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JUDICIAL COLLEGIALITY IN A CHALLENGING TIME

At the 2026 Bolch Prize ceremony, recipient David F. Levi led a roundtable with fellow judges on collegiality, public trust, and the pressures shaping today's courts.

With David F. Levi, Wallace B. Jefferson, Kimberly J. Mueller, Jeffrey S. Sutton & Diane P. Wood

As debate over court decisions and criticism of judges have intensified, confidence in the judiciary has become an increasingly important concern. In a roundtable discussion following his acceptance of the 2026 Susan and Carl Bolch Jr. Prize for the Rule of Law, **DAVID F. LEVI** moderated a conversation about how courts can maintain traditions of collegial decision-making while also helping explain the work of the judicial branch.

Joining Levi were **WALLACE B. JEFFERSON**, retired chief justice of the Supreme Court of Texas; **KIMBERLY J. MUELLER**, the David F. Levi Professor of the Practice of Law and Judicial Studies and director of the Bolch Judicial Institute; **JEFFREY S. SUTTON**, chief judge of the U.S. Court of Appeals for the Sixth Circuit; and **DIANE P. WOOD**, retired judge of the U.S. Court of Appeals for the Seventh Circuit. Together, they reflected on the resilience of the courts, the

From left: Jeffrey S. Sutton, Kimberly J. Mueller, David F. Levi, Diane P. Wood, and Wallace B. Jefferson

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challenges of political polarization, and the importance of civic understanding in sustaining the rule of law.

DAVID F. LEVI: If you think about the last 10 years, the courts have been under a lot of pressure. We had COVID and then a period in which presidents — particularly the current president — are pushing the extent of executive authority. A lot of cases are coming into the courts on an emergency basis, and that's hard for all courts to deal with. Looking back at the past decade, how do you think the courts are doing?

WALLACE B. JEFFERSON: I'll start around 13 years ago, when I left the Supreme Court of Texas to return to private practice. One of the reasons I left was too much politics intruding on the judiciary.

> "In the end, it's logic, precedent, and text that determine the outcome in the vast majority of cases."
> – *Wallace B. Jefferson*

In Texas, judges are elected in statewide elections. You run partisan campaigns. I thought it was getting a little too ugly out there in the general population. I didn't foresee what was coming down the road. But I have been encouraged by the independence of the judiciary and all courts, state and federal.

In general, we can say that the courts are trying to get it right, whatever the question presented to them. There are disagreements, and that's okay. That is natural. Very difficult questions can come before the courts. Many of us serve or have served on a collegial court, and you can have very intense discussions with your colleagues. But in the end, it's logic, precedent, and text that determine the outcome in the vast majority of cases. And that's without

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regard to who is in front of the judge — whether they are wealthy, poor, a minority, that is not the determining factor. I think that's what distinguishes this branch from the others. And I think it's why people look to the United States for the principle of the rule of law.

I know it's a difficult time, but in the end, I'm quite encouraged about where we stand. We have to keep the rule of law — and the people in this room have to be leaders in that effort.

DIANE P. WOOD: I agree with Wallace that there is a lot to be proud of in the way both our state and federal judicial systems have worked — as well as in the judges, who are the people who make that come alive every day.

Whatever your source of news, everything is black and white, and it's discussed in a way that makes one side think, "If you don't agree with me, you're an idiot." Or "If you're taking this other position, you're a terrible person." And that's difficult for a judge to live with every day.

I don't know any judges who have succumbed to that. When I was on the Seventh Circuit and we would be sitting there, maybe all 11 of us, having a discussion about a particularly difficult en banc case, I used to think "it's really too bad the public can't see this." There's no way they can — I wasn't ever in favor of open meetings, so to speak — but it was uplifting. People talked about what they thought had to be done with the case. They talked about the problems. You may have been 180 degrees on the other side in some of these cases. You all know the kinds of topics I'm talking about, whether they're gun rights, religion in the public square, or reproductive rights. A whole set of hot-button issues reach the courts, and people genuinely have different feelings.

I think judges have done a pretty good job of respecting that in one another and coming up with solutions. But it's hard. At the federal level, the difficulty begins with the toxic confirmation process, no matter the appointing president and whatever the Senate has become. No one is even thinking about whether people are qualified to be a judge, and I think that is corroding the public's trust in the judiciary and making it harder for judges to do their job.

