

I AM STILL AFRAID A FEDERAL JUDGE IS GOING TO BE
KILLED: WHAT MORE CAN BE DONE TO PROTECT THE
JUDICIARY IN A POLARIZED SOCIETY

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Abstract

“The idea that politicians would intimidate judges, that judges or their families would be murdered for their rulings, or that deadly mob violence might erupt in response to particular decisions all seemed the province of other countries, places that lack democracy or the rule of law. But all of these things have happened in the United States, in just the past few years.”¹

INTRODUCTION127

I. BACKGROUND128

 A. *Rise of Violence Against the Judiciary*129

 B. *Recent Examples*130

 C. *Potential Causes for the Increased Threats
 Against Judges*133

 1. Media, Polarization, and Public Officials133

 2. International and Domestic Adversaries136

 D. *Legislative Efforts*138

II. ANALYSIS139

 A. *Grounds for Further Measures*141

 1. Impartiality and Credibility141

 2. Potential Questions of the Constitutionality
 of Daniel’s Act143

 3. Potential Funding Issues144

 B. *Further Solutions*144

 1. Civic Education144

 2. Social Media Accountability147

 3. Utilization of District Court en Banc Review151

CONCLUSION154

INTRODUCTION

Recent years have been tumultuous. The COVID-19 pandemic, the George Floyd murder, the 2020 presidential election, January 6th, and a

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1. Levi et al., *infra* note 91.

former president's prosecution and attempted assassination have emphasized how divided the nation is today.² America is a melting pot ready to boil over.³ Thus, it is time to check in with the nation's judiciary. An unprecedented number of threats or harmful communications about the judiciary have taken the nation by storm.⁴ Just one judge received over 40,000 threats and messages as a response to a decision that was politicized in the media.⁵ It is time to reevaluate the root causes of the rise in threats and what more can be done to address the epidemic.

This Note takes a public policy rather than a doctrinal approach to further solutions to help the judiciary. Part I discusses the background of the rising violence against the judiciary and recent examples of attacks against judges. Part I then discusses potential causes for this uptick in violence, including increased polarization. Furthermore, online posts of public figures are referenced and evaluated for their part in increasing the number of attacks judges face. Part I further elaborates on how polarization is furthered by misinformation and how misinformation is disseminated through foreign and domestic means. Lastly, Part I explains recent legislative efforts to protect judges' personal information from online sources.

Part II explains why there is a need for more solutions to protect judges and provides potential solutions. Part II explains why recent legislative efforts do not address the root causes of the increase in threats against judges and further explains why more needs to be done. Lastly, Part II provides three solutions (1) civic education; (2) social media regulation; and (3) en banc utilization to help better address polarization and improve impartiality and credibility. Part II also addresses potential criticisms of these solutions.

I. BACKGROUND

Threats against the judiciary nearly doubled in 2021.⁶ Justices of the nation's highest court were also the target of an almost successful and deadly attack. A striking threat against the Supreme Court was recently carried out following the belief that the Supreme Court might overturn

2. *Divided America*, ASSOCIATED PRESS, <https://www.ap.org/explore/divided-america/> [<https://perma.cc/7J69-UW3A>].

3. *Id.*

4. See Barber, *infra* note 6.

5. See Carter, *infra* note 28.

6. C. Ryan Barber, *Inside the Threats Federal Judges are Facing Across the Country: Suspicious Packages, White Powdery Substances, and a 'Swatting,'* BUS. INSIDER (Oct. 24, 2022), <https://www.businessinsider.com/threats-federal-judges-swatting-suspicious-packages-powder-marshals-court-security-2022-10> [<https://perma.cc/9E3E-UMH9>].

Roe v. Wade.⁷ Nicholas John Roske, was arrested carrying a Glock pistol, a tactical knife, pepper spray, zip ties, a hammer, and a crow-bar while lurking outside Justice Brett Kavanaugh's home.⁸ Roske arrived dressed in all black, prepared to break into Justice Kavanaugh's house, kill him, and then turn the gun on himself.⁹ Roske stated that he was angry with gun control measures and the released draft opinion of *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade* and the right to abortion.¹⁰ This attempted attack occurred even after Attorney General Merrick Garland ordered around-the-clock protection of all Supreme Court Justices in the wake of the leaked draft opinion.¹¹

Scarily, instability has reached even our nation's highest court. Threats against the judiciary and violence in today's society have become a reality. Personal attacks targeting judges on social media and violence inside judges' homes have become increasing at an alarming rate.¹²

A. Rise of Violence Against the Judiciary

The U.S. Marshals Service logged 4,511 threats against judges during the fiscal year ending in September 2021.¹³ This is nearly double the 2,357 threats logged in 2016.¹⁴ A poll released by the National Judicial College in 2022 found that seventy-one percent of judges had received inappropriate communication related to their judgeship, and fifty-six percent had received a threat.¹⁵

These threats can come from a variety of sources, including litigants in cases before a particular judge who are unsatisfied with the judge's handling of their case¹⁶ or from people who view a judge as their

7. Jonathan Turley, *Arrest Outside Justice Kavanaugh's Home is Shocking. But, Sadly, not Surprising*, USA TODAY (June 9, 2022), <https://www.usatoday.com/story/opinion/2022/06/09/threat-against-justice-kavanaugh-sobering/7557278001/> [https://perma.cc/9DA8-L7J5].

8. *Id.*

9. Maria Cramer & Jesus Jimenez, *Armed Man Traveled to Justice Kavanaugh's Home to Kill Him, Officials Say*, N.Y. TIMES (June 8, 2022), <https://www.nytimes.com/2022/06/08/us/brett-kavanaugh-threat-arrest.html> [https://perma.cc/RC4L-JGCJ].

10. *Id.*

11. Kevin Breuninger, *AG Garland Directs U.S. Marshals to Help 'Ensure the Justices' Safety' After Leaked Supreme Court Abortion Draft*, CNBC (May 11, 2022), <https://www.cnbc.com/2022/05/11/garland-directs-us-marshals-to-ensure-supreme-court-justices-safety-after-abortion-draft.html> [https://perma.cc/RC4L-JGCJ].

12. Barber, *supra* note 6.

13. *Id.*

14. *Id.*

15. Cameron Langford, *Panel Highlights Threats to Judges Amid Rising Tensions*, COURTHOUSE NEWS SERV. (June 16, 2022), <https://www.courthousenews.com/panel-highlights-threats-to-judges-amid-rising-tensions/> [https://perma.cc/HZG5-XDL8].

16. See, e.g., Charles Toutant, *Litigant's Threat to Kill Judge Reflects Growing Challenges of Preventing Violence Against Federal Jurists*, N.J. L.J., Nov. 4, 2021, at 2.

opponent or political adversary.¹⁷ Until recent years, “virtually everyone recognized how inappropriate it was to threaten the life or security of a judge because of disagreement with the judge’s decision,” said Barbara Lynn, Chief Judge for the Northern District of Texas.¹⁸ “Now I think there are a lot of people who don’t see anything wrong with that.”¹⁹

B. Recent Examples

The security of this nation’s judiciary is a great concern. Unfortunately, the nation is reminded that threats against the judiciary have been carried out.²⁰ In 2022, a suspicious white powder was sent to Representative Bennie Thompson, chair of the House of Representatives January 6th committee.²¹ The powder was found in a letter that included threats to kill Thompson and Judge Robert D. Mariana of the Middle District of Pennsylvania.²² Suspicious white powder packages also recently arrived at a federal courthouse in Washington, D.C.²³ One package even entered the chambers of Judge Colleen Kollar-Kotelly in the D.C. courthouse.²⁴

Another example occurred in 2017 when U.S. District Judge James Robart halted former President Trump’s executive order, or “travel ban,” barring citizens of several Muslim-majority countries from entering the United States.²⁵ After Judge Robart’s decision, Trump tweeted, “[j]ust cannot believe a judge would put our country in such peril. If something happens, blame him and the court system.”²⁶ Trump also referred to Judge Robart as a “so-called judge” on Twitter.²⁷ In the aftermath, Judge Robart received more than 40,000 messages and threats.²⁸ Approximately

17. See, e.g., Fields & Riccardi, *infra* note 18 (detailing death threats sent to a judge who signed a search warrant for former President Donald Trump’s home in Florida).

18. Gary Fields & Nicholas Riccardi, *Donald Trump Supporters Send Death Threats to Judge who Approved Mar-a-Lago Search*, PBS (Aug. 17, 2022), <https://www.pbs.org/newshour/politics/donald-trump-supporters-send-death-threats-to-judge-who-approved-mar-a-lago-search> [<https://perma.cc/H48U-PE2P>].

19. *Id.*

20. *United States v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008).

21. Barber, *supra* note 6.

22. *Id.*

23. *Id.*

24. *Id.*

25. Eric Bradner & Jeff Zeleny, *Trump: ‘If Something Happens Blame’ the Judge*, CNN (Feb. 5, 2017), <https://www.cnn.com/2017/02/05/politics/trump-twitter-attacks-judge/index.html> [<https://perma.cc/23MB-DA2C>].

26. *Id.*

27. *Id.*

28. Mike Carter, *Seattle Federal Judge James Robart Recalls Deluge of Threats After Striking down Trump Travel Ban in 2017*, SEATTLE TIMES (Feb. 22, 2021), <https://www.seattletimes.com/seattle-news/seattle-federal-judge-recalls-deluge-of-threats-after-striking-down-trump-travel-ban-in-2017/> [<https://perma.cc/ZT65-2M7P>].

