

## CIVIC EDUCATION AND CIVIL DISCOURSE: A ROLE FOR COURTS, JUDGES, AND LAWYERS

Kari C. Kelso\* and J. Clark Kelso\*\*

The judiciary has an important role to play in civic education . . . . I ask my judicial colleagues to continue their efforts to promote public confidence in the judiciary, both through their rulings and through civic outreach.<sup>1</sup>

An overall reduction in the public's knowledge and understanding of basic principles of government and democracy has led to a virtual collapse in practices of civil discourse over the last several decades. The country needs a broad, sustained program targeted at improving civics education and civil discourse. Courts and judges, working collaboratively with lawyers, law schools, and K–12 educators, will play an important part in that education program because of their unique, non-partisan role in our tripartite system of government.

During the first decade of this century, Justices Anthony M. Kennedy and Sandra Day O'Connor championed civics education initiatives. Justice Kennedy's 2002 "Dialogue on Freedom"<sup>2</sup> and Justice O'Connor's 2009

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\* Public Education and Community Outreach Administrator, United States Court of Appeals for the Ninth Circuit, Office of the Circuit Executive. The views expressed in this article do not necessarily represent the opinion of the Ninth Circuit or its Executive Office.

\*\* Professor of Law, University of the Pacific McGeorge School of Law.

1. John G. Roberts, Jr. *2019 Year-End Report on the Federal Judiciary*, 2, 4 (Dec. 31, 2019), <https://www.supremecourt.gov/publicinfo/year-end/year-end-reports.aspx>.

2. Justice Kennedy created the Dialogue on Freedom in the wake of the 9/11 attacks. The American Bar Association worked with Justice Kennedy to establish and make widely available the materials for the Dialogue, which consisted

initiative to establish “iCivics”<sup>3</sup> showed what can be accomplished with committed leadership, a little organization, and a few resources. More recently, Justice Sonia Sotomayor has been taking on the challenge through personal visits around the country, books that target a young readership, and, during the pandemic, Zoom-based meetings from her home and office with hundreds of students at a time.<sup>4</sup>

But much more needs to be done. The lack of civics knowledge among citizens runs deep and broad. A 2016 survey by the Annenberg Public Policy Center revealed that “[o]nly a quarter of Americans can name all three branches of government, the poorest showing on that question in a half-dozen years. . . . Nearly a third of Americans cannot name any of the three branches of government.”<sup>5</sup> Commenting on this survey, Kathleen Hall Jamieson, director of the Annenberg Public Policy Center, observed that “[t]hose unfamiliar with our three branches of government can’t understand the importance of checks and balances and an independent judiciary. . . . Lack of basic civics knowledge is worrisome and an argument for an increased focus on civics education in the schools.”<sup>6</sup>

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of a ninety-minute conversation, usually led by a judge, with a senior-level high school class exploring a hypothetical where students were asked to assume they had to explain the virtues of freedom and democracy to residents of a third-world country with strong suspicions or hostility to America and its commitment to freedom. See Associate Justice Anthony M. Kennedy, Speech at the American Bar Association Annual Meeting (Aug. 9, 2003), [https://www.supremecourt.gov/publicinfo/speeches/sp\\_08-09-03.html](https://www.supremecourt.gov/publicinfo/speeches/sp_08-09-03.html).

3. The iCivics website explains that it “was founded by Justice Sandra Day O’Connor in 2009 to ensure that all Americans have the knowledge and will to participate in our unique experiment in self-government.” ICIVICS, <https://www.icivics.org/who-we-are> (last visited June 2, 2021).

4. See SONIA SOTOMAYOR, JUST ASK!: BE DIFFERENT, BE BRAVE, BE YOU (2019); SONIA SOTOMAYOR, TURNING PAGES: MY LIFE STORY (2018).

5. *Americans’ Knowledge of the Branches of Government Is Declining*, ANNENBERG PUB. POL’Y CTR. UNIV. PA. (Sept. 13, 2016), <https://www.annenbergpublicpolicycenter.org/americans-knowledge-of-the-branches-of-government-is-declining/>.

6. *Id.*

Courts, judges, lawyers, and educators around the country have been exploring the contours of greater judicial involvement in civics education for many years by, among other things, creating and offering a wide variety of programs, curricular resources, and experiential learning targeting K–12 students, including a wealth of online materials, visits by students to courthouses and courtrooms, moot court programs, essay and art contests, and visits by judges and courts to school sites. The processes courts and judges use to conduct hearings and resolve disputes can also serve as models for civil discourse including the recognition and practice of long-standing principles of due process that include the rights to be heard, present evidence and confront one's accusers, and receive a reasoned explanation for a final decision.

Now more than ever, courts, judges, lawyers, and educators need to step forward to help turn our country toward a more civil, civics discourse informed by knowledge and trust in democratic principles. Moving beyond purely local, individually led efforts to a better organized, more systematically resourced, national initiative will increase civics education.<sup>7</sup>

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7. Conversations among judicial leaders have already begun moving in this direction. Chief Judge Sidney R. Thomas of the Ninth Circuit Court of Appeals hosted a national conversation highlighting civics education at the 2017 Ninth Circuit Judicial Conference in San Francisco. *See* Chief Judge Sidney R. Thomas, Remarks at 2017 Ninth Circuit Judicial Conference (July 17, 2017), [https://www.ca9.uscourts.gov/judicial\\_conference/2017/video.html](https://www.ca9.uscourts.gov/judicial_conference/2017/video.html); the late Senior Circuit Judge Robert A. Katzmann of the Second Circuit Court of Appeals and Administrative Office of the U.S. Courts Director James C. Duff (now Executive Director of The Supreme Court Historical Society) hosted a similar national conference in 2019 in New York City. *See* Chief Judge Robert A. Katzmann, *National Conference on Civic Education and the Federal Courts* (2019), <https://justiceforall.ca2.uscourts.gov/NCCE2019.html>. Judge Katzmann passed away during the production of this special issue.

Under the leadership of Rebecca Fanning, the Public Education and Outreach Manager for the Administrative Office of the United States Courts, the elements of a national program are emerging. Her office provides program ideas and materials to support local programs. There are only a few courts around the country that have created a full-time staff position to support civics education initiatives. At most courts, this work is done under the leadership of interested judges and one or more part-time staff who have other full-time responsibilities.

