation that there must be a connection — between the public and the Court, between what the public expects, broadly speaking, and how the Supreme Court and courts of appeals and the district courts rule, and how we justify or explain our rulings.

Any loss in confidence in what we do, or what the Supreme Court does, makes the rule of law somewhat more vulnerable and detracts from the legitimacy of what we do. What I mean by that, at least in part, is that a lack of confidence increases the risk that actors — it could be public actors, legislatures, certainly ordinary people — are just over time going to ignore our orders and mandates. And they’re going to do so as they perceive a lack of confidence or diminution or decrease in confidence and support in courts. They’re going to do so thinking that there will be no practical consequences. And that’s always the worry. It also increases the chances that the public — not only here but also abroad, which I think is an important point — is going to start to regard our judicial decisions not as a product of impartial deliberation based on the facts and the law in each particu-

lar case, but as in favor of or against a particular party, or a particular position, and as essentially pre-ordained, based entirely on the composition of the decision-making panel.

A few years ago, I had the good fortune of meeting a chief justice of what I would describe as a troubled democracy. He spoke to a few federal judges here in New York City and described this phenomenon in a very powerful and very sobering way. What he described is a series of repeated and un rebutted attacks [on the judiciary] from different sectors within the government in that country, especially the media and government actors in that country. Over time, this caused a significant reduction in public confidence in the supreme court of that country in particular, marginalized legal principles, and also marginalized the people within the country — at many levels, but certainly at the highest level — who believed in and were trying to foster a belief in the rule of law.

That’s a problem. And as we, the federal judges, were listening to this chief justice, we were thinking about the fact that it’s not an impossible future in the United States. And part of the problem is that when you have that loss of confidence in the court system, people resort to other means to resolve those matters that are properly or historically within the realm of the judiciary.

I think that there’s a bright side. I don’t think that the poll that you mentioned, David, or the polls that I’ve seen, have picked up on any decrease in confidence in the judiciary among members of the Bar, among the attorney class. And I think that’s pretty important. That was not true, by the way, in the troubled democracy that the chief justice of that country described. And I do think that if that ever begins to happen, that is, a decrease in confi-

dence among the members of the Bar in the pronouncements of the Supreme Court or of the lower courts, or in state court rulings, then we have a truly significant problem.

**DIANE P. WOOD:** I want to go back and ask why we find ourselves in this place, because I am troubled by these polls. I take Jeff’s point that one poll here, a poll there, could miss a lot of nuance. But the first question that I asked myself is: These are public polls, and so where is the public learning about the Court? We in this conversation are in rare air. We think of theories of interpretation, and we think of Court opinions, and we think of scholarly articles. That’s not where the public, as a whole, learns about the Supreme Court. I would say the primary place they learn about the Supreme Court is in the confirmation process. And the confirmation process is portrayed, in the press at least, as this grand fight between Camp A and Camp B, between liberals and conservatives, and who’s going to get this pre-ordained result.

Then you pile on something such as a decision by the Senate not to move forward on a vote with Merrick Garland, and then a decision by the Senate in a much tighter timeframe to move ahead aggressively with a vote on Amy Coney Barrett, my former colleague — both terrifically well-qualified to be on the Supreme Court, and I’m not complaining about anybody’s membership on the Court. But the public at large is told that this is a big partisan fight, and so somebody “wins” and somebody “loses” as a result of that. And that’s a shame.

But it seems to me that — and believe me, I have no idea how to do this — we could somehow dial down the temperature on the confirmation process, and begin to think that we really are

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looking for people who are going to be what I'm going to define as a "good judge." These are people who are likely to sit on the Court for 30 years, 35 years, 40 years. Who among us has any idea what the hot issues of the day are going to be 20 years from now? I certainly don't claim that crystal ball.