1,100 of the messages were so serious that they required further investigation.²⁹

A further demonstration of extensive, hateful threats is found in the case of Magistrate Judge Bruce Reinhart of the Southern District of Florida.³⁰ Judge Reinhart faced a swarm of death threats after he signed the search warrant allowing the Federal Bureau of Investigation (FBI) to search former President Donald Trump's Mar-a-Lago estate in Palm Beach, Florida.³¹ Judge Reinhart's home address was posted on extremist sites along with antisemitic slurs seeking to intimidate and discredit him.³² Additionally, the synagogue where he serves as a board member received seventy-eight harassing phone calls.³³ Services had to be canceled in the wake of the threats.³⁴ Threats were also directed toward his family.³⁵ Later, a Texas woman was arrested after leaving threatening voicemails to Judge Aileen Cannon, a Trump-appointed judge presiding over Trump's legal challenges to the FBI search.³⁶ The voicemails threatened to have Judge Cannon assassinated in front of her family for "helping" Trump in his legal proceedings.³⁷ Luckily, no one was harmed as a result of these threats, but that was not the case for Judge Esther Salas.

Seventy-two-year-old lawyer Roy Den Hollander parked in front of Judge Salas's home, disguised as a FedEx driver.³⁸ Her son, Daniel, had just had his birthday party when the doorbell rang.³⁹ Daniel answered the door and was shot in the chest by Hollander.⁴⁰ Mark Anderl, Judge

29. *Id.*

30. Fields & Riccardi, *supra* note 18.

31. *Id.*

32. *Id.*; see also Arden Farhi & Robert Legare, *Bruce Reinhart Unsealed: The Magistrate Judge at the Center of the Justice Dept's Inquiry into Trump's Handling of Classified Records*, CBS NEWS (Aug. 18, 2022), <https://www.cbsnews.com/news/bruce-reinhart-florida-magistrate-judge-donald-trump-search/> [<https://perma.cc/ZY58-YKTG>].

33. Barber, *supra* note 6; see also Joel Lopez, *Anti-semitic Threats Made Toward Judge Responsible for Signing off on Search of Mar-a-Lago*, WPTV (Aug. 17, 2022), <https://www.wptv.com/news/region-n-palm-beach-county/palm-beach-gardens/judge-bruce-reinhart-threats> [<https://perma.cc/D9A2-HQ7J>].

34. Fields & Riccardi, *supra* note 18.

35. Joel Lopez, *Anti-semitic Threats Made Toward Judge Responsible for Signing off on Search of Mar-a-Lago*, WPTV (Aug. 17, 2022), <https://www.wptv.com/news/region-n-palm-beach-county/palm-beach-gardens/judge-bruce-reinhart-threats> [<https://perma.cc/N956-Y3TD>].

36. Barber, *supra* note 6.

37. *Id.*

38. Bill Whitaker, *Federal Judges Call for Increased Security After Threats Jump 400% and One Judge is Killed*, CBS NEWS (Feb. 21, 2021), <https://www.cbsnews.com/news/federal-judge-threats-attack-60-minutes-2021-02-21/> [<https://perma.cc/9U3F-WE6R>].

39. *Id.*

40. Tracy Smith, *Federal Judge Whose Son was Killed in Ambush: "My Son's Death Cannot be in Vain"*, CBS NEWS (Sept. 11, 2021), <https://www.cbsnews.com/news/esther-salas-son-murder-roy-den-hollander-48-hours/> [<https://perma.cc/35YE-R32L>].

Salas's husband, was also shot in the arm, chest, and abdomen.⁴¹ Daniel died on the way to the hospital.⁴² He had just turned twenty.⁴³ The FBI stated that it appeared that Daniel had tried to block Hollander from his father.⁴⁴ The FBI later determined that the shooter meant to attack Judge Salas.⁴⁵ The shooter left behind a manifesto demonstrating his deep hatred for women.⁴⁶ The FBI found passages written by Hollander stating that Salas was a "lazy and incompetent Latina judge appointed by Obama" and that "affirmative action got her into and through college and law school."⁴⁷

One of the most alarming discoveries after the shooting was the amount of personal information the shooter had on Judge Salas and her family. He had information on where the Judge lived, the routes she took to work, the church she attended, where Daniel went to school, and when Daniel had baseball games.⁴⁸ The shooter obtained this information legally from open internet sources.⁴⁹ This led Judge Salas to do a highly unusual thing for a member of the bench. She pleaded with the legislature on YouTube for federal legislation to scrub judges' personal information from the internet.⁵⁰ In an interview with 60 Minutes, she stated that her mission became urgent when a locker belonging to Daniel's shooter was found.⁵¹ Inside the locker was another gun, ammunition, and personal information on Supreme Court Justice Sonya Sotomayor.⁵²

Most recently, Judge Juan Merchan, who is the presiding judge in former President Donald Trump's criminal case in New York, has received a significant number of threats to his chambers and toward his family.⁵³ Judge Merchan warned Trump against making statements likely to cause civil unrest, but Trump stated in a speech outside his Mar-a-Lago

41. Whitaker, *supra* note 38.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. Gabrielle Scibetta, *Are Judges' Safety at Risk? The Increase in Personal Threats Prompts the Introduction of the Daniel Anderl Judicial Security and Privacy Act*, PACE UNIV. (July 29, 2021), <https://socialmediablwg.blogs.pace.edu/2021/07/29/are-judges-safety-at-risk-the-increase-in-personal-threats-prompts-the-introduction-of-the-daniel-anderl-judicial-security-and-privacy-act/> [<https://perma.cc/TS4F-JQZA>].

48. Whitaker, *supra* note 38.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Sara Dorn, *Trump Judge Juan Merchan Has Received Threats amid Attacks From Ex-President And His Allies*, FORBES (Apr. 5, 2023), <https://www.forbes.com/sites/saradorn/2023/04/05/trump-judge-juan-merchan-has-received-threats-amid-attacks-from-ex-president-and-his-allies/?sh=d57ccd6b5f92> [<https://perma.cc/9XM4-7UC7>].

resort, “I have a Trump-hating judge, with a Trump-hating wife and family, whose daughter worked for Kamala Harris and now receives money from the Biden-Harris campaign.”⁵⁴ True or not, this is just another example of a frightening situation faced by a judge and their family. This example further demonstrates how the judiciary is becoming an increasingly unsafe profession.⁵⁵

C. Potential Causes for the Increased Threats Against Judges

1. Media, Polarization, and Public Officials

What could be the cause of this dramatic uptick in threats against judges? The nation is exceptionally polarized,⁵⁶ and this polarization has even grown in Congress.⁵⁷ Polarization is aided and quickened by social media.⁵⁸ Social media algorithms also play a role, as they often promote extremist and misleading content just to add to revenues at the expense of an informed citizenry.⁵⁹ Social media algorithms can also create echo chambers.⁶⁰ A social media echo chamber is a biased, tailored social media experience where opposing viewpoints are eliminated.⁶¹ This creates a self-affirming feed that leads to more division as people become more entrenched in their biases.⁶² Furthermore, the U.S. lightly regulates the private sector compared to other countries like those in Europe.⁶³ Also, conflicting policies—like wanting to limit or hold accountable

54. Geoff Herbert, *Trump Targets NY judge's wife and daughter, hours after warning not to threaten safety*, SYRACUSE.COM (Apr. 5, 2023), <https://www.syracuse.com/state/2023/04/trump-targets-ny-judges-wife-and-daughter-hours-after-warning-not-to-threaten-safety.html> [<https://perma.cc/6LMY-5KHT>].

55. See Smith, *supra* note 40 (detailing the death of Judge Salas's son); see also Fields & Riccardi, *supra* note 18 (describing the threats against Judge Reinhart and his family).

56. See Elizabeth Kolbert, *How Politics Got So Polarized*, THE NEW YORKER (Dec. 27, 2021), <https://www.newyorker.com/magazine/2022/01/03/how-politics-got-so-polarized> [<https://perma.cc/72WZ-FRNU>] (surveying that seven out of ten Democrats would not date someone who voted for Donald Trump and five out of ten Republicans would not date someone who would vote for Hilary Clinton).

57. See John O. McGinnis & Michael B. Rappaport, *Presidential Polarization*, 83 OHIO ST. L.J. 5, 12 (2022).

58. Ian Bremmer, *The U.S. Capitol Riot Was Years in the Making. Here's Why American Is So Divided*, TIME (Jan. 16, 2021), <https://time.com/5929978/the-u-s-capitol-riot-was-years-in-the-making-heres-why-america-is-so-divided/> [<https://perma.cc/9P76-WKEY>].

59. *Id.*

60. Paige Cabianca et al., *What is a Social Media Echo Chamber?*, THE UNIV. OF TEX. AT AUSTIN, <https://advertising.utexas.edu/news/what-social-media-echo-chamber> [<https://perma.cc/2QBD-U9G2>].