In Part I of this paper, we initially describe and recommend the methods for teaching and restoring democratic principles. These activities include restoring faith in fair and free elections, the importance of the protection of civil rights, and respect for the rule of law. In Part II, we discuss the process of restoring civil discourse and provide recommendations for a lasting solution to change the cultural norms for political speech and public discourse so that these forms of communication become more civil in nature. Then in Part III, we detail the role of courts, judges, and lawyers in changing and improving public discourse. We conclude with our recommendations for a call to action among and between public and private entities to educate and improve public discourse.

## I. DEMOCRATIC PRINCIPLES MUST BE TAUGHT AND TRUST RESTORED

During his many appearances and speeches in support of civic education, a topic he championed for decades, Justice Anthony M. Kennedy regularly reminded audiences that democracy must be learned by each generation.<sup>8</sup> Justice Sandra Day O'Connor, another great leader in civic education, joined in this call.<sup>9</sup> Democracy is something that we consciously must teach each generation because principles of democracy are not self-

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8. See Anthony M. Kennedy, *supra* note 2 (“History teaches that freedom must make its case, again and again, from one generation to the next.”); Kimberly J. Mueller, *Justice Kennedy, Teacher*, 52 U.C. DAVIS L. REV. 329, 331 (2019) (“In a tribute paid upon Justice Kennedy’s retirement, Chief Justice Roberts noted ‘his abiding commitment to civics education.’”); John G. Roberts, Jr., *In Tribute: Justice Anthony M. Kennedy*, 132 HARV. L. REV. 1 (2018); Editorial, *Viewing Public Gets A Peek at State’s Top Court*, PRESS DEMOCRAT, Mar. 19, 2016, 2016 WLNR 8559397 (reporting that California Chief Justice Tani Cantil-Sakauye said, “I do believe that our public’s faith in our democratic institutions depends on their understanding and awareness of those institutions . . . Justice (Anthony) Kennedy said democracy must be learned in each generation. It has to be taught.”).

9. “The practice of democracy is not passed down through the gene pool. It must be taught and learned [anew] by each generation of citizens.” Sandra Day O’Connor, *Our Founder*, ICIVICS, <https://www.icivics.org/our-founder> (last visited May 19, 2021).

evident: we are not born knowing principles of democracy; these principles are not something that naturally develops out of the ordinary practices of childrearing; they are not something that human beings are even naturally attuned to. If history is a reliable guide, when acting as a large group, human beings seem to be peculiarly susceptible to charismatic, authoritarian leadership, not democracy. Historically, democracy is very much the exception.

The “problem” with democracy, particularly in a country where there is a close split between competing viewpoints, is that it requires a large number of individuals on the losing side of an election to go along with the majority for at least several years at a time based upon a foundational belief and trust in the concept and reality of majority rule and a belief that minority voices are at least being heard. “Go along” does not mean always accepting and agreeing with the opposition, of course; political opposition can and should continue. But going along means there is enough understanding and trust in democratic principles to hold the country together and to avoid insurrections or worse.

There are many lists of democratic principles. For our purposes, there is no need to canvass all of the lists to produce the best list of principles. Almost any of the lists will do. Stanford Professor Larry Diamond’s list seems to communicate the essential elements of a democratic system, at least as we practice it in the United States:

- Regular, free, and fair elections to select the government’s leaders;
- Active participation by a substantial portion of the population;
- Protection of basic human and civil rights; and

- Respect for the rule of law, fairly and equally applied to all.<sup>10</sup>

Democracy can thrive and survive only if overwhelming majorities *understand* these essential elements and *trust* that these elements accurately describe how democracy is practiced in the United States. As Judge Robert Katzmann said at the Ninth Circuit Court of Appeals' 2017 annual Judicial Conference, "How can we expect our people to support and defend the constitution when they know so little about it?"<sup>11</sup>

Unfortunately, a range of surveys over the years have consistently shown that Americans generally have a poor understanding of democratic principles, and that lack of understanding is eroding public trust in democratic institutions.

### A. *Regular, Free, and Fair Elections*

Tens of millions of Americans do not trust the election system that resulted in Vice President Joe Biden being declared President of the United States. Poll results published by Quinnipiac University on January 11, 2021, indicated that "37 percent of voters do believe there was widespread voter fraud."<sup>12</sup> This disbelief in the election system is clearly partisan in nature. The same poll reported that 73% of Republicans believed there was widespread voter fraud while 93% of Democrats said there was no widespread voter fraud.<sup>13</sup> The partisan nature of the results in no way minimizes the enormity of the challenge facing the country.

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10. Larry Diamond, What is Democracy, Lecture at Hilla University for Humanistic Studies (Jan. 21, 2004), <https://diamond-democracy.stanford.edu/speaking/lectures/what-democracy>; Larry Diamond & Leonardo Morlino, *The Quality of Democracy*, in SEARCH OF DEMOCRACY (Larry Diamond ed., 2016).

11. Chief Judge Robert A. Katzmann, Remarks at 2017 Ninth Circuit Judicial Conference, (July 7, 2017), [https://www.ca9.uscourts.gov/judicial\\_conference/2017/video.html](https://www.ca9.uscourts.gov/judicial_conference/2017/video.html) (video entitled "Civics Education in the Ninth Circuit and Beyond" at 24:58).

12. *74% of Voters Say Democracy in the U.S. Is Under Threat*, QUINNIPIAC UNIV. (Jan. 11, 2021), <https://poll.qu.edu/poll-release?releaseid=3733>.

13. *Id.*

Put yourself in the shoes of one of those 37% of voters who believes there was widespread fraud. One of those voters explained his frustration as follows:

I can't just sit back and say, "OK, I'll just go back to watching football," said Daniel Scheerer, 43, a fuel truck driver in Grand Junction, Colo., who went to the rally in Washington [on Jan. 6], but said he did not go inside the Capitol and had nothing to do with those who did. He said he did not condone those who were violent but believed that the news media had "totally skewed" the event, obscuring what he saw as the real story of the day—the people's protest against election fraud.

"If we tolerate a fraudulent election, I believe we cease to have a republic," he said. "We turn into a totalitarian state."<sup>14</sup>

For our purposes, it does not really matter that there may be no evidence of widespread, systematic fraud. Nor does it matter that much more than a majority believes there was no fraud. The problem is that a very significant portion of the voting public, and a large percentage of voters of one party, believe that there was widespread fraud. Mr. Scheerer's concern that the toleration of fraudulent elections is a harbinger of totalitarianism is not irrational, and his belief that we would cease to have a republic is fully consistent with Professor Diamond's inclusion of free and fair elections as a critical component of our democracy.