KIMBERLY J. MUELLER: Here I would echo my colleagues. What's happening inside courtrooms is very encouraging. Judges are doing their jobs; they're rising to the occasion. I'm the former trial court representative here, from one of the districts that was already burdened and is now just being buried in temporary restraining order [TRO] petitions out of federal detention centers in the Central Valley of California.

One colleague got 16 TRO requests on a recent Friday. The judges are handling those matters. They've figured out ways to be transparent. Those kinds of emergency requests put a strain on the court's ability to vindicate due process, which is at the core of what we do, and also on the ability to create explanations that are fully transparent.

But again, I think courts are rising to the occasion and doing the job — the challenge is that not everyone is able to see that. And what courts do is translated in ways that misinterpret what is truly going on.

WOOD: Can I interrupt with a little plug for *Judicature International*? A recent issue featured a very interesting article on how the apex courts in Canada, Germany, and Israel are handling this problem institutionally.

In Canada, they are appointing an executive official whose job it is to explain the court's decisions in what I would call plain English, just a paragraph, not a hundred pages or even 30. The article went on to describe a number of other institutional efforts to make the courts more accessible to people. I commend it to all of you.

JEFFREY S. SUTTON: I'm a little mixed about the intensity of the feelings of Americans about state and federal courts and many of our elected officials. The reason I'm mixed about it is that state and federal courts are doing some really important things — things that people really care deeply about, and it would almost be non-American not to be agitated when things don't go your way. It's just a very American thing. We care about our rights, and state and federal courts are in the middle of all of this.

I quite agree with Diane; the selection process is a Hunger Games fiasco at the federal court level. The Wisconsin Supreme Court race last year tried to one-up things, with $50 million spent on one race. To me, that race presented the question of what it means to be a ▸

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judge. Is this a form of representative government where we're identifying where we're going to be on the issues and then the people who support that vote for us? Happily, I think that's unfair. There are probably a couple of salient issues where it may be predictable what a court will do.

I guess I end up where Wallace is. I think the courts are going to come through this and be as strong as before or stronger still. For better or worse, I think the current administration is showing the judiciary's independence. They're giving us lots of opportunities to show we're an independent branch. And it's not just one administration; the same has been true for the last 10 years.

> "Over time, [judges will] prove they're political hacks or truly trying to get it right in an independent, neutral way."
> *– Jeffrey S. Sutton*

Everybody likes outcomes that don't alienate anybody. But then there are outcomes where you read the decision and you say, "They're trying; they were definitely trying to get it right." I kind of think that's all we can do. Some of these are very difficult problems and questions. Thank God, in the appellate courts, we have a couple of colleagues to ask questions of and several layers of review. I think that helps as well.

The Bolch Judicial Institute is performing a great service, whether it's defending the judiciary, explaining what we're doing, or embracing the civics education piece that is so critical right now. Thank you for everything the Institute's doing.

LEVI: Let me stay with you because you started to raise this. When Americans don't agree with a decision, there's at least some tendency to ascribe the decision to partisanship. They'll say, "The judge is a politician in robes," and you hear that from members of Congress. But this is not the way any judge would describe themselves or their colleagues, for the most part. So how do we deal with this?

SUTTON: At one level, it may be a bit of a lost cause. I think it's asking too much of citizens to not think when a case comes out, they're for it or against it. If people of faith can sometimes convince themselves that "my will is God's will," it's child's play to say, "What I want is in the Constitution." I don't think we can fix that. I think it's not even worth trying to fix that.

What is worth doing is judges being able to show over time, not in one case but over time, that whatever their approach to interpretation is, it doesn't always land where their worldview is. And that's the only way to do this. It's a character test for each judge, and you can only evaluate it over time. Over time, you realize that maybe you didn't like what a judge did that time, but next time it seemed to come out differently from that person's worldview.

For most nonlawyers, they're just going to ask, "Did I win or lose?" It's so American, and I don't know a way around it, but I do think you can test the judges and courts over time, and over time they're going to prove they're political hacks or truly trying to get it right in an independent, neutral way.

JEFFERSON: I'd say there's another aspect to that. The question is, do judges legislate from the bench? And everyone knows that's evil because we're not legislators. We don't do that. We just interpret, and that's it. But that's not exactly how it works because legislation is very often fuzzy, and there are policy judgments in the end that judges have to make in interpreting what the words mean and what the intent was.