61. *Id.*

62. See *id.*

63. Bremmer, *supra* note 58.

speech that elicits violence and the First Amendment right to free speech—make regulating social media a difficult task.⁶⁴

Social media can easily disseminate information, which enables polarization by legitimizing and accelerating violence.⁶⁵ Social media can lead to weakening social ties and can isolate people into separate ideological communities with fewer opportunities to gain counter-information.⁶⁶ Being able to hide behind a profile can embolden the user.⁶⁷ Also, a retired federal judge has warned that many posts can be dehumanizing or subject people to personal attacks, leading people to believe those they see as “opponents” are untrustworthy and threatening.⁶⁸ These accusations can undermine credibility and create further instability.⁶⁹

Additionally, many public officials utilize social media platforms. For example, Twitter became former President Trump’s preferred mode of communication with the nation.⁷⁰ Trump tweeted about the state of his legal actions even while he was running for president: “I have a judge in the Trump University civil case, Gonzalo Curiel (San Diego), who is very biased and unfair. An Obama pick. Totally biased-hates Trump.”⁷¹ Tweets like these seem to be routine, and during Trump’s presidency, a dramatic rise of threats against the judiciary ensued.⁷² As another example, false narratives about Judge Reinhart spread as Senator Marco Rubio insinuated the Justice Department engaged in “judge shopping” and intentionally chose Judge Reinhart because he was an “Obama donor judge.”⁷³ The Florida senator mentioned Judge Reinhart’s donation to former President Obama’s 2008 presidential campaign. Marco Rubio

64. Will Oremus, *Want to Regulate Social Media? The First Amendment may Stand in the Way.*, WASH. POST (May 30, 2022, 6:00 AM), <https://www.washingtonpost.com/technology/2022/05/30/first-amendment-social-media-regulation/> [<https://perma.cc/QP27-WDJZ>].

65. Kristina Hook & Ernesto Verdeja, *Social Media Misinformation and the Prevention of Political Instability and Mass Atrocities*, STIMSON (July 7, 2022), <https://www.stimson.org/2022/social-media-misinformation-and-the-prevention-of-political-instability-and-mass-atrocities/> [<https://perma.cc/QVC3-CU42>].

66. *Id.*

67. See Gaia Vince, *Evolution Explains Why We Act Differently Online*, BBC (Apr. 3, 2018), <https://www.bbc.com/future/article/20180403-why-do-people-become-trolls-online-and-in-social-media> [<https://perma.cc/BF2S-3GPN>].

68. *Id.*

69. *Id.*

70. Sounman Hong, *Politicians on Social Media: Perceptions of Risk and Reward*, HARV. UNIV., https://scholar.harvard.edu/sounman_hong/politicians-social-media-perceptions-risk-and-reward [<https://perma.cc/G6PW-U32Q>].

71. @realDonaldTrump, X (May 30, 2016, 5:45 PM), <https://x.com/realDonaldTrump/status/737399475509985280> (last visited Dec. 3, 2024).

72. See Ryan Barber, *Threats Against Judges Skyrocketed During the Trump Era, and Experts are now Fearing for the Worst*, BUS. INSIDER (Oct. 31, 2022), <https://www.businessinsider.com/donald-trump-judges-threats-courts-scotus-2022-10> [<https://perma.cc/56L4-2426>].

73. Zoppa, *infra* note 90 (recalling Senator Marco Rubio’s interview with Fox News).

failed to mention that Judge Reinhart had also donated to Republican Jeb Bush's 2016 campaign and that his wife, Judge Carolyn Bell, was appointed to the Florida circuit bench by Republican Governor Rick Scott.⁷⁴

A different kind of criticism against judges is apparent from social media posts. Former Judge John Jones, a President George W. Bush appointee, attributed to the elevation in threats to the current "road-rage society."⁷⁵ Judge Jones criticized that public officials are now directing their attacks on the character of their "opponents" or judges rather than disagreeing with the ruling or decision itself.⁷⁶ This rhetoric found on social media, coupled with a volatile public, could lead to someone getting hurt or killed, Judge Jones warned.⁷⁷

The American public becoming divided over social media can lead to real consequences. Only one-third of Americans think that social media is good for democracy, with a large percentage thinking that social media has influenced people to be more divisive, especially in their political opinions.⁷⁸ One recent example of the division sparked on social media is the attack that occurred on the U.S. Capitol on January 6, 2021. After former President Trump took to the media to claim that Democrats had rigged the 2020 presidential election against him, a "Stop the Steal" Facebook group was created to prevent President Biden from taking office.⁷⁹ The page amassed 320,000 members in less than twenty-four hours before spreading to other social media platforms.⁸⁰ Trump also took to Twitter to encourage people to protest the vote-counting ceremony, tweeting "[b]e there, will be wild!"⁸¹ A mob eventually grew on Capitol grounds, leading to the brutalization of Capitol and Metropolitan Police Officers.⁸² Rioters also stormed the Capitol Building.⁸³ Another example of public division occurred after the leaked *Dobbs* draft opinion. In the aftermath of the opinion being leaked, social media posts contained threats "to burn down or storm the Supreme Court building and murder

74. *Id.*

75. *Id.* (quoting Judge John Jones).

76. *Id.*

77. *Id.*

78. Richard Wike et al., *Social Media Seen as Mostly Good for Democracy Across Many Nations, But U.S. is a Major Outlier*, PEW RSCH. CTR. (Dec. 6, 2022), <https://www.pewresearch.org/global/2022/12/06/social-media-seen-as-mostly-good-for-democracy-across-many-nations-but-u-s-is-a-major-outlier/> [<https://perma.cc/UC5N-68ET>].

79. Brian Duignan, *January 6 U.S. Capitol Attack*, BRITANNICA (last updated Oct. 3, 2024), <https://www.britannica.com/event/January-6-U-S-Capitol-attack> [<https://perma.cc/2AUN-A2JT>].

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

justices and their clerks.”⁸⁴ One of these threats was almost carried out against Justice Kavanaugh.⁸⁵ Polarization has even gone so far as to divide colleges into red and blue schools, further entrenching the public divide.⁸⁶

Members of government often disagree and, in some cases, high-ranking political figures take to social media to condemn judges with opposing views.⁸⁷ Political activism from both the right and left has changed since Trump’s presidency, particularly with increased use of social media and direct public confrontations.⁸⁸ Changing norms of public discourse, coupled with rising public distrust and widespread access to judges’ information, has contributed to heightened tensions.⁸⁹ When government officials take to social media to promote their agendas, they seem to forget their actions have real-world consequences, coaxing the public into thinking it is okay to harm the judiciary.⁹⁰

2. International and Domestic Adversaries

International adversaries and domestic groups can also be a source of polarization, leading to the spread of misinformation or hate about judges. In 2021, the Federal Judges Association with former Dean of Duke Law School, David Levi, convened in a roundtable to discuss the systemic threats against the judiciary and how that can also be attributed to domestic and international adversaries.⁹¹ Suzanne Spaulding, a senior

84. Sophia Cai & Stef W. Knight, *DHS Preparing for Violence Following Abortion Ruling*, AXIOS (May 18, 2022), <https://www.axios.com/2022/05/18/supreme-court-abortion-roe-protests-violence> [https://perma.cc/9YRR-DS9M].

85. Turley, *supra* note 7.

86. Nick Anderson, *Political polarization is sorting colleges into red and blue schools*, WASH. POST (Apr. 3, 2023), https://www.washingtonpost.com/education/2023/04/03/red-blue-college-culture-war/?utm_campaign=wp_post_most&utm_medium=email&utm_source=news-letter&wpisrc=n1_most&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F399a7d5%2F642afc43f19a510b04332ac4%2F6429cbc1c7bbc335785fc37%2F10%2F74%2F642afc43f19a510b04332ac4&wp_cu=e15940068dfe0079487aa71768e36731%7C446fbacc-0197-43d0-844d-f26d40fb0224 [https://perma.cc/6D3R-YFK8].

87. See Fields & Riccardi, *supra* note 18.

88. See *id.* (Matthew Weil, executive director of the Democracy Initiative at the Bipartisan Policy Center in Washington, DC stated that President Trump had “changed the ground rules regarding threats and explosive rhetoric” after condemning a judge who ruled against him.)

89. *Id.*

90. See Avalon Zoppa, *Political Attacks on Florida Judge Bruce Reinhart Reignite Judicial Security Concerns*, DAILY BUS. REV. (Aug. 11, 2022), <https://www.law.com/dailybusinessreview/2022/08/11/political-criticism-of-judge-who-issued-trump-warrant-renews-judicial-security-concerns-392-163483/> [https://perma.cc/GHD6-8ZPV] (quoting Judge Jones, who states that “[w]hen public figures make inflammatory statements about the judiciary, no matter what their intention is, it can play to the unbalanced segments of society and be viewed as a license to harm judges”).

91. David Levi et al., *Judicial Independence: Threats Foreign and Domestic*, BOLCH JUD. INST. DUKE LAW SCH. (2021), <https://judicature.duke.edu/articles/judicial-independence-threats-foreign-and-domestic/> [https://perma.cc/34ZF-XMBC].

advisor to the Department of Homeland Security (DHS), spoke to Levi about how foreign adversaries like Russia will use their information operations to try to undermine the public's trust in the U.S. by exploiting preexisting divisions and declining trust.⁹² DHS began to apply what they saw in the 2016 presidential election, including hacking and leaking sensitive documents and emails, hacking court databases, and preventing access to information, to the public's confidence in courts.⁹³ DHS immediately saw evidence of Russian operations designed to undermine public trust in the judiciary.⁹⁴

For example, social media exploded with attacks on Judge James Robart after he decided to halt Trump's travel ban, as discussed above.⁹⁵ Later, Spaulding saw that the two most active Twitter accounts attacking Judge Robart, Tennessee GOP and Tennessee Lone Star, were both set up by the Internet Research Agency in Russia.⁹⁶ Furthermore, in 2018, DHS inspected eleven million tweets attributed to Russia and found a running theme:⁹⁷ Russia was challenging the independence and impartiality of our judges by dubbing them "politicians in robes."⁹⁸

Domestic groups can also be a source of the disinformation spread on social media attacking the judiciary. In 2016, a fabricated story of Syrian refugees raping a five-year-old girl in Twin Falls, Idaho, spread rampantly and sparked protests all over the media after photos of the refugees high-fiving their dads were leaked.⁹⁹ The story insinuated that the "justice system favors immigrants over its citizens."¹⁰⁰ Photos of the judge presiding over the case were posted by a hate group, leading to multiple death threats against the judge.¹⁰¹ Spaulding warns that disinformation like this achieves goals adverse to a uninformed citizenry and results in the public giving up on caring about the truth.¹⁰² Judge Jones also warned that "as much as direct attacks on judges can lead to safety concerns, the effort to spread misinformation about the judicial process is further exacerbating the matter."¹⁰³

92. *Id.*

93. *Id.*

94. *Id.*

95. See Fields & Riccardi, *supra* note 18; see also Levi et al., *supra* note 91.

96. Levi et al., *supra* note 91.

97. *Id.* at 13.