A much smaller percentage of voters who believe there was widespread fraud also believe in using violent means as a response.<sup>15</sup> This smaller group appears to be

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14. Sabrina Tavernise, *Why Rage Over the 2020 Election Could Last Well Past Trump*, N.Y. TIMES (Jan. 18, 2021), <https://www.nytimes.com/2021/01/18/us/supporters-of-donald-trump.html>.

15. "Voters are split on whether they consider what happened at the U.S. Capitol a coup attempt or not. Forty-seven percent say they consider it a coup attempt, 43 percent say they do not, and 10 percent say they are unsure. There is a near unanimous view among voters, 91–6 percent, that the individuals who stormed the U.S. Capitol on January 6th should be held accountable for their actions. Voters also say, 81–12 percent, that extremism is a big problem in the United States." QUINNIPIAC UNIVERSITY, *supra* note 12.

more closely aligned with various extremist groups which have been communicating amongst themselves and railing against government and the “deep state” for over thirty years.<sup>16</sup>

The circumstances described above raise a question for our readers:

What can courts, judges, and lawyers do to help restore understanding and trust in our system of regular, free, and fair elections?

### *B. Active Participation by the Population*

In the most recent election, over 158 million people of the 239 million who were eligible to vote cast their ballots. That represents over 66% of eligible voters, the highest percentage turnout for a presidential election in over 100 years.<sup>17</sup> This metric suggests a great deal of active participation by the population.

Surveys conducted by the Pew Research Center on U.S. Politics & Policy seem to confirm that a substantial majority of Americans are actively engaged with the country’s politics. Two-thirds voted in 2020, and a similar percentage of Americans have participated in politics in one way or another from 2013 to 2018:

Many Americans participate in politics, either by volunteering for or donating to campaigns, attending protests or meetings, contacting officials or expressing their views on social media. Overall, a large majority (67%) reports having engaged in at least one of these activities in the past five years; nearly half (46%) say they have done so in the past year alone.<sup>18</sup>

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16. KATHLEEN BELEW, *BRING THE WAR HOME: THE WHITE POWER MOVEMENT AND PARAMILITARY AMERICA* (2018).

17. Kevin Schaul, Kate Rabinowitz & Ted Mellnick, *2020 Turnout is the Highest in Over a Century*, WASH. POST (Nov. 5, 2020), <https://www.washingtonpost.com/graphics/2020/elections/voter-turnout/>.

18. PEW RSCH. CTR., *THE PUBLIC, THE POLITICAL SYSTEM, AND AMERICAN DEMOCRACY 101* (Apr. 26, 2018), <https://www.pewresearch.org/politics/2018/04/26/10-political-engagement-knowledge-and-the-midterms/>.



Similar margins believe that “it ‘really matters’ which party wins control of Congress.”<sup>19</sup>

These numbers suggest that active participation is an opportunity rather than a problem. Americans are willing to pay attention to political issues. According to the Pew Research Center’s survey, “[a]bout half of the public (51%) say they discuss politics with others at least a few times a week” and “[n]early two-thirds of those older than 65 (63%) say they have these discussions at least weekly.”<sup>20</sup> Even among younger adults, “45% of those 18 to 29 and 30 to 49 say they talk about politics with others at least weekly.”<sup>21</sup>

Can courts, judges and lawyers take advantage of the opportunity to reach out to the American public to discuss matters of civic education and civil discourse?

### *C. Protection of Basic Human and Civil Rights*

Professor Diamond’s list of essential elements for democracy includes the recognition of basic human and civil rights. There is some controversy among political science scholars about whether this is truly an aspect of democracy or, instead, reflects libertarian and/or natural law principles that are part of our particular version of democracy. We will not enter that debate here. For our purposes, it makes sense to include this element because it certainly is a fundamental aspect of the United States of America’s version of constitutional democracy. The rights declared in the Bill of Rights and in subsequent amendments to the Constitution, as interpreted by the Supreme Court of the United States and, in cases involving state constitutional rights as declared by each state’s highest court, are an integral part of the People’s relationship with government and with each other.

It is somewhat heartening to learn that the public seems to have a well-developed understanding that

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19. *Id.* at 106.

20. *Id.* at 105.

21. *Id.*

certain rights are protected by our Constitution. The Pew Research Center poll referenced above reported that “[a]n overwhelming share of the public (84%) says it is very important that ‘the rights and freedoms of all people are respected,’”<sup>22</sup> and a “majority of Americans (86%) correctly identify free speech as a right guaranteed by the First Amendment.”<sup>23</sup> Not surprisingly, of course, there is disagreement about which rights should exist and what limits should be placed on the exercise of those rights. So even though there is widespread agreement that rights should be respected, a majority of Americans (53% to 47%) say that our country does not do a good job of respecting all people’s rights.<sup>24</sup>

That half of the country believes rights are not fully respected is not surprising. Our country remains a work in progress, and the direction that further progress should take is disputed and constantly changing. Tens of millions believe there is much work still to be done to root out systemic racism, there remains substantial distrust about the behavior of law enforcement and correctional officers in performing their duties, a substantial portion of the populace believes that the rights of the unborn are not respected, and another large group believe that the right to bear arms is under assault. People with strong religious beliefs claim their rights are being infringed even as the rights of others are recognized. We are a country beset by division and disagreement.

One source of the public’s dissatisfaction may be an absolutist understanding of rights that frequently is the medium of litigation, advocacy, and rights discourse. Either the court protects the right I am seeking to exercise or the court refuses to protect it. From this perspective, there are clear winners and losers in every case. For example, any limits on abortion rights can be criticized as full assaults on *Roe v. Wade*,<sup>25</sup> and any attempts to

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22. *Id.* at 1.

23. *Id.* at 108.

24. *Id.* at 1.

25. 410 U.S. 113 (1973).

regulate guns can be viewed as an attack on Second Amendment rights. In other words, what may be reasonable limitations or accommodations placed on the exercise of rights are too frequently viewed by advocates of those rights as a failure to respect the right at all. Judges and lawyers know that rights are not absolutes. There are limits to the exercise of all rights. There can be competing rights where accommodations must be made on all sides. In fact, in cases involving constitutional rights, courts spend most of their time focused on where to draw the lines and limits. The cases focused solely on the question of whether a particular right exists or not—while correctly viewed as “leading” cases—are actually few and far between. More people need to understand that the Constitution is about both rights *and* responsibilities.

The circumstances described above raise another question for our readers:

What can courts, judges, and lawyers do to help the public better understand how courts interpret and define rights, including a recognition of limitations placed on rights?