The text is very often ambiguous. You have to understand what's happening in the nation and what the parties bring to you about the impact of this legislation. So I think it is true to some extent that, when you're sitting before the Senate, or you're in a campaign, what you're asking the public to do is evaluate whether the judge is doing their best not to impose their own personal will but try as best they can to interpret the statute, the Constitution, or precedent that's before them. When you're at the Supreme Court, state or federal, there's an even more serious obligation. And that is, how do we evaluate precedent in a modern world? Does it need to change or evolve in some way because of some peculiar impact of history?

That's also a very grave responsibility of that judge. I think what you should ask the public is part civic engagement — to understand what judges really do. One way is for judges to get off the bench and go into the community every now and then and talk about what it is a judge does, talk about disagreements you have with colleagues, and ask the public to read your opinions on something that they care about. Ask them to read it through from beginning to end and see if they understand. If they have the opportunity to watch oral arguments, ask them to do that and see the debates among the judges and their colloquy with the lawyers to get a very real sense of what it means to try to do the right thing as a judge.

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WOOD: Those things can help, but one of the problems is that people conflate the idea of partisanship with just a different philosophy of the way the law is interpreted.

In the Seventh Circuit, as in all the courts appointed by a huge number of presidents, there were people with as many different philosophies as you can think of. And I guarantee you, there were colleagues of mine whose vote you could not predict if the only piece of information you had about them was the name of their appointing president. They were far more independent than that in the way they approached cases.

But I think it's hard for the public if they do what Wallace is saying and they sit down and read an opinion, maybe on a topic that they're very interested in. Maybe it's an environmental topic, and they want to know what happened in that case. And if they spend 15 or 20 pages going through the law of standing, that may be something that all of us in this room know and love, but members of the public are not likely to have a sense of what Article III standing is all about, how it confines the issue that's properly before the court.

What different judges don't even agree on themselves is how broadly or narrowly this is to be done. And state courts take different views from those in federal courts.

So a particular view of standing might lead to defeat by the environmental plaintiff, but it doesn't mean that it was partisan. It just means that there was a different concept of what the judicial role was there and how the court applied it.

> "One of the problems is that people conflate the idea of partisanship with just a different philosophy of the way the law is interpreted."
>
> *– Diane P. Wood*

LEVI: Kim, I have two questions. You might have a courtroom full of citizens; they're actually parties to the case, and they're interested in seeing the discussion. I don't know that in that setting they really think of the judge as a partisan. If it's a criminal case, they may be concerned about whether you were a prosecutor or a defense lawyer — that kind of thing. But they get to see the kinds of questions you ask, and you get to explain. So it's a different setting. ▸

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And then let's talk a little bit about this new advisory opinion that makes it clear that judges in some circumstances can speak out, and I'd like to consider how wise that is because you've heard me say that, gee, having a thousand people in an organization speak for the organization might not be the most efficient way of doing things. It would be unusual, let us just say, in anything other than a university to say, for example, that any of you can speak for the university.

"Judges can be alert to how they're being perceived while still doing their job."
– Kimberly J. Mueller

MUELLER: There are limits to what courts can do, but I certainly think judges can be alert to how they're being perceived while still doing their job.

Judges can do their best to explain when people are appearing in front of them. They can do their jobs in ways that model judicial principles. Trial courts can be a secret weapon. Annenberg recently did a study looking at public confidence that picked up on the fact that when people personally interact with the courts through jury service and interact with court staff who treat them well, they come away feeling pretty good about the courts.

State courts have such high volumes. It can be a challenge for someone to have a good experience even if they win, so paying attention to that interface is important when someone does appear in court; most people don't. Paul Grimm has pointed this out often. Most people in our country never appear in a courtroom, so we have to figure out how to reach them.

That's where we see limits to what judges can do. I do think there's extreme interest. There's a hunger for knowledge about what we do. So part of the job for those of us who aren't judges

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anymore is to figure out how we can translate, how we can stand by the judiciary. Now that I'm outside, I have the chance to represent the judiciary and speak up on its behalf. And I'm working to figure out how best to do that.