98. *Id.*

99. See Caitlin Dickerson, *How Fake News Turned a Small Town Upside Down*, N.Y. TIMES MAG. (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/magazine/how-fake-news-turned-a-small-town-upside-down.html> [<https://perma.cc/3TQ7-M8WY>]; see also Levi et al., *supra* note 91, at 12.

100. Levi et al., *supra* note 91, at 12.

101. *Id.* at 13.

102. *Id.* at 14.

103. Zoppa, *supra* note 90 (quoting Judge Jones).

D. Legislative Efforts

After witnessing her son's murder and pleading with Congress to take action, Judge Salas warned, "[t]he threat of democracy is at stake. We need to do something, and we need to do it now."¹⁰⁴ Some states and Congress have taken steps to alleviate this growing concern. In June of 2022, Congress passed the Supreme Court Police Parity Act of 2022, which extended protection for the Supreme Court justices and their families.¹⁰⁵ The Act extends protection to "any member of the immediate family of the Chief Justice, any Associate Justice, or any officer of the Supreme Court if the Marshal determines such protection is necessary."¹⁰⁶ This bill was passed a week after Roske was arrested outside the home of Justice Kavanaugh.¹⁰⁷

Soon after the murder of Judge Salas's son, New Jersey Governor Phil Murphy signed legislation (A1649), also known as "Daniel's Law."¹⁰⁸ The law shields judges' home addresses and telephone numbers from public disclosure.¹⁰⁹ Passed in honor of Daniel Anderl, the bill prohibits government agencies, individuals, and businesses from knowingly publishing judges' home addresses or their unpublished telephone numbers.¹¹⁰ U.S. Senator Bob Menendez warned, however, that the work was not done.¹¹¹ The need for national legislation still existed.¹¹²

In December of 2022, Congress passed long-awaited legislation similar to the New Jersey Act. The Daniel Anderl Judicial Security and Privacy Act (Daniel's Act) cleared through Congress after a multi-year effort once coupled with a must-pass defense package.¹¹³ The law had

104. Sunday Night In America with Tret Gowdy, *Judge Ester Salas on how 'Daniel's Law' Could Impact Judges' Safety*, FOX NEWS (Oct. 23, 2022), <https://video.foxnews.com/v/6314252022112> [<https://perma.cc/QHA5-4Z82>] (quoting Judge Ester Salas).

105. *Supreme Court Security Bill Enacted*, AM. BAR ASS'N (June 29, 2022), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/june-22-wl/scotus-security-0622/ [<https://perma.cc/X8QC-AGYD>].

106. Supreme Court Police Parity Act of 2022, Pub. L. No. 117-148, 136 Stat. 4421.

107. Rebecca Shabad & Zoe Richards, *Congress Passes Bill to Provide Security to Supreme Court Justices' Family Members*, NBC NEWS (June 14, 2022), <https://www.nbcnews.com/politics/congress/house-vote-senate-passed-bill-provide-security-supreme-court-justices-rcna33427> [<https://perma.cc/5QMM-AYYK>].

108. *Governor Murphy Signs "Daniel's Law,"* NJ.GOV (Nov. 20, 2020), <https://nj.gov/governor/news/news/562020/approved/20201120b.shtml> [<https://perma.cc/75YV-NMUP>].

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Tierney Sneed, *What to Know About a Judicial Privacy Bill Congress is Passing with a Major Defense Package*, CNN (Dec. 14, 2022), <https://www.cnn.com/2022/12/14/politics/judges-privacy-threats-defense-bill/index.html> [<https://perma.cc/BV6A-GD99>].

broad bipartisan support with a passing vote in the Senate of 83-11.¹¹⁴ The law aims to protect judges' personally identifiable information from becoming public information.¹¹⁵ The law allows federal judges to redact personal information found on federal government websites and blocks individuals and businesses from publishing personal information where there is no legitimate public interest.¹¹⁶ Protected personal information includes judges' birthdays, home addresses, sensitive financial information, and information relating to their spouse's employment.¹¹⁷ Even judges' spouses, children, and anyone living at their home can also request a redaction.¹¹⁸ The law does not impede on judges' ethical disclosure requirements but, instead, targets information that could be used to physically track judges.¹¹⁹ The law also establishes programs to help protect personal information at state and local levels.¹²⁰ Judge Salas praised the passage of the law, thanked Congress for honoring the memory of her son Daniel, and applauded the efforts to better protect others on the bench.¹²¹

Members of the United States House of Representatives also introduced a new idea to protect federal judges.¹²² The Firearm Lockbox Protection Act of 2022 would allow judges who are licensed to carry a gun to secure the firearm inside the courthouse.¹²³ Representative Tom Cole argues that this could increase judicial safety in compromising positions—like when a judge is walking to his or her car.¹²⁴ He is seeking more support for this bill within the House.¹²⁵

II. ANALYSIS

Daniel's Act is a step in the right direction, but it is not without its shortcomings. The act does not address the root causes of the threats and violence against judges like increased polarization and politicization of

114. *Congress Passes the Daniel Aderl Judicial Security and Privacy Act*, U.S. CTS. (Dec. 16, 2022), <https://www.uscourts.gov/news/2022/12/16/congress-passes-daniel-anderl-judicial-security-and-privacy-act> [https://perma.cc/9A44-8KC4].

115. *Id.*

116. *Id.*

117. Sneed, *supra* note 113.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Congress Passes the Daniel Aderl Judicial Security and Privacy Act*, *supra* note 114 (quoting Judge Salas).

122. Peter Kasperowicz, *GOP Renews Push to Arm Federal Judges amid Rising Threats of Violence*, FOX NEWS (Feb. 3, 2023), <https://www.foxnews.com/politics/gop-renews-push-arm-federal-judges-amid-rising-threats-violence> [https://perma.cc/BJ6U-MP6T].

123. See H.R. 6561, 117th Cong. (2022).

124. Kasperowicz, *supra* note 122.

125. *Id.*

the judiciary.¹²⁶ For example, removing judges' personal information from the internet will not stop the onslaught of threats that Judge Reinhart received. There, a simple signature sparked an instant, personal attack. This is the troubling reality that judges are faced with, and Daniel's Act does not address it. The American Bar Association pointed out that Daniel's Act will not help improve public perception of the judiciary, potentially allowing this state of divisiveness to continue.¹²⁷ Senior U.S. District Judge Paul L. Friedman forewarned that society should be concerned about personal attacks on the judiciary:¹²⁸

[W]hat is so troubling today is that such personal and caustic attacks on judges are on the rise. The attacks are better organized, more partisan, more vitriolic, often extremely heavily financed, and more purposefully misleading than ever before. And—with social media like Twitter—the attacks are instant, widespread, and often rapidly “retweeted” to thousands of people. What should concern us all is not when politicians, government officials, and the press express their disagreement with judicial decisions, but when they attack the integrity and motives of the judges who have issued those decisions, attempting to paint them as partisan or political. These personal attacks undermine public confidence in the courts, endanger judicial independence, and may ultimately undermine faith in the rule of law itself.¹²⁹

Members of Congress, district courts, and bar associations should take a deeper look into other ways to further judicial security. The risk is not likely to decrease, with threats against judges on the rise and the continuing trend of public officials using the media to personally target judges and their families.¹³⁰ Hateful posts could easily spark violence.¹³¹ Rhetoric does not change attitudes but emboldens individuals to act on

126. See S. 2340, 117th Cong. (2022).

127. *Legislative Priorities for the 118th Congress*, AM. BAR ASS'N (Feb. 28, 2023), https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/117th-priorities1/ [<https://perma.cc/23S5-DHAB>].

128. *Senior Judge Paul L. Friedman*, U.S. DIST. CT. D.C., <https://www.dcd.uscourts.gov/content/senior-judge-paul-l-friedman> [<https://perma.cc/26AH-RXCK>].

129. Judge Paul L. Friedman, *Threats to Judicial Independence and the Rule of Law*, AM. BAR ASS'N (Nov. 18, 2019), <https://www.americanbar.org/groups/litigation/about/awards-initiatives/american-judicial-system/threats-to-judicial-independence-and-rule-of-law/> [<https://perma.cc/DHL3-4SB6>].

130. See Barber, *supra* note 6.

131. Daniel L. Byman, *How Hateful Rhetoric Connects to Real-World Violence*, BROOKINGS (Apr. 9, 2021), <https://www.brookings.edu/articles/how-hateful-rhetoric-connects-to-real-world-violence/> [<https://perma.cc/U7WH-SSLV>].

views they had once suppressed.¹³² Further measures must be taken to ensure judicial safety.

This Note poses three solutions that better address the root causes of threats against judges. The first solution is to place civic education in a place of importance in school systems and to continue this education through adulthood, enabling the public to better understand judicial procedures and to be able to protect themselves from misinformation. The second solution is to ensure tech companies have the proper systems in place to monitor social media platforms so they can detect threats, misinformation, and hate speech against judges. Lastly, this Note poses the solution for district courts to utilize en banc review to enhance credibility. These three measures could lessen political and threatening attacks, instill a greater sense of impartiality and credibility in the court, and potentially save judges' lives.