We can all pick the 3 percent of cases that are the source of most differences in opinion. It's the abortion cases, it's guns; it's the tough ones. That used to include the death penalty. Many people have sincerely held, strong views on one side or the other of these issues. I'm not sure how you bridge those gaps, but truly you begin by respecting the fact that these are very difficult issues and that people of good faith are going to come out differently on them.

One other point I want to make is about the cert power. I think any of us, if given a pool of 6,000 cases and told, "pick out the 60 hardest cases, the most consequential that you can find, and give those your attention," we would end up with the tough ones. They will be the cases that have political overtones, that turn on policy, that have all sorts of dimensions. At the court of appeals level, where we have mandatory jurisdiction, you don't have that selection issue. But you do have it when you have the cert power. And the Supreme Court, for better or for worse, faces this challenge. We have asked this institution of nine human beings to somehow cope with these extraordinarily eventful and consequential cases. It's a little unfair of us then to turn around and say, "Oh, now you're being partisan," because we've asked them to do exactly that. We've asked them to take these extraordinarily difficult cases.

My only suggestion, or my wish, I suppose, would be that when opinions are being written, judges take

great care with their audience. Shorten them, make it clear what principles are being used. Don't stoop to name calling, probably don't even go into 20-page digressions into history. I'm not sure that's helping that much. I think clear rules of interpretation — where a judge can plausibly say, "This is the way I understand the law. This is how I got to where I need to be" — might be of some help in pulling back from the little 'p' politics view.

**LEVI:** I don't think the public really understands that the courts of appeals judges usually agree with one another, to the point where at least in some circuits it's not even deemed necessary to hold argument in many cases because these cases are so one-sided. It's also not fair to the parties, in a way, to impose more expense on them when the judges are quite convinced in how they're going to decide those cases. Even on the Supreme Court, out of those 60-odd cases, maybe each year there are 10 or so that will cause consternation. But in the majority of them, particularly in the technical areas, the judges are quite constrained and do tend to agree.

You're all on the court of appeals. Do you feel that you are affected when the Supreme Court is in the crosshairs, and the public has less confidence in the Court? Do you think that affects the stature of the lower courts?

**LOHIER:** The level of civic education about what we do is such that most people don't distinguish between different court systems. They just hear the term judge, or federal judge, and they have a general impression that applies to all judicial decision-making. I agree with Diane — a lot of what people see is the confirmation process and the top-line divided decisions of the Supreme Court, because that's what

the media picks up on. There very rarely are cases or media reports about circuit court decisions that don't make it up to the Supreme Court. And there's no news about unanimous decisions either, certainly not with respect to Supreme Court decisions, but definitely not with our courts and intermediate courts of appeals.

Diane and Jeff and I are each dealing with probably hundreds of decisions on the merits, and our courts are dealing with thousands at some point. With great respect for the individual litigants in each, decisions are like pebbles thrown into the ocean. By contrast, each one of the Supreme Court's decisions has the seismic — or is perceived to have — this seismic effect because there are so few decisions that come out. And again, the press and others don't focus on the unanimous decisions on more or less technical issues. They focus on the decisions that are sharply divided, or that show the Court as sharply divided. And that view trickles down to the rest of the judiciary.

I think that forms of civic education would help ameliorate that misperception. On the Seventh Circuit, there's a 97 percent unanimity rate. On the Second Circuit, it's something like 98 percent, a very high level of unanimity notwithstanding differences in terms of the appointing authority. And that is just not a story that's told.

**LEVI:** Jeff, you have been telling the story of the state constitutions incredibly well. I'm just in awe of what you've been able to accomplish here in the past few years. You've written two really wonderful books on state constitutions — *51 Imperfect Solutions: States and the Making of American Constitutional Law*, and *Who Decides? States as Laboratories of Constitutional Experimentation*. One of the points you've tried to make is ►

*“There’s a growing disconnect, at least the perception of a disconnect, between the public and what the Supreme Court*

that these constitutions, and the state supreme courts that are interpreting them, can take some of the pressure off of the U.S. Supreme Court to be the sole decision-maker on some of these very difficult issues. Can you talk to us about that in our current circumstance?