We are working on language that translates judicial independence and rule of law because those phrases don't land with the public. Judicial independence sounds like rogue judges. Fundamental fairness, a chance to be heard even if you're going to lose, slowing things down so someone is really paying attention. I really think a lot of the onus here is on those of us now outside of the judiciary to do our part.

Advisory Opinion 118, as I read it, reinforces a lot of the restrictions on judges that they should be very careful. That is, federal judges should never talk about a case. But it does clarify that civics education, that kind of thing, is completely within the realm of a judge. When a person can interact with the judge outside of the courtroom and realize they're a real person — Jim Duff is doing this with the Supreme Court Historical Society — that can help increase confidence.

The most important thing I see in the 118 opinion is the freedom of certain judges to speak on behalf of colleagues when they are attacked. Many judges are now speaking up about their own personal experiences with threats. Those threats are unacceptable. We should know that those are going on. If a colleague is attacked, I think chief judges everywhere have the ability and the responsibility to figure out how to say something, and the 118 opinion lets them do that.

Chief Justice Roberts knows how to use his words carefully, sparsely, but at just the right time. Other chiefs can learn that message along with other judges if they feel so compelled. But I think that's where judges and former judges can use some assistance in figuring out the sound bites and ways to put information out there that responsible social media podcasters can pick up on and amplify for us.

We recently had a new media session in Washington, D.C., in which Bolch Deputy Director Melinda Vaughn was instrumental, along with other Bolch staff. It was very hopeful. Some of you in the room today were there. It showed people within the judiciary — retired judges, lawyers — how we could work with social media and how they could amplify the good news. We will be following up on that. I am hopeful.

> "The difficulty is explaining to citizens how judging works. In my court of appeals, we're unanimous on 90% of our cases. What people read about are the high-octane issues."
>
> *– Jeffrey S. Sutton*

I don't think it's a lost cause if I understand the point that you were talking about, but I think those of us outside the judiciary need to be speaking up more.

LEVI: We want people to trust. And you want to be trustworthy.

SUTTON: I don't think that point is a lost cause at all. I think the difficulty is explaining to citizens how judging works. What they learn about judging is not the cases we get complete agreement on. In my court of appeals, we're unanimous in 90% of our cases. What people from different parties read about are the high-octane issues. Whether it's a trial judge who has this nationwide injunction, Rule 23 class action, or the Supreme Court with an epic case. Those are hard. I think we have to keep doing this, though. We have to keep educating people. I assumed that the point of getting this advisory opinion out there was to encourage people to speak about what we do.

I think that's why you're right that the 118 opinion is on both sides of this. It's saying you can do this, but boy, you've got to be careful because the person you're implicitly critiquing may be a party in a case tomorrow in front of you. And that's not a great look for them. We do want the parties to trust us as well.

MUELLER: That's why it's up to us.

LEVI: Diane, you were a chief judge, and you were on the Judicial Conference, and right now there's a lot of hostility in Congress toward the judiciary. I think one member had a wanted poster of a judge outside his office. I mean the harshness of the criticism, let us just say, is very high. What can the judiciary as a branch do about that? It's not helpful.

WOOD: I think, to begin with, the things that the Chief Justice has said have been useful. Disagreement with a lower court opinion is fine. Criticize it, disagree with it, but if you don't like it, take an appeal or bring a new case. Test it somehow. The remedy is not being drummed out of town with tar and feathers. The remedy is not, to be specific, impeachment. Impeachment, as you all know, has only happened 15 ▸

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times in our history and only eight of those resulted in convictions. They were severe forms of misbehavior.

So this is a form of education. I'm not sure that I believe we should get out on the roof and talk about judicial discipline and so on, but maybe people do need to know.

As an offshoot of that, the idea of judicial independence, certainly as Kim said, does not mean you can go out there and be rogue. It means you're free to call it as you see it, and to give your best effort to understand the law and the facts of the case. What if somebody isn't doing the right thing? What if somebody's falling asleep on the bench in the afternoon, or somebody has stuffed lots of $20 bills in his refrigerator, or has done something really wrong?

We do have the judicial conduct and disability process, which the chief judges of the 13 circuits administer. Any member of the public can file a complaint against a judge. The chief judge will look at that complaint. Most of them are meritless; the solution, if you disagree with a ruling, is to take an appeal.

It's not to say that some judges have not engaged in misconduct. I think if the public knew that, at the federal level, judges are, in fact, entirely accountable for standard garden-variety misconduct, that would be helpful.