A. *Grounds for Further Measures*

1. Impartiality and Credibility

Increased impartiality and credibility are other grounds for finding better solutions for judicial security. “Judges should not have to fear retaliation for doing their jobs.”¹³³ Protecting federal judges through further measures will facilitate impartiality and increase credibility.¹³⁴ The former president of the Federal Bar Association recently stated, “[f]or an independent judiciary to exist, our judges must be able to perform without intimidation, attacks, or fear for their safety or the safety of their families.”¹³⁵ For example, judges may consider what one political party desires before ruling for fear of obscene retribution.¹³⁶ The judiciary will lose the appearance of credibility in the public's eye if it is “subject to influence or intimidation by corrupt officials, groups, or individuals.”¹³⁷ The bashing and threatening of judges undermines essential core values of the judiciary: independence, integrity, and

132. *Id.*

133. Gary Fields & Nicholas Riccardi, *Trump Supporters' Threats to Judge Spur Democracy Concerns*, ST. LOUIS POST-DISPATCH (Aug. 17, 2022), https://www.stltoday.com/news/national/crime-and-courts/trump-supporters-threats-to-judge-spur-democracy-concerns/article_f326fd83-0203-5603-8826-ca54d2f4dde6.html (last visited Dec. 3, 2023) (quoting U.S. Circuit Judge Richard J. Sullivan, chair of the Judicial Conference Committee of Judicial Security).

134. See Hannah Elias Sbaity, *Private Lives at Home and Public Lives in Court: Protecting the Privacy of Federal Judges' Home Addresses*, 28 J. INTELL. PROP. L. 475, 489 (2021).

135. Anh Kremer, *President's Message: It's Been a Privilege*, FED. BAR ASS'N (Aug. 16, 2022), <https://www.fedbar.org/blog/presidents-message-its-been-a-privilege/> [<https://perma.cc/FVD9-KY9N>].

136. See Sbaity, *supra* note 134, at 490.

137. J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence from What and Why*, 58 N.Y.U. ANN. SURV. AM. L. 241, 246 (2001).

impartiality.¹³⁸ It may even deter those who are best suited from becoming judges.¹³⁹

Even U.S. Senators have routinely spoken out about this concern. Following the murder of a federal judge's family, Senator Arlen Specter spoke out at a Senate Judiciary Committee hearing, saying, "[t]he capability of the judiciary to determine the rule of law without fear or favor is an indisputable prerequisite in our democratic society."¹⁴⁰ Senate Judiciary Committee Member Chuck Grassley warned that "these attempts to influence and intimidate members of the federal judiciary are an affront to judicial independence. No fair-minded person can question that such conduct inherently threatens the judicial process" when speaking out against the dangerous and targeted protests outside of Supreme Court Justices' homes following the leaked *Dobbs* draft.¹⁴¹ If the public cannot trust the judicial process or thinks that judges are bending to the will of political adversaries, then they will not utilize the judicial process to achieve a result in their dispute.¹⁴² Other members of Congress should realize that the credibility of the court and judicial impartiality will be advanced with strengthened efforts to better protect judges. Thus, the constant bombardment of death threats over a "controversial" decision cannot continue.

Furthermore, a self-interested judiciary or one that is focused on self-preservation is in direct conflict with the Code of Conduct for United States Judges.¹⁴³ Specifically, Canon One states, "A [j]udge [s]hould [u]phold the [i]ntegrity and [i]ndependence of the [j]udiciary."¹⁴⁴ Furthermore, the commentary states that "integrity and independence of judges depend in turn on their acting without fear or favor" and that "[a]dherence to this responsibility helps to maintain public confidence in

138. Stephen B. Bright, *Political Attacks on the Judiciary: Can Justice be Done amid Efforts to Intimidate and Remove Judges from Office for Unpopular Decisions*, 72 N.Y.U. L. REV. 308, 324 (1997).

139. *Id.* at 325.

140. *Protecting Federal Judges*, C-SPAN (May 18, 2005), <https://www.c-span.org/video/?186776-1/protecting-federal-judges> (last visited Dec. 3, 2024) (speaking out after the murder of Judge Lefkow's husband and mother by a litigant who was angry with Judge Lefkow's decision to dismiss his case).

141. *Grassley Calls on Justice Dept. to Enforce Law & Protect Justices as White House Remains Muted on Threats to Supreme Court*, CHUCK GRASSLEY (May 11, 2022), <https://www.grassley.senate.gov/news/news-releases/grassley-calls-on-justice-dept-to-enforce-law-and-protect-justices-as-white-house-remains-muted-on-threats-to-supreme-court> [<https://perma.cc/8B6N-T724>].

142. Wallace, *supra* note 137.

143. Sbaity, *supra* note 134, at 490.

144. *Code of Conduct for United States Judges*, U.S. CTS. 1, 2 (Mar. 12, 2019), <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges> [<https://perma.cc/BT4E-93CK>].

the partiality of the judiciary.”¹⁴⁵ Also, Canon Two states that judges “[s]hould [a]void [i]mpropriety and the [a]pppearance of [i]mpropriety in all [a]ctivities.”¹⁴⁶ A judge may not intend to act with fear, but how can one not have it in the back of their mind? A judge wanting to avoid death threats and having obscenities directed at their family may give into the pressure to rule a certain way, or at least convey the impression that the violent behavior influenced their decision. This works against instilling public confidence in an “independent and honorable judiciary” which is “indispensable to justice in our society.”¹⁴⁷ Thus, threats to judges and their families directly impact judicial impropriety.¹⁴⁸ Providing better protections to the judiciary would enhance the court’s independence and integrity which are so vital to the administration of justice in today’s society.

2. Potential Questions of the Constitutionality of Daniel’s Act

Further protections for the judiciary are also necessary because Daniel’s Act may be subject to a legal challenge. Opposition to the law could potentially challenge it under the First Amendment or as creating obstacles with judicial accountability and evaluating conflicts of interest.¹⁴⁹ Federal courts have struck down laws that shield public servants’ addresses or contact information as these laws can be a matter of public concern.¹⁵⁰ The constitutionality of the law may come down to how aggressively the bill is enforced or how an exception in the law that protects the publication of information that is a matter of public concern is interpreted.¹⁵¹ Also, this law comes at a time when there is heightened scrutiny for the federal judiciary.¹⁵² Gallup polling demonstrates that only 25% of Americans have confidence in the Supreme Court.¹⁵³ There also have been recent concerns, including disclosure relating to Justice Thomas’s wife and his vacations, where disclosure of personal

145. *Id.*

146. *Id.*

147. *Id.*

148. *See* Sbaity, *supra* note 134, at 491.

149. Grayson Clary, *Bill to Conceal Judges’ Personal Information Raises First Amendment Concerns*, REPS. COMM. FOR FREEDOM OF THE PRESS (Oct. 20, 2022), <https://www.rcfp.org/judicial-security-first-amendment/> [<https://perma.cc/UU3T-NLH3>].

150. *See* Publius v. Boyer-Vine, 237 F. Supp. 3d 997, 998 (E.D. Cal. 2017); *see also* Brayshaw v. City of Tallahassee, Fla., 709 F. Supp. 2d 1244, 1249 (N.D. Fla. 2010).

151. Sneed, *supra* note 113.

152. Clary, *supra* note 149.

153. Jeffrey Jones, *Confidence in U.S. Supreme Court Sinks to Historic Low*, GALLUP (June 23, 2022), <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx> [<https://perma.cc/VT8S-DQDW>].

information and impartiality come into question.¹⁵⁴ Although the bill received bipartisan support, further incidents like these could lead people to challenge the law. It is imperative that other forms of protection for judges are accessible with the concerns about how Daniel's Act will fare in a legal challenge.

3. Potential Funding Issues

Furthermore, court security programs must be adequately funded when threats against judges are on the rise. Congress has usually filled the fiscal needs of the judiciary, but that could change with the upcoming 118th Congress.¹⁵⁵ The Speaker of the House recently announced that he plans to cap the fiscal year 2024 spending to fiscal year 2022 levels.¹⁵⁶ This would lead to a 130 billion dollar cut in spending, which would mostly come from the discretionary side of the federal budget, impacting how much money is allocated to the judiciary.¹⁵⁷ Potential cuts to judicial funding bolsters the need to find other and more long-lasting solutions to the rise in judiciary attacks.

B. Further Solutions

1. Civic Education

In a 2020 poll, the most popular solution chosen to heal the divide in this country was civic education.¹⁵⁸ Recent surveys also demonstrate a gap between policy and government.¹⁵⁹ Only fifty-six percent of Americans can name the three branches of government according to a 2021 University of Pennsylvania survey.¹⁶⁰ A 2018 John Hopkins survey found that fewer than twenty percent of people could name their state legislators and a third could not name their governor.¹⁶¹ Turning to the judiciary, a survey conducted by Xavier University found that seventy-

154. Jane Mayer, *Is Ginni Thomas a Threat to the Supreme Court?*, THE NEW YORKER (Jan. 21, 2022), https://www.newyorker.com/magazine/2022/01/31/is-ginni-thomas-a-threat-to-the-supreme-court?source=search_google_dsa_paid [https://perma.cc/HF4Q-FQAE].

155. *Legislative Priorities for the 118th Congress*, *supra* note 127.