**SUTTON:** When we think of federalism, or “states’ rights,” lots of cautionary experiences come to mind, whether it’s slavery, Jim Crow, or other unfortunate chapters in American history. The last thing I want to do is forget those chapters. But I do wonder if, at this moment, federalism might offer some opportunities. I appreciate the risks of allowing 50 states to go their own way, as they might experiment in unsavory ways. But it is a very big country with 330 million perspectives. And it seems possible that many of the policy challenges we face do not submit to just one overarching answer.

It’s hard to find anything in law or policy these days about which Americans still agree. But we still seem to embrace Justice Louis Brandeis’s insight that, if you have a tricky policy problem, it’s dangerous to have the national government experiment with a one-size-fits-all solution when you have little information about how it’s going to play out. In making this point, Brandeis was referring to state legislatures as the laboratories of experimentation. But I wonder if the same insight applies equally to state courts — and state constitutions — as well. The key point Brandeis is making is that sometimes we should develop new ideas from the ground up. Why not do the same thing with innovative constitutional rights or structural ideas? Many of the biggest challenges in constitutional law — and many of the biggest divisions in the courts — arise from disputes about the meaning

of vague words (say, whether speech is “free”) or concepts that offer no guidance at all (say, substantive due process).

When the U.S. Supreme Court identifies a new substantive due process right, for example, it is at the outer edges of its power. Is that not a good time to wait for input from other sources?

I am skeptical that the current model, in which we Americans ask the U.S. Supreme Court to be the lead innovator, can last. There are three features of federal constitutional law that combine to put tremendous pressure on the current Court. One is that, over the last 75 years or so, the U.S. Supreme Court has exercised judicial review in a muscular way. It’s indeed hard to think of a country in world history that exercises judicial review with the same frequency and with respect to significant matters of public policy in the same way that the U.S. Supreme Court does.

The second point is that the federal courts are interpreting a document that requires three quarters of the states to amend. In other words, if the Court decision concerns anything remotely controversial, it can’t plausibly be corrected by a vote of the people. While I am prepared to be corrected, I doubt there is a democracy in the world that uses judicial review so frequently and makes it so difficult to correct a Court mistake by a constitutional amendment.

That brings us to the third leg of the stool: All federal judges have life tenure, making it difficult and highly unpredictable to alter the composition of the Court. It seems unlikely that the next 75 years of our history will see all three of these things taking place together.

Now let me contrast these features of the federal system with the state systems to show why state courts offer considerable promise as better vehi-

cles for constitutional experimentation. As a general rule, the state courts do not have a single one of these problems. They do not exercise judicial review in such consistently broad ways. Every one of their constitutions can be amended much more easily — in all but a few states just by a 51 percent vote. No state has a 75 percent threshold. The highest is New Hampshire, with a two-thirds requirement. Ninety percent of state court judges face the electorate at some points, and nearly all of the rest of them face age limits. Only Rhode Island gives its state court judges life tenure.

As I see it, the judges who ought to be in the vanguard of experimentation are the state court judges. The risks are smaller given the size of their jurisdictions. Any innovations provide useful information to the U.S. Supreme Court before it nationalizes an approach. The people can far more readily correct flawed decisions with constitutional amendments. And the people nearly always have the option of not reappointing or reelecting judges with whom they disagree.

It’s not lost on me that there are risks with relying exclusively on state courts, just as there are risks with relying exclusively on federal courts. That’s why I prefer two chances, not just one, to protect our liberties. And that’s why I prefer a system in which, generally speaking, constitutional experimentation starts in the states, it sometimes ends there, and it always permits a valuable dialogue between the state and federal court systems.