*D. Respect for the Rule of Law,  
Fairly and Equally Applied to All*

John Adams famously observed that a republic is “a government of laws, and not of men.”<sup>26</sup> That observation encapsulates the concept of respect for the rule of law, fairly and equally applied to all. The “Educational Resources” page on the United States Courts website describes the rule of law as follows:

- Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are:
  - Publicly promulgated;

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26. JOHN ADAMS, NOVANGLUS ESSAYS—NO. 7 (1774–75). In this work, Adams attributes the source of this definition to Aristotle, Livy, and Harrington, but Adams is now generally given attribution for this quote.

- Equally enforced;
- Independently adjudicated; and
- Consistent with international human rights principles.

The courts play an integral role in maintaining the rule of law, particularly when they hear the grievances voiced by minority groups or by those who may hold minority opinions. Equality before the law is such an essential part of the American system of government that, when a majority, whether acting intentionally or unintentionally, infringes upon the rights of a minority, the Court may see fit to hear both sides of the controversy in court.<sup>27</sup>

In other words, minority viewpoints need a place where they can be heard and their positions can be thoughtfully, fairly considered. Courts are one important venue where all points of view can be expressed, and courts will listen, deliberate, and decide. There is, of course, usually a winner and a loser in these cases, and that is the way the public understands court decisions even when a decision may be more nuanced. One of the most important things our courts do to contribute to respect for the rule of law is to publish written opinions that explain the reasoning in support of the court's decision. The written opinion requirement and practice not only forces the courts themselves to consider the strengths and weaknesses of their own deliberations and reasoning, but it gives the courts the opportunity to demonstrate to the public that all sides were heard and to teach the public about how rights discourse can be conducted in a civil manner.<sup>28</sup>

Respect for the rule of law can be hard to maintain if you are consistently in the minority or always on the losing side. The degree of understanding and trust necessary to maintain respect for the rule of law in those

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27. *Overview—Rule of Law*, U.S. CTS., <https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law> (last visited May 27, 2021).

28. See J. Clark Kelso, *A Report on the California Appellate System*, 45 HASTINGS L.J. 433, 487–88 (1994).

circumstances requires a trait that is usually in short supply among human beings: genuine humility. Just enough humility to recognize that the opposition, made up of a majority of the population (or a majority of judges on the court), might have the better position for at least the time being. Humility is not a trait built into the human psyche by tens of thousands of years of evolution. It also must be taught.

What can courts, judges, and lawyers do to promote respect for the rule of law and a belief that law is being fairly and equally applied to all?

## II. CIVIL DISCOURSE MUST BE RESTORED

Restoring knowledge and trust in democratic principles is a first, important step. A second, equally important step is restoring practices of *civil* public discourse.

According to the Pew Research Center's 2018 survey, "[f]ew people say tone of political debate is 'respectful.' Just a quarter of Americans say 'the tone of debate among political leaders is respectful' is a statement that describes the country well."<sup>29</sup> The tone of political discourse is important for many reasons, but most particularly because a civil, respectful tone promotes greater understanding and trust, while an uncivil, disrespectful tone promotes misunderstandings and division.

Public discourse—the language people are willing to use in public—has coarsened over the last forty or fifty years. In politics, uncivil and disrespectful speech has grown exponentially over the last several decades. We want to be clear that our concerns are focused not on the substance of anyone's speech, but upon the methods, tone, and style of discourse.

Politics has always been a rough-and-tumble business, but we are now living through one of the most toxic political environments that we have seen in a long

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29. PEW RESEARCH CENTER, *supra* note 18, at 3.

time.<sup>30</sup> There is a lot of name-calling and vituperation, and not a lot of listening or constructive discussion. The First Amendment has become an excuse for routine incivility and hostility.

We believe that one of the biggest differences in our public discourse over the last twenty years is the increasing ubiquity of social media. Social media has fundamentally changed the nature of public discourse. As with any new technology, some of the changes are really positive, but at the same time, some are really negative.

On the positive side, the most exciting change is that social media through the internet opens up the public discourse dialogue to virtually anyone with a smartphone and something to say. Fifteen years ago, participation in public discourse was essentially limited to institutional media and other groups with sufficient financing to organize and reach the public through media. Most of us were observers, not participants, and candidates could reach us mostly through intermediaries in the media.

Times have certainly changed. Today, social media technologies, which everyone has access to, have themselves become the platform for much public discourse. On those platforms, everyone can directly participate with an immediacy not previously possible. Public discourse has become democratized.

On the negative side, one of the biggest problems is that social media as currently designed and implemented—and this is really a criticism of the internet

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30. It is always tempting to believe that *now* is the worst it has ever been, and that we have reached a new low. After all, what are we to think of a presidential campaign where one candidate's supporters accuse the opposing candidate of adultery and misusing government money and property, and in return, we see charges that the other candidate had, during multiple trips to Russia, essentially been a pimp to the Russian leader by providing to the leader the sexual services of an American woman. Sound vaguely familiar? If you think we are referring to the 2016 presidential election, you would be very much mistaken. In fact, those smears were exchanged in the presidential election in 1828 between Andrew Jackson and John Quincy Adams. See Robert McNamara, *The Election of 1828 Was Marked by Dirty Tactics*, THOUGHT CO., <https://www.thoughtco.com/the-election-of-1828-1773861> (visited June 7, 2021).

overall—permits and actually encourages different forms and levels of anonymity. People create their own cyber-identities and avatars. It is one of the frailties of human nature that a person who knows he or she can act anonymously—a person who believes they cannot be caught—is a person who will act without personal accountability. Absent strong personal integrity, the lack of accountability often leads to misbehavior.

If I can post anonymously online, I can be the most outrageous cyberbully imaginable as I try to take down the opposition without suffering any personal consequences. I can say whatever I want—whether true or not—because no one will ever know it was me. I can focus entirely on what types of communication actually work to change people’s minds—and experience shows that negative messages and personal attacks tend to work pretty well in politics—and that the wilder the story, the more attention it gets. That is one of the reasons why conspiracy theories and scandalous personal attacks are able to proliferate so easily on social media and the internet. And that style of communication becomes a self-reinforcing norm on social media—it is what we expect to see and hear.

The second big change in discourse, and it is clearly related to the first, is that we seem to have become a country that increasingly is indifferent to truth and to facts—everything is a matter of opinion or, if the facts are really stubborn, subject to simple rejection as the result of one or more conspiracies. It seems that almost any assertion of fact is now subject to being rejected as “fake facts” or “fake news.”