156. *Id.*

157. *Id.*

158. Healy, *infra* note 179.

159. Benjamin Hammer, *What is Civic Education and Why Is It Important?*, UNIV. OF N.H. (Apr. 8, 2022), <https://carsey.unh.edu/blog/2022/04/what-civic-education-why-it-important> [https://perma.cc/ZVK2-ASGZ].

160. *Americans' Civics Knowledge Increases During a Stress-Filed Year*, ANNENBERG PUB. POL'Y CTR. (Sept. 14, 2021), <https://www.annenbergpublicpolicycenter.org/2021-annenberg-constitution-day-civics-survey/> [https://perma.cc/RM9Z-BFNE] (finding that 20% of people could not name a single branch of government).

161. Jill Rosen, *Americans Don't Know Much About State Government, Survey Finds*, JOHN HOPKINS UNIV. (Dec. 14, 2018), <https://hub.jhu.edu/2018/12/14/americans-dont-understand-state-government/> [https://perma.cc/4N82-TLDK].

five percent of participants could not correctly answer the question, “[w]hat does the judiciary branch do?” and eighty-five percent did not know the meaning of the “rule of law.”¹⁶² Despite this lack of knowledge, ninety-seven percent of Americans have an opinion about the government.¹⁶³ This demonstrates the importance of civic education; how can one disapprove of a decision made by a branch of government if one is not aware of the procedure behind it?¹⁶⁴

Civic education should be better emphasized in schools and by the legal community to help enhance public perception of the credibility and impartiality of the judiciary.¹⁶⁵ “The greater a citizen’s knowledge of the judicial system the more favorable is that citizen’s opinion of the courts and of the duty to decide cases impartially.”¹⁶⁶ Thus, multiple public figures have emphasized civic education. Chief Justice John Roberts in his 2019 year-end report emphasized the amount of disinformation spread on social media and the weakening state of civics education in the United States.¹⁶⁷ Suzanne Spaulding also encouraged civil education to build public resilience to misinformation because education helps the public to not jump to conclusions.¹⁶⁸ Chief Justice Hecht of the Supreme Court of Texas also stated, “the solution for keeping judicial independence strong lies with better public education and making sure that they understand and buy into the importance of judicial independence as protective of the rule of law.”¹⁶⁹ Perhaps public trust in judicial credibility and independence can be restored by targeting education in a quick-to-judge society, thus decreasing attacks against judges.¹⁷⁰

Bar organizations, legal professionals, and schools can contribute to furthering civic education. In response to the threats and mischaracterization spread about Judge Reinhart, the University of

162. Don Burnett, *Civic Education, the Rule of Law, and the Judiciary: A Republic, if You Can Keep It*, 58 *ADVOCATE* 26, 28 (2015).

163. Hammer, *supra* note 159.

164. *Id.*

165. See Rebecca Winthrop, *The Need for Civic Education in 21st-Century Schools*, BROOKINGS (June 4, 2020), <https://www.brookings.edu/policy2020/bigideas/the-need-for-civic-education-in-21st-century-schools/> [<https://perma.cc/EF4B-L9P6>]; see also Burnett, *supra* note 162, at 27.

166. Burnett, *supra* note 162, at 27 (Don Burnett is a Professor of Law at the University of Idaho and a former judge.).

167. Andrew Chung, *U.S. Chief Justice Warns of Internet Disinformation, Urges Civics Education*, REUTERS (Dec. 31, 2019, 6:03 PM), <https://www.reuters.com/article/usa-court-chiefjustice-idUKL1N2950OT> <https://perma.cc/U6Y7-GFZQ>].

168. Levi et al., *supra* note 91.

169. *Id.*

170. See Fields & Riccardi, *supra* note 18 (conveying that the rise of threats against judges comes at a time where public trust in government is at a low).

Connecticut Law Professor Leslie Levin called for bar associations to do more:¹⁷¹

If [bar organizations] see specific statements they think are seriously misleading or really mischaracterizing the process, I think it would be a good idea for them to be the one to come forward and say something. . . [Bar associations can] make clear that [Judge Reinhart] wasn't exceeding his power, that he needed to consider a certain standard.¹⁷²

State bars have already stepped into the field of bettering social media for the legal profession, and they could take a step further to help protect judges from attack.¹⁷³

Aaron Nash, chairman of the Arizona Supreme Court Task Force on Countering Disinformation, called upon former judges and academics to explain legal procedures in the wake of the onslaught of threats against Judge Reinhart.¹⁷⁴ Nash argues that the more retired judges and professionals with experience “who can talk about the process—here’s how this happens, here’s the steps that are required by law for this—that would be helpful.”¹⁷⁵ As applied to Judge Reinhart’s case, organizations could have distributed information on how assignments are given to magistrate judges by district judges and explained how it is not done through “judge shopping.”¹⁷⁶ Also, explanations on search warrant standards and why certain information is redacted could have lessened the public outcry.¹⁷⁷ Misinformation has real-world consequences that can create imminent safety concerns for the judiciary.¹⁷⁸

The American Bar Association recently advocated for advancing education as civic ignorance and distrust in government fuel polarization, recording at the highest levels in the modern era.¹⁷⁹ The ABA found that the polarization trend correlates with the lack of civic education in K-12 school systems.¹⁸⁰ Forty-four percent of schools have reduced time spent on social studies while only ten percent of the time is spent on the subject

171. Zoppa, *supra* note 90.

172. *Id.*

173. Kevin D. Tragesser, *Regulating Social Media Use in the Securities Industry*, 29 U. FLA. J.L. & PUB. POL’Y 215, 232 (2019) (discussing how state bars implement guidelines for social media use for attorneys).

174. *See* Zoppa, *supra* note 90.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. Shawn Healy, *Momentum Grows for Stronger Civic Education Across States*, A.B.A. (Jan. 4, 2022), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-civic-education-in-america/momentum-grows-for-stronger-civic-education-across-states/ [<https://perma.cc/2Z89-MEHS>].

180. *Id.*

in elementary grade levels.¹⁸¹ Civic education is also decidedly underfunded in schools as five cents per student in federal funds is devoted to the subject while fifty-four dollars per student is invested in science, technology, engineering, and math (STEM) subjects.¹⁸² Federal and state funds could be devoted to heighten civic programs, including increased credit offerings in government, history, and economics classes.¹⁸³ Institutes could also be implemented, in conjunction with federal and state courts and law professors, for secondary school teachers to gain an understanding of an independent judiciary and a judge's duties.¹⁸⁴ Teachers could then take this material back to the classroom.¹⁸⁵ People may be able to discern credible sources from the misinformation with this further education and understanding of the procedure.¹⁸⁶ An uneducated public is a fertile ground for misinformation to take root and for polarization to flourish.¹⁸⁷ Being able to protect oneself from misinformation, whether it is spread by public officials or foreign adversaries, is an essential benefit of civic education. In turn, people may be more hesitant to personally threaten a judge and their family since they understand a judge's role and duty in government. Hanlon's razor states, "never attribute to malice that which is adequately explained by stupidity." It is time to take the latter out of the equation.

2. Social Media Accountability

Additionally, the United Nations recently called out large tech executives like Elon Musk, Mark Zuckerberg, and Alphabet, Google's parent company, for the rise in hate speech and the lack of accountability online.¹⁸⁸ Also, there have been notable changes in Twitter since Elon Musk took over, including reducing the workforce in charge of content

181. *Id.*

182. *Id.*

183. Burnett, *supra* note 162 (discussing a program implemented in Idaho which mandated government, U.S. history, and economics class in high schools).

184. *See id.* (discussing a program in Idaho run in conjunction with Idaho state and federal courts and the law school for secondary teachers to learn about the judiciary, the constitution, the rule of law, and other topics to be able to bring back to the high school classroom).

185. *Id.*

186. *See* Zoppa, *supra* note 90 (noting that a major problem is that people are not turning to credible sources first).

187. *Civil Illiteracy Fuels Misinformation*, NAT'L CIVIC LEAGUE (July 28, 2021), <https://www.nationalcivicleague.org/civic-illiteracy-fuels-misinformation/> [<https://perma.cc/GQ67-QSQG>] (discussing how a third of Americans believe there was widespread voter fraud in the 2020 election and fourteen percent will never accept Biden as the true president).

188. *Urgent Need for More Accountability from Social Media Giants to Curb Hate Speech: UN Experts*, UN NEWS (Jan. 6, 2023), <https://news.un.org/en/story/2023/01/1132232> [<https://perma.cc/2MBD-QXRA>].

modification and reinstating users that had formerly been banned.¹⁸⁹ The anti-Semitic and threatening attack against Judge Reinhart experienced on social media, including Twitter, shows how this epidemic has affected the judiciary.¹⁹⁰ Why does the government not step in and hold platforms accountable for the threats, misinformation, and hate speech against judges promulgated across their sites? Either they do not want to, or they are worried about the First Amendment.¹⁹¹

Recent cases have made the regulation of social media on First Amendment grounds a fuzzy area, and it will likely largely depend on potential future court decisions.¹⁹² Some states have even taken the opposite direction of social media regulation and have passed laws prohibiting tech companies from “censoring” their users.¹⁹³ The two circuit courts reviewing the laws reached opposite conclusions regarding these state laws.¹⁹⁴ The Fifth Circuit upheld Texas’s prohibition on tech companies “censoring” their users and rejected the tech companies’ First Amendment rejection.¹⁹⁵ In a divergent opinion, the Eleventh Circuit rejected Florida’s censor law and held that the First Amendment protects tech companies’ decisions to remove content from their platforms.¹⁹⁶ Still, tech companies should take better measures in changing their platforms’ architecture to better address threats, hate, and misinformation. Nevertheless, the government should hold the companies accountable for not having the proper comprehensive content moderation in place.