If you look at the states, virtually all have some kind of judicial qualification commission. Many are composed of several judges and several laypeople who are gubernatorial appointments. They have a mixed group, but they provide an outlet, a safety valve, so that even if it's somebody on the state supreme court, the public is satisfied that there is an accountability mechanism. I don't think that people know that exists for the federal courts. It goes back to education, education, education, and it's got to start much younger than it does. It's got to start maybe in the high schools. There are some great programs in Chicago that I've been involved with where people in high school are exposed to the judiciary.

They all help because drawing a target on a judge's face is one step away from the worst kind of violence that hopefully we all deplore.

LEVI: Okay, I have one last question for everybody. We've made it for 250 years. What advice do you have for the judiciary, for the country, for the next 250?

JEFFERSON: You alluded to it, David, in your remarks, and that is to talk to the public about access to justice. Most people in our country cannot afford a lawyer. That's true, obviously, of those who are indigent, and it's true of those who are middle class as well as most small businesses. What judges can do is put a spotlight on that and bring people into the room and start asking, "How do we resolve this?"

I think that speaks to people who have a parent who is undergoing a crisis — maybe dementia. How do they get their medical bills paid? Do they have a will? I mean, those sorts of everyday problems that come up. But you need a lawyer, and you look, and you can't find one, and you don't have the resources to pay for that.

Think about how to tackle that problem in the next 250 years, and I think that will help restore some confidence and faith that our judicial system is not just for one tier but for everyone. That's where I would start.

WOOD: It's hard to improve on that. Maybe I will just add that I think any measure we can take that will improve the transparency of what judges are doing is worth taking. I know this idea is not popular in all circles, but our state supreme courts do allow live streaming of oral arguments.

One of my colleagues on the Seventh Circuit once told a story from when he was getting his hair cut. His barber had just watched an Indiana Supreme Court argument on one of the local access television stations, and the man was so impressed. He said, "They were asking pertinent questions. I could understand what the case was about. I could see how the lawyers were answering it." It was a confidence-enhancing experience all around.

I think that a good deal of the time, our judges are great, actually. Sometimes it might be a really obscure case that the public can't really follow, but most of the time I think they can and, again, that will help people trust the judiciary. And I couldn't agree more with Wallace that if the judiciary isn't serving 90% of the population, then we have our work cut out for us.

MUELLER: I'm going to associate my comments with those of Learned Hand, whom you quoted, David, which is that the rule of law has to live in the hearts of the people. So I'm going to have faith and hope in the people — "We the people."

Corey Brettschneider at Brown has written a book called *The Presidents and the People*. He talks about previous eras in our country where people organized themselves into what he calls constitutional constituencies: journalists in the face of President Adams, the civil rights era of Frederick Douglass, speaking in the era of Lincoln, and moving him along.

I recently got a postcard — sent to me after I left the bench — from some group in Boston that wrote, "We support the courts. We are with you."

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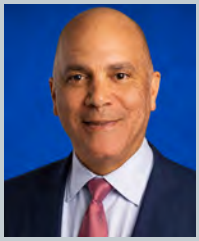
SUTTON: I received one too. I wasn't sure whether to trust it, but now that you tell me, I'm really happy about it.

MUELLER: They have a webpage. They have taken it upon themselves to speak up on behalf of the courts. So I'm counting on the fact that, at least in the short term, there will be a constitutional constituency in support of the judicial branch that will get us to that 500th anniversary.

SUTTON: Well, I can't improve on any of that, but I will say something. I don't think we'll look back on this era and say that it was a great one for Americans listening to each other and finding ways to compromise. I do think we could do a little better on that front, whether it's citizens or Congress, and I think the courts can lead by example that you have to listen to each other. And every now and then, a compromise is not a bad way to stabilize things.

LEVI: Well, you've heard it here. If I hear you right, you think we'll make it another 250, and that's pretty good.

DAVID F. LEVI is dean emeritus of the Duke University School of Law and the founding director of the Bolch Judicial Institute. A former chief judge of California's Eastern District, he previously served as president of the American Law Institute.



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JEFFREY S. SUTTON is a judge on the U.S. Court of Appeals for the Sixth Circuit and a leading scholar of state constitutional law. Beginning in 2027, he will also join the faculty at Ohio State's Moritz College of Law.