Sometimes, the flight from truth does not really matter. But sometimes truth and facts really do matter. It really does matter whether foreign governments are trying systematically to influence our electoral process. It really does matter whether millions of people are successfully getting healthcare coverage under the Affordable Care Act or, alternatively, whether the healthcare insurance system is in a death spiral. Those are two radically different conclusions, and there are verifiable

facts on this topic that should be the focus of a policy discussion. It really does matter whether COVID-19 is a genuine pandemic that is killing hundreds of thousands of people in the United States. It really does matter whether COVID-19 vaccines are effective.

Unfortunately, we are sliding toward a time when facts and truth do not seem to matter as much in public discourse as attacking opponents' credibility using personal invective and conspiracy theories. That is not a healthy place to be because facts always matter.

Some of the questions that arise out of our recent civic experience are how seriously we need to take these developments in public discourse: Are these changes merely a short-term phase in our history, or do attacks on credibility and personal invective become permanent features of public discourse? Has our public discourse fundamentally changed?

Social media as a means of mass communication is not going to go away. A particular instance of social media—like Snapchat—may fall into disuse over time, but we can be sure that the basic technologies that make up social media will remain and Snapchat can be replaced by the likes of TikTok. We will forever live in a world where the platform for public discourse has been thoroughly democratized. Change is a good thing.

But what about the negative side of social media? Can something be done to mitigate the effects of anonymity and the normalization of uncivility? Twitter, Facebook, and Google have, in recent years, been taking increasingly aggressive steps to police their platforms. It is much too early to tell whether these efforts will be successful. Although these private companies certainly have power to set and enforce rules for appropriate use on their platforms, the process of trying to regulate speech on any platform is notoriously difficult and risks drawing these companies into content or viewpoint discrimination. That is a very difficult tightrope to walk successfully. The jury is out on whether the negative side of social media will be permanent or temporary.



A more lasting solution would be to change the cultural norms for political speech and public discourse so that these forms of communication become more civil in nature. This will be a long-term effort, because several generations have already learned how to use social media in uncivil, disrespectful ways. Unlearning that behavior will be difficult for those generations. That is why we think the best investment is made in trying to teach the next generation of users—students in elementary, middle, and high school—about the benefits of a more civil, proper use of social media.

These considerations lead to another question for our readers:

What can courts, judges and lawyers do to improve the quality of civil public discourse?

### III. THE ROLE OF COURTS, JUDGES AND LAWYERS IN CHANGING PUBLIC DISCOURSE

The magnitude of the challenge before us might convince some that the problem is just too big for courts, judges, and lawyers to play a meaningful, significant role in addressing the knowledge and trust gap and in addressing uncivil discourse. Some might believe this is a problem for political leaders (not courts), for the K–12 education system (not courts), for traditional mass media (not courts), for owners and operators of social media platforms (not courts), and for communications influencers on social media (not courts). Courts should stick to their jobs: deciding cases.

We believe that this perspective underestimates the influence that courts, judges, and lawyers possess and can easily deploy in the service of promoting understanding and trust in democratic principles. The National Center of State Courts has conducted annual surveys of public opinion about state courts.<sup>31</sup> Those surveys

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31. *State of the State Courts—Survey Analysis*, NAT'L CTR. FOR STATE CTS, at 1 (Jan. 3, 2020), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/16731/sosc\\_2019\\_survey\\_analysis\\_2019.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/16731/sosc_2019_survey_analysis_2019.pdf).

consistently have shown that state courts are the most trusted of the three branches of government and that people who have actually participated in court processes generally come away with positive reactions to those processes.<sup>32</sup> Courts, judges, and lawyers are uniquely positioned to lend credibility to the efforts of politicians, educators, and the media.<sup>33</sup>

In his 2019 Year-End Annual Report, Chief Justice Roberts identified two distinct ways in which courts can contribute to improving the public's understanding and trust in democratic principles and civil discourse. First, as he explained, "[b]y virtue of their judicial responsibilities, judges are necessarily engaged in civic education."<sup>34</sup> Second, courts have directly contributed to civics education by developing curricular materials for students, establishing judicial learning centers which serve as community forums for civic education, developing best practices for civic education, and coordinating their efforts with other organizations.<sup>35</sup> We will summarize these distinct contributions in the next two sections.

#### *A. Court Processes Are a Model for Civil, Civic Discourse*

Hundreds of years' experience has taught courts how to conduct hearings and render judgments that, by and large, generate public trust in what courts do. The 2019 National Center for State Courts survey showed that "[t]hose with direct experience with the court system continue to express satisfaction with the fairness of their proceedings" and "[t]he courts remain more popular than other parts of our government at all levels."<sup>36</sup>

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32. *Id.*

33. *Id.*

34. Roberts, *supra* note 1, at 2.

35. *Id.* at 2–4.

36. *State of the State Courts—Survey Analysis*, *supra* note 31, at 1. All was not rosy in the 2019 survey, however. There were year-over-year decreases in confidence for all levels of the court system which was probably a result of increasing public cynicism about all aspects of government.

The processes that generate trust in court proceedings and judgments are well known. They consist of the right to be heard (and the concomitant responsibility of the court and jury to listen attentively), the right to present evidence in support of one's position (and the concomitant responsibility of the court and jury to consider that evidence), the right to cross-examine and challenge one's opponents' evidence, the right to address argument to the court and jury, and the courts' obligation to issue public, written opinions explaining the reasons for the courts' judgment (with a major exception for decisions by juries which are not supported by written opinions). In a phrase, due process of law.

These basic principles and practices perfectly describe how discourse and disagreement can be undertaken in a civil manner. The characteristics that make so much public discourse on social media disagreeable and uncivil—things like repetitive *ad hominem* attacks, mocking others, trafficking in rumors and conspiracy theories, and cyberbullying—would simply not be tolerated in a well-run courtroom. In place of such irrelevant nonsense, attention is focused on the merits of the disagreement, and courts are a place where parties can and should disagree without being disagreeable. Parties should listen to each other, and the court and jury should engage in eloquent, meaningful listening.

Courts and judges are justifiably proud of these processes. Courts, judges, and lawyers should communicate these processes and the reason for them more broadly and effectively. This is not because we want everyone to study civil procedure or evidence or trial advocacy. It is because these processes actually serve as a model for the way democracy should work (in much the same way that the procedures in the United States Senate used to be held up positively as an example of how civil discourse should occur and how respect for the views of the political minority were respected—in recent decades, the Senate has moved away from those practices and towards a model of raw political power).

