

**One-Day Law School for Journalists**  
**July 16, 2020 by Zoom**  
**Honorable Cynthia M. Rufe, Eastern District of Pennsylvania**  
**President, Federal Judges Association**

Thank you to Pennsylvanians for Modern Courts, Penn Law, and the Philadelphia Inquirer for creating, organizing and hosting the “One-Day Law School for Journalists”.

I am honored to address all participants today. It is exciting to be part of the initiative to effect means to collaborate, communicate and create a working understanding of the operations of court systems and how to access and understand court decisions and rulings, both by our written word and in court proceedings.

Thank you, Deborah Gross, for your kind introduction. And congratulations and all the best in your new position. I know your expertise and presence in cases you brought to court will be missed, as you have proven to be a trusted and reliable professional. It is a pleasure to be able to continue to work with you.

Professor Rulli, I thank you for your complete introduction to the procedures in civil and criminal cases. Sharing your wealth of knowledge with the participants is valuable and practical information, in particular shining light on the critical limitations that prevent judges from speaking publicly about pending matters in cases and issues in the public arena that implicate political positions. That, in fact, is not a fine line. It is clear from all edicts, and to preserve integrity of court rulings, that we judges, upon taking our oath of office, literally and figuratively must abandon most of our First Amendment rights.

One notable example of this deprivation is that judges cannot defend themselves when attacked for their decisions, even when an attack is unfair. We cannot use our positions as a bully pulpit. We must only speak in Court when we rule, and in writing when matters are decided on the papers. Perhaps if the case is appealed the trial court can explain its rulings, but no debate or commentary can be afforded. Nor should that be. Our decisions should stand on their merits. The appellate process of review is built into our legal system. Trial judges must follow the precedent of the appellate courts. We are bound by those rulings, which together comprise stare decisis.

I would like to take a moment to suggest that another very important reason I am happy to again meet with you members of the press on these general matters that affect the courts and the press, is that I have long thought that our respective institutions are more alike than different. Moreover, each of our roles can benefit from better understanding of each other's concerns.

I would also like to take a moment to explain to you the Federal Judges Association: The Federal Judges Association is an independent, voluntary association of active, senior, retired and resigned judges of the United States federal courts established by Article III of the United States Constitution and as formed by the Judiciary Act of 1789. The "FJA" was formed nearly 40 years ago. Our organization's purpose remains to seek the highest quality of justice for the people of the United States, and we, therefore, are authorized to do all things reasonable and necessary to:

1. Preserve and protect the ability of the federal judiciary to attract and retain the best qualified men and women for judicial service;

2. Preserve and protect the independence of the federal judiciary from intrusion, intimidation, coercion or domination from any source;
3. Formulate and carry out such other activities and programs as are deemed necessary and appropriate in furtherance of its stated purpose.

In the conduct of these programs and activities, the association works in coordination and cooperation with the Chief Justice of the United States, The Judicial Conference of the United States, the American Bar Association, Federal Bar Association, and other bar associations, as well as public and private organizations committed to the same purposes. Our mission statement reflects that we act to support and enhance the role of our members within a “Strong, impartial and independent judiciary; to actively build a community of interest among its members; and to cooperate with others to strengthen our system of justice through civics education and public outreach.”

“Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support.” Hamilton, The Federalist, 1788. Pay and benefits remain our focus but if we have learned anything from the shut down of the courts in 2019, we recognize that it is a most serious challenge to the survival of the courts. As impressively as the judicial branch maintained most operations with strategic use of funds, the federal courts came within three days of running out of those funds. While Article III Judges’ pay is constitutionally protected, maintaining employee’s compensation and keeping the courthouse doors open was in peril. FJA supports the hard work of the Administrative Office of the United States Courts, but we know that we must all plan for the possibility of future government shutdowns. We are looking for a better way to protect the funding of our courts,

and to separate and protect our function financially from the operations of the executive and legislative branches.

Note: I am putting aside for a moment the shutdowns due to the COVID-19 pandemic. All courts are doing all that they can to cope with the necessary health restrictions to keep litigants and court personnel safe.

The FJA, as an independent organization, can speak in one voice to protect the independence of the judiciary and to explain its significance to a free society. The Association expresses the collective interest of Article III judges to the two other branches of the government and to the public on issues related to fair and impartial courts. That speech, however, has its limitations grounded in the rules provided by the Code of Conduct that applies to federal judges, which prohibits commenting on the merits of a matter pending or impending in any court.