**LEVI:** I don’t know whether the last couple of cases challenge or illustrate your theory. In *Dobbs v. Jackson Women’s Health Organization*, you have the Court throwing the issue back to the states, and maybe to the state supreme courts, because as you point



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—RAYMOND J. LOHIER

out in one of your books, they have not been ruling on a constitutional right to abortion under their own state constitutions since *Roe* was decided. But now they will get cases. And, I don't suppose it's easy to predict how that's going to go, but it's going to become something significant, I would expect.

And then in *New York State Rifle & Pistol Association, Inc., v. Bruen*, you have, in a way, the reverse point, which is the Court's taken this off the table, something that involves guns in a country that is so different in different locations. The access to police resources and the environmental threats that you might have in a remote location in Wyoming are going to be very different than what you find in a highly urbanized area. And that might have been something where legislatures and even courts would say, "We come to different views on this because the circumstances are so different." But that's not going to happen now, at least for the foreseeable future.

**SUTTON:** It's clearly an educational moment for Americans to appreciate that they have at least two shots to protect a right to abortion. That's a valuable thing for people to know. It's possible we will find this is an area that also will lend itself to some compromises at the legislative level. Until now, I should add, no state has enacted a constitutional amendment to protect a right to abortion or a right to choose, however one wishes to phrase it. Now we have several on the ballot this fall.

In *Bruen*, I appreciate the perspective that it seems to be limiting state experimentation. But that story, it seems to me, has yet to be told. Based on the handgun-related holdings so far in *Bruen* and *District of Columbia v. Heller* and *McDonald v. Chicago*, there is still plenty of room for local experimentation with respect to all kinds of

weapons and ammunition. Time will tell. Whatever happens, I will be surprised if it ends with a country in which we have just one rule about gun regulation for rural Wyoming and urban New York. This is a big country, and I suspect all nine justices of the U.S. Supreme Court appreciate that the "right to bear arms," constitutional mandate though it is, still leaves room for local innovation and experimentation.

**LEVI:** So Jeff thinks that maybe the state supreme courts can take some of the pressure off of the U.S. Supreme Court. But can the circuit courts also take some of that pressure off the Court? Instead of being a way station en route to the decision, can they help to educate the public and maybe dissipate some of the division?

**LOHIER:** The federal courts of appeals were created in part to take pressure — another form of pressure — off of the Supreme Court, when the Supreme Court was overwhelmed after the Civil War by a very congested docket. We were created to significantly reduce its docket. And then, of course, as Diane mentioned earlier, in the 1920s that all-important cert power was introduced to take further pressure off. And prior to that, there had been a pretty active certification process whereby courts of appeals could certify specific questions. I think that if you had a certification process of the type that our state court counterparts in just about every state now have, that would be very helpful — if we could resume this tradition of certifying at least one or two questions that the active members, say, of the court of appeals in each region thought were not only very important, but particularly vexing for them. There's a growing disconnect, at least the perception of a dis-

connect, between the public and what the Supreme Court does, sometimes a disconnect between what the courts of appeals do around the country and what the Supreme Court does. In many areas, on technical issues, we see these circuit splits, and they're prolonged. They're not resolved by the Supreme Court. The Supreme Court takes other cases as is its prerogative. If we had a more formal procedure to tell the Supreme Court, "These are the issues that we're grappling with that are very vexing, that would be very helpful for you to resolve and to nationalize," that would be helpful.

**LEVI:** We're in a period where I think the lay public would be surprised — I'm surprised, too — that so much of the debate over the past 30 years or so has been in these competing camps of methodology of how to interpret the Constitution. Diane, you've offered in other venues an elegant defense of some form of living constitutionalism with some textualism thrown in — it may be even more subtle than that. But one of the concerns about living constitutionalism is that, if it's alive, it can go in a lot of different directions. And those directions may be determined by the judge's own predilection, and less by what the American people thought when they ratified the document. What are your thoughts about that?

**WOOD:** I start from the proposition that the people who wrote the Constitution — and I'll include those who've written the rather small number of amendments that we have to the Constitution — were intelligent people who knew what they were doing, and who meant what they were saying. So that's where I say, of course, you're going to start with the text. But if the text you're worried about says "in ►

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order to be the president, you have to be 35 years old,” that’s easy. I have never in my life heard any big debate about what it means to be 35 years old.