## *B. Court-Sponsored Opportunities to Teach and Showcase Civics and Civil Discourse*

As Chief Justice Roberts noted in his year-end report,<sup>37</sup> many courts, judges, and lawyers are already engaged in substantial court outreach efforts, and each of these individual efforts presents an opportunity to reemphasize principles of democracy and practices of civil discourse. In the sections which follow, we describe the primary channels for court outreach (that is, the ways in which courts, judges, and lawyers are brought together with elementary, middle, and high school teachers, students, and classrooms).

### *1. School Visits to Courts*

#### *a. Open Doors to Federal Courts*

One of the most broadly established federal court outreach initiatives is the annual Open Doors to Federal Courts program.<sup>38</sup> It brings together high school students, teachers, judges, court staff, lawyers, probation and pretrial services representatives, and others who work within the justice system, with the goal of improving the students' knowledge and appreciation of legal processes and the courts.<sup>39</sup> As described on the national Open Doors website,<sup>40</sup> the program features a scripted

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37. See Roberts, *supra* note 1.

38. See *Open Doors to Federal Courts*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/annual-observances/open-doors-federal-courts> (last visited May 27, 2021). Open Doors was created in 1999 by Ms. Rebecca Fanning of the Administrative Office of the U.S. Courts, see *supra* note 7, under the banner of "Open Doors of Justice."

39. The stated purpose of *Open Doors* is to expose high school students to courtroom protocol, the concept of precedent, the importance of jury service and due process. These concepts "come to life" for tens of thousands of students every year who visit federal courts under the *Open Doors* banner. *Court Shorts: Open Doors to Federal Courts*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/court-shorts-open-doors> (last visited May 27, 2021).

40. See *id.*

mock trial on a legal issue likely to be of interest to high school students with actual attorneys and a federal judge presiding over the proceedings. Students have the opportunity to play various parts in the mock trial, and a student jury renders a final decision in the case. Materials for the mock trial are available from the national Open Doors website and from individual district court websites.<sup>41</sup>

Some courts offer Open Doors visits throughout the year, with arrangements being made with individual schools based on interest and convenience of scheduling. Other courts concentrate the program on a single day and essentially devote nearly all of the court's resources on that day to Open Doors. For example, the United States District Court for the Eastern District of California has been holding its Open Doors program on a single day in March.<sup>42</sup> In 2019, over 800 students visited the courthouse for the program. Needless to say, this type of effort requires coordination across the courthouse and the involvement of the Chief Judge and Court Clerk's office.

#### b. Individual Classroom Tours of Courts

Throughout the school year, many other classrooms schedule visits to local courthouses, some under the auspices of Open Doors, but most arranged on an ad hoc basis. Experience teaches that meaningful tours require

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41. For example, the national *Open Doors* website contains materials for a mock trial raising Free Speech issues arising out of a high school student's use of certain emojis in a meme posted on Facebook. See *Elonis v. U.S.*, U.S. CTS., <https://www.uscourts.gov/educational-resources/educational-activities/elonis-v-us> (last visited May 27, 2021). The legal issue in the case was whether skull emojis used in a meme were death threats against another student or were artistic free speech protected by the First Amendment. The facts in the mock trial give students the opportunity to argue about the application of the Supreme Court's 2015 decision in *Elonis v. United States*, 135 S. Ct. 2001 (2015), where the Court interpreted the federal anti-threat statute, 18 U.S.C. § 875(c).

42. *2019 Open Doors*, U.S. DIST. CT. E. DIST. CAL., <http://www.caed.uscourts.gov/caednew/index.cfm/education/open-doors/2019-open-doors/> (last visited May 27, 2021).

substantial organizational and curricular planning. It is not as simple as it sounds.

First, a successful tour experience depends upon a thorough understanding of the audience and its capacities and needs. Various grade spans and respective ages experience and learn from a court tour in very different ways. Their background knowledge is obviously different, the educational level of the content needs to be adjusted appropriately, certain types of cases in the courtroom need to be avoided for a younger audience, attention spans vary, and adjustments need to be made to hold a class's interest.

Second, the logistics associated with a classroom's visit to the courthouse are formidable. It is all about scheduling. Picking a particularly good day for a visit involves judgment and discretion. Not all days are created equal in a federal courthouse. Close attention must be paid to all of the individual courtroom calendars to try to select a day when it is likely there may be something of interest actually going on in the courthouse at the precise day and time of a visit that is being scheduled several months in advance. Courtroom agendas change frequently, of course, so as a visit approaches, there must be regular re-validations of court calendars to ensure the courtroom will not suddenly turn out to be dark. A good courthouse visit gives students the opportunity to see and hear from a wide variety of justice-system players, and each of one these players is a scheduling opportunity (and possible disaster!): court security officials, counsel from the United States Attorney's office and Federal Public Defender's office, court clerks, jury commissioners, and representatives from probation, to name a few of the most common speakers. Naturally, the most important speaker—the person the students are most expecting to hear from—is a federal district judge. If it turns out that there is nothing appropriate going on in a courtroom at the time of a visit, then a judge can still invite the class into his or her courtroom for a visit.

Third, a visit to a courthouse can and should be more than just a visit to a courtroom. Since 1963, the General

Services Administration has maintained an “Art-in-Architecture” program pursuant to which GSA has commissioned hundreds of works of art for federal buildings and courthouses across the country. The goal of the program is to commission works of art that have special connections to the locality and will facilitate meaningful cultural dialogue about the relationships between the public and government.<sup>43</sup>

A thoroughly planned, well executed courthouse visit can be the high point for many students, something they will remember long after other details from the school year have been forgotten.

## *2. Courts and Judges Visit the Schools*

The visits described above, where one or more classes travel to the court for a visit, tour and/or mock trial, involve significant planning and logistics. For the school, these trips involve transportation issues, individual student waivers, and interference with classes for most of a school day. For the court, these trips involve scheduling issues, security considerations, and significant dedication of judicial and staff time.

A logistically less burdensome approach for the courthouse is to have individual judges, court staff, and lawyers visit schools. These visits are often the result of personal contacts that judges may have with individual schools, but such programs can successfully be organized and sustained over long periods of time. In Sacramento, this type of volunteer organizational effort resulted in the creation of Operation Protect & Defend in the immediate aftermath of 9/11. The program, whose creation was led by Judge Frank C. Damrell, Jr. (ret.), is still going strong twenty years later.<sup>44</sup> Teams of judges and

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43. See *Art in Architecture Program*, U.S. GENERAL SERVICES ADMINISTRATION, <https://www.gsa.gov/real-estate/design-construction/art-in-architecture-fine-arts/art-in-architecture-program> (visited June 7, 2021).

