

International Forum

“High Culture of Jurisdiction” Impartiality and Quality of the Judge Comments by Marilyn Huff, (USA), First Study Commission President

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1. Drawing on your research, institutional, professional experience which are the challenges? Please refer to the focal point of your group and to the theme that has been assigned to the group where you are.

The theme of my group is “At the Macro Level, the Judiciary and the Outside World.” The greatest challenge to judicial independence related to the judiciary and the outside world is unfair criticism of judges by members of the public.

A careful line should be drawn between unfair criticism of judges, on the one hand, and legitimate criticism of judicial decisions, on the other hand. Freedom of speech is an important right that is strongly upheld by judges. Therefore, it is perfectly legitimate—and indeed, essential—for the public and the bar to scrutinize the correctness of judicial decisions through legitimate criticism. Legitimate criticism of the judiciary addresses the correctness or persuasiveness of a judicial decision while avoiding abusive or inflammatory language and avoiding personal attacks on individual judges.

Criticism crosses the line from legitimate to unfair when critics impugn the personal integrity of judges who author decisions they disagree with, or imply that a judge has ruled purely out of his or her political preferences. Personal attacks and demagoguery do nothing to advance the broader legal discourse, and merely serve to undermine the legitimacy of important public institutions. Indeed, sustained unfair criticism of the judiciary has the potential to undermine judicial independence. Even worse than unfair criticism are threats to members of the judiciary, which should never be tolerated.

2. If you were asked to identify the most promising leverages to respond to these challenges, which would you highlight? And why? Leverages are here meant not as legal measures, rather as functional, cultural, structural dimensions or factors (for instance you are not expected to design a reform, rather to point to which aspect you would think as a pivotal factor in making things changing for better – or for the worst if the leverage is not correctly activated and used.

Unfair public criticism of judges can be addressed by responding to it directly. Lead judges, judges’ associations, bar associations, and other representative bodies of the legal profession should respond strongly to any criticism which risks the independence of the judiciary, the separation of powers, or is otherwise improper.

Members of the media and politicians should also take steps to defend the judiciary against inappropriate attacks.

In addition, unfair criticism can be minimized by promoting the principle of open justice to better educate the public regarding the judiciary's decisions and actions. All courtrooms should be open to the public and all decisions and judgments should be publicly accessible unless otherwise required by safety, security, privacy, or confidentiality concerns. Decisions and judgments should also be written in clear and understandable language—particularly for high-profile or significant cases.

There should also be greater public education programs surrounding the role and importance of the judiciary, particularly aimed at the importance of judicial independence and the apolitical nature of judicial decision-making. Judges should take part in these education efforts by regularly engaging with the media and wider society to explain the role of the judiciary.

Finally, threats against judges should be prohibited. Any threats of violence against a judge should be taken seriously, investigated, and prosecuted if appropriate. In addition, adequate security measures should be in place to ensure that judges are free to make decisions without fear of reprisal or retribution.

3. Please, describe briefly a case that will exemplify your idea. It may be a recent reform you observed – it should not be necessarily a reform adopted in your country – or a choice that has been made in the past which in your view is particularly telling to cast better and sharper light on your point 2.

The story of federal judge Ester Salas is a cautionary tale about the dangers of unfair judicial criticism and judicial threats. Ester Salas is a United States District Judge for the District of New Jersey.

In July 2020, Judge Salas and her husband, Mark Anderl, were celebrating the 20th birthday of their only son, Daniel, when a man posing as a delivery driver came to the front door of their New Jersey home, rang the doorbell and fatally shot and killed Daniel. The man also shot Judge Salas' husband three times. Judge Salas was in the basement during the attack and was not injured.

Prior to the attack, the gunman, an anti-feminist activist and lawyer, had spewed hate against Judge Salas online and in a misogynistic book he authored years after she presided over a civil case in which the gunman provided representation. The gunman targeted Judge Salas after he was able to find her address and personal information online.

Following the incident, in December 2022, the United States Congress pass a law named after Judge Salas's son—The Daniel Anderl Judicial Security and Privacy Act. The Act generally prohibits federal agencies and private businesses from publicly posting certain personal information (e.g., home addresses) of federal judges and their immediate family members. It also (1) requires information to be removed upon written request from the federal judge concerned, (2) prohibits data brokers from purchasing

or selling such information, and (3) establishes programs to protect such information at the state and local level and to enhance security for judges.

The Act will make it harder for violent individuals to find judges' addresses and other personal information online. By better protecting judges, the bill helps safeguard the judicial independence guaranteed by the Constitution. A free democracy depends on judges who are free to make decisions without fear of reprisal or retribution.