But we have other provisions of the Constitution where, if you want to think in terms of rules versus standards, the people who wrote the document gave us very broad instruction — no cruel and unusual punishments, due process, equal protection. So if the constitutional text that we’re starting with happens to be one of those “standards,” one of those much broader-based things, then the people who wrote it themselves would’ve expected those standards to be applied in the contemporary world where the question arose. They would not have thought that you had to always excavate history in whatever year you want — 1787, 1791, 1868, and on. These are things that we build on experience. The common law judges themselves didn’t just pick solutions out of a hat. They looked very carefully to the other similar problems that had arisen, to analogies. Could they ground the rule that was going to govern this case in propositions that had been there before? And the difference for us is those propositions have to be rooted in the constitutional text.

I really think we can follow the constitutional text and still have flexibility where it’s needed, and not where the people who wrote the Constitution meant what they said. I don’t think you’ve got to be completely on one side or the other. You don’t have to read the Second Amendment to apply only to blunderbusses that were available in 1791. We should be sensible. There are a lot of provisions to the Constitution that I think give room for contemporary applications rooted in the law that’s developed around the clause.

**LEVI:** How do you assess this sense that we have these different methodologies and judges just have to select one or the other? I think you’ve confused it a little bit by saying you can be eclectic depending on the nature of the text.

**WOOD:** So here’s the evil that I hope we can avoid, and that’s opportunistic behavior. If you think you want very literal interpretation, maybe you strike down the administrative state because Article II doesn’t say anything about it, or maybe you think that’s too much weight for the necessary and proper clause to carry. It’s just when you’re a textualist when that serves your end, and when you’re not a textualist when that doesn’t seem to lead to the result you want — I have trouble with that. It seems to me then you’re not really a textualist. You’re just doing sort of an ad hoc assessment of the provision in mind.

**LEVI:** That’s very helpful. I think what we want to avoid is we don’t want to get to the point where the methodologies are so constraining that we all know how a person is going to decide. That is kind of a form of judging that I’m sure none of us subscribes to, and yet it’s hard when you see these stable voting blocks on the controversial cases not to be, at least for me, not to be uneasy about it.

**SUTTON:** One premise of appellate courts is the possibility of disagreement. That’s why you have multiple members, who bring with them multiple perspectives. Take a case like *Bostock v. Clayton County*, where Diane [and her findings in a related case, *Hively v. Ivy Tech Community College*] was affirmed. There were three different opinions in the case, all written by textualists, and all in

disagreement. Even judges using the same methods of interpretation can come to different outcomes.

It might be helpful if we judges and the law schools could cut back on the “teams” approach to statutory and constitutional interpretation. It can be quite misleading in both directions. On one side, people should be happy to accept that all interpretation starts with the relevant words, and it usually starts with the assumption that they have a fixed meaning. There may be modest exceptions. If a constitutional provision turns on what is “unreasonable,” there may be more room for debate about evolution in that setting or others. And history is always relevant, even if it is not always dispositive. There is no such thing as legal interpretation without history. On the other side, judges should be humble about their ability to use history to discern clear answers. And they should be humble about whether dictionaries, context, and canons of interpretation supply clear answers. Otherwise, we are going to politicize interpretation, which is not good for law. A society that cannot agree how to interpret language is going to have difficulty preserving the rule of law.

**LEVI:** Two of you have been chief judges, so I think you’ve all been very aware of the collegiality of your courts. Maintaining collegiality is important for the very reasons that we’re talking about — so a court can do its job well. How is it to be a judge in a divisive time?