44. Only one month after 9/11, Judge Damrell called for attorneys to join him in civic education activities:

attorneys go out to high schools to teach a curriculum of legal cases and concepts intended to increase student awareness of civic responsibility. The program's goals are to connect students to the United States Constitution and American history, educate future voters and jurors, explore issues of U.S. citizenship, and encourage students to become active citizens. The program connects with ninety-three classrooms across sixteen schools, annually reaching 2,500 students. The effort has not only survived but flourished over the years because of the volunteer commitment of scores of attorneys and judges.

A much more ambitious approach is to actually convene a session of court at a high school so that the entire school can witness a court in action. This type of outreach is probably limited to appellate courts given the problematic logistics of trying to schedule and hold a trial court session on a single day at a high school. In California, the

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Today, after 9/11, patriotism is in full flower. The American flag is proudly displayed in our homes and in our businesses. On the front pages of our newspapers people are publicly reflecting what it means to be an American and extol the value of American citizenship, yet there are other stories on pages 4 and 5 of our newspapers such as the Sikh convenience store owner in Arizona. He had a dark complexion and wore a turban and was shot and killed for no apparent reason. He was an American citizen like you and me. Then there is the Arab-born shopkeeper in Reedley who recently was gunned down. He was an American citizen like you and me. This evil side of American resolve is born of ignorance. The perpetrators of these evil acts do not know America or what America stands for. They live in the iron grip of ignorance. . . . **[Ignorance] requires the mobilization of all to protect and defend the values of the Constitution of the United States. I call it: "Operation Protect and Defend."** . . .

Lawyers must now realize they are citizens who have been given the privilege of being educated in the law and the Constitution. You members of the legal profession have been chosen to prosecute and defend our fellow citizens; you are entitled to counsel fellow citizens on the meaning of the law; you, alone, are eligible to be chosen to judge and ultimately interpret the law and the Constitution for all Americans, including the government itself. **If lawyers are given the privilege to assume such public responsibility to protect and defend the Constitution, lawyers therefore must become the educators as well as protectors and defenders of the Constitution and its values.**

*History*, OPERATION PROTECT & DEF., <https://www.opdcivics.org/history/> (last visited May 27, 2021).



California Supreme Court and several of the intermediate courts of appeal successfully held sessions of their courts at remote locations. Today, with the flowering of web-streaming technology, it is much easier for a court to make its proceedings available to everyone for viewing and, with platforms such as Microsoft Teams and Zoom, to engage interactively with viewers.

### 3. *Essay and Art Contests*

A number of courts and organizations have engaged with their student population by sponsoring annual essay, art, and video competitions on themes relevant to civics education and civil discourse. This year's Ninth Circuit writing competition theme could not be more on point for the purposes of this article. The theme is as follows:

“What Does Our American Community Ask of Us?” Our Constitution both confers rights and establishes responsibilities. The Preamble that begins the Constitution speaks of the people's commitment to “secure the blessings of liberty,” while also recognizing the need to “promote the general welfare.” Among the many rights enshrined in the Constitution, for example, are the right to peaceably assemble, the right to free exercise of religion, and the right to a speedy and public jury trial in criminal cases. Over the course of our country's history, global events have challenged us to find a balance between critical rights like these and our responsibilities to each other.<sup>45</sup>

These contests generally have some sort of prize for the top papers, and many district courts have established their own smaller prizes for winners at the district court level that supplement the Ninth Circuit's overall award. While an essay and art contest may seem to be a simple affair to manage, it actually requires extensive planning, coordination, and effort. Settling upon a good theme,

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45. See *2021 Ninth Circuit Civics Contest*, U.S. CTS. FOR NINTH CIR., <https://www.ca9.uscourts.gov/civicscontest/> (last visited May 27, 2021).

preparing effective announcements, marketing the competition to schools, arranging for the collection of hundreds or thousands of entries, and securing judge and staff time to grade the entries—all of this requires leadership and resources. The investment of these resources is more than amply compensated for by seeing how students react at the awards ceremonies for district and circuit winners.

These sort of essay and art competitions are a very effective way for the courts to help set an agenda for civics education and civil discourse.

#### 4. *Teacher Institutes*

The programs described above utilize a direct channel between students and courts: students visit courts, and court personnel visit schools. Another approach, one that can reach many more students more efficiently, involves an indirect channel to students through their teachers. The idea here is that middle and high school teachers can participate in additional professional development programs and activities sponsored and developed by courts, judges, and educators that focus on civics education and court topics. These professional development opportunities, which usually last from one to four days, to two or more weeks, are generally referred to as “teacher institutes.”<sup>46</sup> A one-week program for twenty-five to thirty teachers can indirectly reach or influence

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46. According to the U.S. Courts website:

More than two dozen teacher institutes, which take almost as many programming approaches, are offered by courts across the country. Federal judges, volunteer attorneys, legal scholars, and court staff create realistic courtroom experiences and offer classroom-ready resources for high school and middle school teachers, who seek to deepen their understanding of the Third Branch and ignite the interest of their students.

Most events are scheduled in the summer and have registration deadlines in late winter and early spring when teachers, typically, make their professional development plans.

*Teachers Institutes at Courts Help Prepare Next Generation of Jurors*, U.S. CTS. (Feb. 6, 2020), <https://www.uscourts.gov/news/2020/02/06/teachers-institutes-courts-help-prepare-next-generation-jurors>.

several thousand students. There are currently more than two dozen such teacher institutes offered on an annual basis.<sup>47</sup>

### 5. *Judicial Learning Centers*

The most substantial, year-round dedication of resources to court-focused civic education efforts is found in the few judicial learning centers that have been established around the country. The first such center, the Judicial Learning Center (JLC), was established in 2009 at the Thomas F. Eagleton Federal Courthouse in St. Louis, Missouri. Its stated purpose is to “promot[e] public understanding of the importance of an independent judiciary and the rule of law in American society.”<sup>48</sup> The JLC includes space for exhibits dealing with civics education, programs for coordinating and hosting school visits, and substantial online curricular materials.<sup>49</sup>

In 2013, the Anthony M. Kennedy Judicial Library and Learning Center was established on the West Coast by the Ninth Circuit Court of Appeals and the Sacramento Federal Judicial Library & Learning Center Foundation at the Robert T. Matsui United States Courthouse in Sacramento, California.<sup>50</sup> Since its creation, the Kennedy Learning Center has grown into a regional

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47. For a list of these institutes see *Teachers Institutes at Courts Help Prepare Next Generation of Jurors*, U.S. CTS., (Feb. 6, 2020), <https://www.uscourts.gov/news/2020/02/06/teachers-institutes-courts-help-prepare-next-generation-jurors>.