Admittedly, the argument could depend on whether the U.S. Supreme Court decides to take up the issue of whether content modification constitutes tech companies’ speech. However, there are things that tech companies can change to better their platforms. Platforms can focus more on the broader architecture of their platform to better overall internalization and rationale debate among users.¹⁹⁷

189. Matt O’Brien et al., *Explainer: How Elon Musk is Changing What You See on Twitter*, AP NEWS (Dec. 13, 2022), <https://apnews.com/article/elon-musk-twitter-inc-technology-europe-business-1b3d4266c5acdab47fc1e95fe8026590> [<https://perma.cc/WZQ8-3KXN>] (showing that Donald Trump and Ye are both reinstated users).

190. See Madeline Fixler, *On Gab, Truth Social and Beyond, Antisemitic Threats Continue in the Wake of the FBI’s Mar-a-Lago Search*, JEWISH TELEGRAPHIC AGENCY (Aug. 18, 2022), <https://www.jta.org/2022/08/18/politics/on-gab-truth-social-and-beyond-antisemitic-threats-continue-in-the-wake-of-the-fbis-mar-a-lago-search> [<https://perma.cc/C7NR-EZHD>] (discussing viral tweets and message boards referencing Judge Reinhart’s Jewish identity).

191. See Oremus, *supra* note 64.

192. See *id.*

193. *Id.*

194. *Id.*

195. NetChoice, L.L.C. v. Paxton, 49 F.4th 439, 444–45 (5th Cir. 2022).

196. NetChoice, LLC v. Att’y Gen., Fla., 34 F.4th 1196, 1203 (11th Cir. 2022).

197. Frank Fagan, *Systemic Social Media Regulation*, 16 DUKE L. & TECH. REV. 393, 429–30 (2018).

On the other hand, configuring network architecture with systemic social media regulation so that claims are funneled toward locations where discursive excellence thrives, can lead to greater levels of internalization. Consider that Reddit, in an effort to elevate the quality of its fora, “shadowbans” users who come to troll. Traditional banning blocks the troll from the forum, but trolls can simply change their names and continue to troll. By contrast, shadowbanning blocks others from viewing the troll’s messages: the troll continues to troll, sees her messages, and believes she is still trolling. But she is speaking to an empty hall, even as she believes the seats are full. Policing content rarely fosters rational deliberation and the internalization of facts and norms. By focusing on platform architecture, a tendency toward group polarization can be neutralized, and users can be nudged with systemic measures toward network locations where rational deliberation proliferates.¹⁹⁸

Thus, tech companies could initiate overarching systems like Reddit’s to create a network of inclusion rather than polarization. A platform that directs its users to inclusion rather than instigating them could save judges from hate, threats, dissemination of misinformation, and potentially their lives.¹⁹⁹

However, the case can still be made for intervention if tech companies fail to sustain such comprehensive systems for their platforms. One obvious challenge to government intervention is the First Amendment, as discussed above, but the various types of free speech can still be profitably analyzed under the Learned Hand framework as updated by Judge Posner.²⁰⁰ Essentially, the law should “forbid speech only if the costs of forbidding it are greater than the probabilistic costs of permitting it.”²⁰¹ The cost of permitting the speech can also occur later in time.²⁰² Systematic regulations of death threats, hate speech, and misinformation have low costs and a highly probable social cost of furthering polarization or harm to judges.²⁰³ Thus, regulating social media could be done comprehensively, and designed to focus on the overall architecture of the platform, rather than policing individual content.

While First Amendment doctrine circumscribes direct speech restrictions, the systemic regulation of platform architecture is more likely to survive constitutional scrutiny. In any case, platforms appear to

198. *Id.*

199. See Barber, *supra* note 6 (Judge Jones’s interview).

200. Fagan, *supra* note 197, at 430; see *United States v. Dennis*, 183 F.2d 201, 211–12 (2d Cir. 1950), *aff’d*, 341 U.S. 494 (1951) (establishing Learned Hand’s framework); see Richard A. Posner, *Free Speech in an Economic Perspective*, 20 SUFFOLK U. L. REV. 2, 8 (1986) (establishing Posner’s update to Learned Hand’s framework).

201. Fagan, *supra* note 197, at 430.

202. See Posner, *supra* note 200.

203. See Fagan, *supra* note 197, at 430 (referencing how forbidding obscene speech has a low social cost); see also Barber, *supra* note 6.

be leading the way here in terms of developing creative architectures and implementing them, though one could imagine sustained divergence and the need for state action in the future.²⁰⁴

Thus, the United States could follow the lead of the European Union (EU) in its systemic regulation to oblige tech companies to implement comprehensive systems to better regulate illicit speech.²⁰⁵ The EU's Digital Services Act (DSA) became effective on November 16, 2022,²⁰⁶ and aims to clean up the world's largest online forums.²⁰⁷ The DSA applies within the EU regulating intermediaries like Google, Twitter, Facebook, and Amazon.²⁰⁸ The DSA aims to regulate the dissemination of misinformation and hate speech, among other things.²⁰⁹ Noncompliance violations include a fine of six percent of global turnover, or in serious cases, a temporary suspension of the platform.²¹⁰ Large forums with over forty-five million users must also engage in an annual risk assessment of harmful content and then put in measures to mitigate those risks.²¹¹ Platforms' content moderation teams will now be vetted by the EU including having to publish an independent audit showing compliance with the DSA.²¹² Moreover, the EU is conscious of overregulating content. For example, fines are used if a platform does not have an adequate system to remove unauthorized content, rather than imposing a fine for individual decisions about specific pieces of content.²¹³

The United Kingdom (UK) has also taken a stance on making social media safer. The Online Safety Bill is expected to become law in the fall of this year²¹⁴ and is a comprehensive approach to protect adults and

204. Fagan, *supra* note 197, at 438.

205. Natalia Drozdiak & Ben Brody, *U.S., EU Part Ways in Regulating User Content on Social Media*, BLOOMBERG (June 9, 2020), <https://www.bloomberg.com/news/articles/2020-06-09/u-s-eu-part-ways-in-regulating-user-content-on-social-media> [<https://perma.cc/UM6J-2K7P>].

206. William Schwartz, *The EU's Digital Services Act Confronts Silicon Valley*, WILSON CTR. (Feb. 15, 2023), <https://www.wilsoncenter.org/article/eus-digital-services-act-confronts-silicon-valley> [<https://perma.cc/5RQS-W452>].

207. Dan Milmo, *Digital Services Act: Inside the EU's Ambitious Bid to Clean up Social Media*, THE GUARDIAN (Dec. 17, 2022), <https://www.theguardian.com/media/2022/dec/17/digital-services-act-inside-the-eus-ambitious-bid-to-clean-up-social-media> [<https://perma.cc/BD4Y-ZLAC>].

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. Drozdiak & Brody, *supra* note 205.

214. Mark Scott & Annabelle Dickson, *How UK's Online Safety Bill fell victim to never-ending political crisis*, POLITICO (Feb. 28, 2023), <https://www.politico.eu/article/online-safety-bill-uk-westminster-politics/> [<https://perma.cc/A957-DMU7>].

children while online.²¹⁵ The bill will also target harmful content including hate speech and speech inciting violence.²¹⁶ Georgetown University Professor Mark MacCarthy argues that two policies from the bill could be imitated in the U.S.²¹⁷ First, the bill implements an independent agency to employ mechanisms to regulate social media and search engines.²¹⁸ Second, the bill focuses on the systems social media companies use for ordering content to ensure they comply with the terms of service.²¹⁹ These policies demonstrate another example of a comprehensive social media regulation.

The U.S. could implement policies similar to the EU and the UK and in turn, judges would be better protected from misinformation and threatening attacks inciting violence online. Furthermore, this Note does not attempt to address the potential of censoring misinformation that is actually true. This Note only addresses proper monitoring of blatant misinformation, personal threats, and hate speech personally directed at judges and the systems that can be put in place to minimize it. Therefore, the government needs to step into the arena if companies like Twitter will not take a stance on monitoring content.²²⁰ Rhetoric inciting violence on social media and an eruptive public could easily lead to a judge being killed, as Judge Jones warned.²²¹ The fuel to the fire can be stopped before it reaches an already volatile public if misinformation and violent speech are regulated at the forefront.

3. Utilization of District Court en Banc Review

Lastly, districts could opt for the utilization of en banc decisions at the district court level. This could further judicial credibility, thus potentially lessening polarization and reducing threats against judges.²²² District courts have the authority to decide cases collectively, even if it is an

215. *A Guide to the Online Safety Bill*, GOV.UK (Dec. 16, 2022), <https://www.gov.uk/guidance/a-guide-to-the-online-safety-bill> [<https://perma.cc/8LL8-8ST8>].

216. *Id.*

217. Mark MacCarthy, *What U.S. Policymakers Can Learn from the U.K.'s Online Safety Bill*, BROOKINGS (May 19, 2022), <https://www.brookings.edu/blog/techtank/2022/05/19/what-u-s-policymakers-can-learn-from-the-u-k-s-online-safety-bill/> [<https://perma.cc/9KD6-ZTNT>].

218. *Id.*

219. *Id.*

220. Mark McCreary, *Unlike the US, the EU Has the Support to Address Online Misinformation*, THE LEGAL INTEL. (July 3, 2022), <https://www.law.com/thelegalintelligencer/2022/07/03/unlike-the-us-the-eu-has-the-support-to-address-online-misinformation/> [<https://perma.cc/L5JS-8HG6>] (explaining how Elon Musk, owner of Twitter, has taken the stance to not restrict content until a law is passed requiring it).