**WOOD:** As chief, I certainly tried hard to make sure that the rhetoric stayed cooled down. And when I write dissents, I try, godfather-like, to “keep it business.” Not personal. If I don’t agree, I need to have a reason, and I need to be able to put the reason down in some

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way that a well-informed legal reader can understand what it is. If I can't do that, I shouldn't even write the dissent. The last thing in the world I want to do is write a dissent that's going to antagonize a colleague whom I might want to persuade to join me tomorrow. In fact, in over 27 years on the Seventh Circuit, there have been so many times when I have thought I knew exactly what Judge X was going to do. And Judge X would sometimes surprise me.

The other thing I'll just put in a huge plug for is at the Supreme Court level — just like at our level — if you can write opinions somewhat more narrowly, if you can do what the Supreme Court did during the term that it had only eight people while the vacancy was unfilled, they actually got a lot done and they narrowed things. They found ways of getting along together. They proved that they can do it if they need to.

**SUTTON:** Instead of *The Godfather*, I will invoke *The Sound of Music*, the nun's statement toward the end — "Father, I have sinned," after pulling out the spark plug in the police car. I'm sure I have written some dissents that are stronger than they needed to be. But I agree with Diane, it is usually unproductive in the case at hand, usually springs from vanity, and is not good for the courts in general.

**LOHIER:** I think that peer pressure helps. What I've noticed, particularly in the context of en bancs, has been when other colleagues, particularly senior colleagues, call and say, "You might want to take out a few words or sentences that you thought were superb sentences." There are so many new judges. This is a real opportunity to reinforce the message about collegiality.

**LEVI:** All of you do so much work in the civic education space. Do you have an elevator speech that you give when people say, "Gee, isn't this just politics by another name?"

**LOHIER:** I spoke to a number of high school students with very different backgrounds in New Mexico. It was fantastic, but I was stunned by the number of times that these 14- to 18-year old high school students expressed the view that judges were really nothing more than purely political actors whose decisions were entirely political. I was very surprised, and what I tried to do was to explain what I do, explain what my colleagues do, explain how I do my job every day. As Diane and Jeff both pointed out, I tell them how often we're unanimous in our decisions, despite very different viewpoints.

I also encourage people to go see an actual court proceeding. Go to court, federal court, state court, lower court, I don't care — just see how it operates. See, frankly, how, in many ways — with great respect for the litigants in each case — mundane it is, and then they'll appreciate really the majesty of what it is that we do and the fact that we've been able to do it so well in a way that has until now preserved the rule of law.

**SUTTON:** If we were blue-robed and red-robed judges, why would we agree in 90 percent to 97 percent of our cases? I can personalize the point in this way: In my two biggest cases, I ruled opposite my policy preferences, proving either that someone gave me the wrong-colored robe or that robes correctly come in neutral black after all.

I would add that increasing respect for law and courts is not our job alone. It's also the job of lawyers. Alexis De Tocqueville, in *Democracy in America*, makes the point that lawyers have a

prominent role in American government. Lawyers are in a great position to explain how the system works and what are legitimate points of debate about a decision and what are not.

**WOOD:** When I'm in that situation, as I was earlier this year with a rule of law program in Chicago that had quite a few high school students attending it, I try to keep it pretty specific. I try to say, "What are you worried about? Are you worried about the gun case? Are you worried about abortion?" Because the press tends to run these "sky is falling, world is coming to an end" headlines, and I'm very often able to say, "Let's be specific. What did the Court say here?" Well take *Dobbs*. They said, "This goes back to the legislatures and to the people." So I say, "If you want to feel empowered, the Court didn't shut you off, but you, as soon as you're able to do it, should register to vote, should make your voice heard." There are many, many court decisions that operate inside statutes where there's actually a pretty straight line between individual action and the ability to affect the system — not so for all constitutional things. But if you tell them, "Let's stop for a minute, take a deep breath and break it down," it becomes more manageable, and I think they wind up feeling empowered to do something about it.

**LEVI:** Thank you all so much. It renews my confidence in a system that attracts such talent and genuinely nice and thoughtful people. I cannot thank you enough, for what you do in your work and for being with us here today.

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