48. See *Our Mission*, JUDICIAL LEARNING CENTER, <https://judiciallearningcenter.org/our-mission/> (last visited May 31, 2021). “The JLC exhibits focus on the importance of ‘The Rule of Law’ and depict how and why the federal court system was created. The differences between state and federal courts are also outlined. Other JLC highlights include an exhibit on landmark Eighth Circuit cases and interactive displays which allow visitors to serve as jurors and preside as a judge.” *Id.*

49. See JUD. LEARNING CTR., <https://judiciallearningcenter.org/> (last visited May 27, 2021).

50. An excellent description of the Kennedy Learning Center’s program has been written by the Honorable Kimberly J. Mueller, now serving as Chief Judge of the United States District Court for the District of Eastern California. See Mueller, *supra* note 8, at 350–60.

umbrella organization for court-connected civic education, as well described in the Foundation's 2019 annual report:

With the Foundation's support, the Kennedy Learning Center's sixth year of operations and activities included frequent school visits to the Center and the federal courthouse, moot court experiences for students ranging from second graders to law students, the teacher institute in Sacramento, art and essay contests for Sacramento-area high school students, installation of a new exhibit direct from the Supreme Court of the United States, and perhaps most significantly of all, a commitment of very substantial resources from the Ninth Circuit to improve the Center's exhibit and conference space. In 2019, the Center hosted over 4,000 students, teachers and community leaders, and we touched another 2,500 students through classroom visits. The 28 teachers who attended the summer institute in Sacramento teach high school classes that reach another 1,400 students.<sup>51</sup>

More recently, a move has been made to articulate a circuit-wide approach to civics education within the Ninth Circuit using the Kennedy Learning Center as the catalyst for that expanded circuit footprint.

Finally, on the East Coast, the Second Circuit Court of Appeals announced the creation of its judicial learning center along with its circuit-wide civic education initiative, Justice For All: Courts and the Community. The initiative includes:

- “hosting field trips to the courthouse for schools and community organizations to observe court proceedings and to meet with judges and court staff;
- holding moot courts and mock trials for students;

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51. See *Annual Report—2019*, SACRAMENTO FED. JUD. LIBR. & LEARNING CTR. FOUND. (2019), <https://www.sacjlc.com/annual-report>.

- developing educational resources for teachers about the law and justice system; developing learning centers;
- creating library labs for students;
- coordinating Constitution Day/Citizenship Day programs;
- supporting essay contests;
- sponsoring adult education programs in such areas as financial literacy;
- fostering jury service; and
- developing a speakers bureau whereby judges and members of the Bar visit the schools and community organizations to discuss the work of the courts.”

Not surprisingly, judicial learning centers tend to serve as regional “umbrella” organizations where all aspects of judicial civics education and court outreach programs can be nurtured and supported. They are a natural resource on which to build even more substantial civic education and civil discourse initiatives. As Chief Justice Roberts said, “[t]hese learning centers revive the historic role of courthouses as vital and vibrant centers of a civically engaged community.”<sup>52</sup>

#### IV. A CALL TO ACTION: ORGANIZING TO DELIVER A CONSISTENT MESSAGE

Courts, judges, and lawyers, working collaboratively with educators, law schools and universities, need to organize their efforts at civic education so that all of the existing channels, as well as channels still to be developed and expanded, can deliver a consistent message focused on improving knowledge of and trust in democratic principles and promoting civil discourse. Right now, that needs to become the national focus of attention. We need (a) an organized effort (b) to achieve a common vision.

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52. See Roberts, *supra* note 1, at 3.

### *A. An Organized Effort*

The first step is to get better organized. The many efforts that currently exist operate largely in isolation from each other. Many of the efforts were started by individual, committed leaders. Virtually all of the efforts require the commitment of a large number of volunteer hours and donated resources. These resources can be better coordinated to produce a more effective and lasting result.

The following preliminary list of existing organizations is intended to spark further thinking about how to organize courts, judges, and lawyers around a national initiative on civic education and civil discourse. Organizations that can be involved in promoting such an initiative include, at a minimum:

- Courts
- Supreme Court of the United States
- Supreme courts of every state
- Intermediate courts of appeal, federal and state
- District and trial courts, federal and state
- Tribal courts
- Court Administrators
- Administrative Office of the United States Courts
- Federal Judicial Center
- Administrative offices of the state courts
- National Law Organizations and Partners
- American Bar Association
- Federal Bar Association
- National Center for State Courts
- State bar associations
- Law schools
- American Association of Law Schools
- Conference of Chief Justices

- Council of Chief Judges of the State Courts of Appeal
- American Judges Association
- Conference of State Court Administrators
- Conference of Court Public Information Officers
- National Association for Court Management
- National Association for Presiding Judges and Court Executive Officers
- National Association of Judicial Educators
- National Conference of Appellate Court Clerks
- National Consortium on Racial and Ethnic Fairness in the Courts
- Council of Language Access Coordinators
- American Inns of Courts
- National Constitution Center
- Constitutional Rights Foundation
- iCivics
- Annenberg Classroom

Can anyone doubt that we would see material progress if this set of organizations set out on a common mission to address gaps and problems associated with civic education and civil discourse?

### *B. To Achieve a Common Vision*

The second step is to collaborate around a common goal and set of messages. As things stand now, there is a tremendous amount of civic education being facilitated and delivered by courts, judges, and lawyers around the country. But the message being delivered is just as diverse as the number of groups. A great deal of content is focused simply on educating students about the courts. Some of that content includes a hefty dose of judicial history; some of it is built on certain important Supreme Court decisions; some of it comes from particular dates

or holidays of significance (e.g., Law Day and Constitutional Day); some of it is more locally focused on important events or cases involving the locality.

To be effective at addressing our current problem, these efforts need to be slightly redirected or supplemented to add a focus on the four core elements of our democracy—free and fair elections, voter engagement, protection of human and civil rights, and respect for the rule of law, fairly and equally applied to all—and upon restoring civil discourse to our American political scene.

In closing, we believe our judicial leaders—perhaps the leadership of the Second and Ninth Circuits—should convene a Civics and Civil Discourse Summit to discuss in greater detail, and with a view to action, what courts, judges, and lawyers, working collaboratively with educators, law schools, universities, and other stakeholders, can do to address the current state of public knowledge and trust in democratic principles and practices of civil discourse.<sup>53</sup> This would build on the success of both the Second and Ninth Circuit's previous civic education conferences and ensure a strong tie across the country in supporting students and teachers in this ever evolving new world of civics programming.

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53. *See supra* note 7.