221. *See* Barber, *supra* note 6.

222. *See* Julio Mendez, *Polarization, Misinformation Undermining Confidence in the Courts*, N.J. L.J. (Jan. 31, 2023), <https://www.law.com/njlawjournal/2023/01/31/polarization-misinformation-undermining-confidence-in-the-courts/> [<https://perma.cc/UFY4-T5UH>].

uncommon practice.²²³ District-level en banc cases have even been acknowledged by the Supreme Court.²²⁴ For example, *Hickman v. Taylor*²²⁵ and *Zadvvydas v. Davis* were multi-judge decided district court opinions presented to the Supreme Court.²²⁶ Appellate courts have even praised the use of district en banc opinions.²²⁷ There is further statutory authority to allow for en banc district court decisions under 28 U.S.C. § 132(c).²²⁸

Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.²²⁹

Section 132(c) is a permissive statute that states that the exercise of judicial power “may” be done by a single judge, not that it must be.²³⁰ This lack of prohibition of en banc review at the district level is significant because it leaves space for courts to utilize their inherent authority.²³¹ Inherent authority is the power a court possesses “simply because it is a court.”²³² The use of inherent authority leaves district courts the power to enable en banc review when issuing a decision.²³³ Thus, this leaves ample space for district courts to elect and establish procedures for en banc review.²³⁴

Furthermore, en banc review has historically been utilized in cases of high political pressure.²³⁵ Starting with the period of 1912 through 1940, en banc review was utilized in Prohibition prosecutions and bankruptcy cases following the Great Depression.²³⁶ For example, the Eastern District of Pennsylvania implemented an en banc review when there was a need for uniformity or when the decision was of high public importance

223. Maggie Gardner, *District Court en Bancs*, 90 FORDHAM L. REV. 1541, 1551 (2022).

224. *Id.*

225. 329 U.S. 495, 499 (1947) (noting the en banc decision).

226. 533 U.S. 678, 686 (2001) (referencing how the district court convened as a “panel of five judges”).

227. *See Banks v. United States*, 490 F.3d 1178, 1182 (10th Cir. 2007) (noting the use of the district en banc panel and the impressive and convincing opinion).

228. Gardner, *supra* note 223, at 1552.

229. 28 U.S.C. § 132(c).

230. Gardner, *supra* note 223, at 1553.

231. *Id.*; *see also* Dietz v. Bouldin, 579 U.S. 40, 47 (2016).

232. Gardner, *supra* note 223, at 1553.

233. *Id.*

234. *Id.* at 1554.

235. *Id.* at 1561.

236. *Id.* at 1562.

during this era in bankruptcy cases.²³⁷ After World War II, district court en banc review was utilized in controversial labor disputes involving the contentious Portal-to-Portal Act of 1947 and in race relation cases regarding civil rights.²³⁸ More recently, multiple collective district court proceedings have regarded contentious political issues.²³⁹ These cases have included the District of Hawaii's rejection of a challenge to a statute effectively blocking a Republican candidate from an election ballot²⁴⁰ and the dismissal of an ethics complaint against independent counsel Kenneth Starr for his handling of the Whitewater investigation.²⁴¹

This is not to say that en banc review should be implemented all the time. The exercise of inherent authority is not without its limits. According to the Supreme Court, (1) an inherent power cannot be contrary to any express rule or statute, (2) an inherent power must be a reasonable response to a specific problem, and (3) a court in exercising its inherent power must comply with the mandates of due process, meaning that the process is fair for those who will be affected by it.²⁴²

Cornell Law Professor Maggie Gardner lays out best practices and considerations for en banc decisions.²⁴³ The first criterion is to ensure that the en banc conforms with existing legal rules.²⁴⁴ As discussed, district courts can usually organize as they see fit, so this step essentially reminds them that inherent authority should be used intermittently.²⁴⁵ Secondly, Professor Gardner lists circumstances that come under the reasonable response to a specific problem criterion.²⁴⁶ Such reasonable responses include issues that raise questions about the integrity of the district court and exceptional matters of local importance.²⁴⁷ Both of these circumstances apply to protect judges from threats as threats undermine credibility and can involve matters of great importance.²⁴⁸ Local rules could also be enacted to specify further circumstances allowing for judges to elect en banc review.²⁴⁹ Lastly, fairness to litigants should be conducted by giving litigants advance notice of the election of en banc

237. *Id.*; see also *In re Jay & Dee Store Co.*, 37 F. Supp. 989 (E.D. Pa. 1941); *In re Clover Drugs, Inc.*, 21 F. Supp. 107 (E.D. Pa. 1937); *In re Collins Hosiery Mills, Inc.*, 18 F. Supp. 89 (E.D. Pa. 1937); *In re Stein*, 17 F. Supp. 587 (E.D. Pa. 1936).

238. Gardner, *supra* note 223, at 1563–64.

239. *Id.* at 1568.

240. See *Fasi v. Cayetano*, 752 F. Supp. 942, 951, 954 (D. Haw. 1990).

241. See *In re Starr*, 986 F. Supp. 1159, 1160 (E.D. Ark. 1997).

242. Gardner, *supra* note 223, at 1595.

243. *Id.*

244. *Id.*

245. *Id.* (“[I]nherent powers should not contradict existing law can serve as a more general reminder that inherent powers should remain interstitial.”).

246. Gardner, *supra* note 223, at 1596.

247. *Id.*

248. See *Sbaity*, *supra* note 134, at 490; see also *Fields*, *supra* note 18.

249. Gardner, *supra* note 223, at 1596.

review.²⁵⁰ While these guidelines may seem vague, the important aspect is to remember that en banc review may be utilized. District courts may add further clarity by enacting local rules addressing circumstances in which en banc may be utilized and the procedures in which to do it.

There are also practical considerations to consider when discussing en banc review. En bancs may be logistically challenging. One response to this concern is that there are more options for judges to convene remotely since the pandemic. Remote options have been highly utilized and have even been praised as being “more transparent, more accessible, and more convenient.”²⁵¹ Another possible concern is that en bancs would be overused, becoming very costly and time-consuming for litigants. However, the proposal to convene en banc could be initiated solely by the assigned judge and then must be approved by the chief judge of the district.²⁵² This could make these procedures more manageable while still providing the option for en bancs for judges to utilize when their safety is a concern.

Ultimately, the employment of intermittent en banc review with proper procedures would play a key role in enhancing legitimacy and credibility in politicized or important decisions.²⁵³ Professor Gardner also demonstrated how en banc review carries many other legitimacy benefits.²⁵⁴ “Speaking with one voice may serve to educate a key audience, reduce future challenges, or simply avoid any one judge having to take sole responsibility for a difficult or high-stakes decision.”²⁵⁵ Also, en banc review emphasizes the seriousness with which the district court is handling the matter.²⁵⁶ These are precisely the issues that this Note discusses and attempts to resolve. Also, these benefits could have been influential in the cases of Judge Reinhart and Judge Robart. There, threats and misinformation could have been silenced if blame was not focused solely on the one judge or if impartiality could not have been called into question. Therefore, the utilization of en banc review is an advantageous solution for judicial safety.

CONCLUSION

It is time to reevaluate the root causes of why the nation’s judges are not safe and understand the importance of inaction. “These attacks aren’t

250. *Id.* at 1598.

251. Eric Scigliano, *Zoom Court Is Changing How Justice Is Served*, THE ATLANTIC (Apr. 13, 2021), <https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/> [https://perma.cc/FR2H-X9L2].

252. *See* Gardner, *supra* note 223, at 1599.

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

just a threat to judges, but a threat to the rule of law—the bedrock of our justice system.”²⁵⁷ Polarization is also evident in many examples where judges have been threatened.²⁵⁸ For instance, what should have been a routine exercise of their judicial duty turned into a media firestorm for Judges Reinhart and Robart. Social media aids polarization, providing a platform for attacks against the judiciary.²⁵⁹ Misinformation furthered by domestic and even foreign users enlarges this divide.²⁶⁰ Startling consequences result from this divergence which have not spared the judiciary.²⁶¹

Recent legislative efforts to address judicial safety do not attack the root causes of many of the threats. Polarization and politicization of the judiciary will still be here even if it is harder to find the address of a judge online or if a judge is allowed to carry a gun to the courtroom. Furthermore, the need for an increase in the impartiality and credibility of the courts when it is at an all-time low²⁶² is a key factor in attempting to protect judges. Additionally, questions of the constitutionality of the new judicial safety efforts and the potential for a lack of government funding for judicial safety demonstrate the need for long-lasting policies.

Three policies can be implemented to address the root causes of the threats. A better focus on civic education, social media regulation, and utilization of en banc review at the district court level all attempt to curb polarization and increase the credibility of the courts. None of them will be able to silence all the threats and misinformation. There will always be those with hate and discontent. However, these policies are a start at treating the disease rather than managing the symptoms.

257. Maddie Hosnack, *Judicial Security Is Increasing Concern Across the Country*, UNIV. OF DENVER (Feb. 28, 2023), <https://iaals.du.edu/blog/judicial-security-increasing-concern-across-country> [<https://perma.cc/33LP-VVDF>].

258. See Barber, *supra* note 6.

259. See generally Bremmer, *supra* note 58.

260. See Levi et al., *supra* note 91.

261. E.g. Turley, *supra* note 7 (referencing the attempted kidnapping of Justice Brett Kavanaugh).

262. See Nadine El-Bawab, *How Did the Supreme Court Become so Polarized?* ABC NEWS (Oct. 5, 2022), <https://abcnews.go.com/Politics/supreme-court-polarized/story?id=90598910> [<https://perma.cc/XX42-SK6G>].