**Why is Judicial Independence important?** “If our courts lose their authority and their rulings are no longer respected, there will be no one left to resolve the divisive issues that can rip the social fabric apart... The courts are a safety valve without which no democratic society can survive. “Rose E. Bird, American jurist; Chief Justice, Supreme Court of California, *Los Angeles Times*, September 11, 1978.

Justice Bird, in a series of news articles, noted that “The Courts hold a unique position among our democratic institutions. In a sense, they represent one of our last bastions of participatory democracy, in which disputants go directly before a judge or jury to resolve an issue. In no other governmental context does an individual have the opportunity to take a

problem to a decision maker who represents the full force and power of that particular branch of government. This direct interchange between the individual and the state is at the heart of the democratic process... we must protect this unique heritage and strive to preserve the values it represents. Rose E. Bird, Chief Justice, Supreme Court of California, *Los Angeles Times*, November 16, 1977.

“We must use our courage to ensure a judiciary not governed by the daily polls but by the rules of law, serving not the special interest of the few but the best interest of all, devoted not to self-preservation, but to the preservation of those great constitutional principles which history has bequeathed to us. Rose E. Bird, Chief Justice, Supreme Court of California, *Los Angeles Times*, July 20, 1982.

Our Constitutional structure was created with these goals in mind. “We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion not public opinion by authority.” Robert H. Jackson, *West Virginia State Board of education v. Barnett*, 319 U.S. 624, 641 (1943).

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One’s rights to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.” *Id.* 624,638.

Lawyers and Bar Associations agree that “Attacks on our judiciary pose the same danger. Judicial Independence, free of external pressure or political intimidation, lies at the foundation of our constitutional democracy. An independent judiciary must be free of undue influence from the executive and legislative branches and must remain committed to the preservation of the rule of law and the protection of individual rights and liberties. When criticism of judges’ rulings crosses the line into personal attacks or intimidation, public respect for our system of justice is undermined, creating risk to our constitutional bedrock and the preservation of liberty. Federal Bar Association, Statement, 2020.

Both of our institutions must be preserved to keep our democracy. What can we do to help each other? Practically speaking:

1. **Use of language.** Just as our written decisions live on in precedent and posterity, so, too do the chosen words of your reporting which heavily impacts the public’s appreciation and understanding of the process of judging as well as to the results of judging. If not chosen carefully and accurately for factual content as well as context, we end up with descriptions that undermine judicial independence. Part of accurate reporting is not to describe a judge with adjectives that implies the judges’ decisions are based in or affected by their political party or gender or any other personal life choice, unless there is evidence that those choices have impact on the ruling at issue. It is a specific inquiry that depends on facts, and evidence, not on the President that appointed her. As Chief Justice Roberts remarked, “We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing

their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for”.

In the category of “use of language”, courts can foster better public comprehension of its rulings and the law by writing in plain English. I speak for myself in this regard.

2. **Attend court proceedings**, in person when possible. This used to be required. Brilliant analysis of written opinions and rulings are important to the public’s understanding of the work of the courts but experiencing the arena of advocacy in pursuit of proving facts, where lawyers and judges must do their best, will assist you in doing your best. Fair and balanced reporting is all we ask. Join us in court and you will have ample opportunity to get it right. Open proceedings, even in a pandemic, throw light onto a judge’s reasoning and analysis, and reveal the arguments and factual bases presented to the court upon which decisions are made. Public proceedings are clearly not limited only to jury trials guaranteed by the Constitution and the Bill of Rights.
3. **Bring back the courthouse press rooms**. Let’s make them large enough and well-equipped to assist the press to efficiently and timely provide legal news to the public.
4. **Join us, too, in our civics education exercises**. Mock trials, Law Day programs and naturalization ceremonies are windows to the soul of the courts’ desire to promote the ideals of a fair and independent judiciary. And it gives one great hope for the future to see the earnest desire among the students to do right and good. I wish you could attend the classes of our Circuit’s Adult Civics Education Course which premiered at the Community College of Philadelphia last Fall. You are all welcome. The Third Circuit

Courts and Community Committee created the program with the college, and it was taught by state and federal trial and appellate judges and practicing lawyers. We hope to repeat it here and at other comparable venues. Stay tuned.

5. Judges can and do provide their courtroom protocols to the press and public by publishing any rules of access to court proceedings. We should be mindful of the interest of all cases. Recently, notice of hearings of public interest before me were placed on the Eastern District of Pennsylvania website Homepage. We provided access for the press by video as well as audio. It was important to me as a previous trial attorney and longtime state and federal judge to take the few extra steps to be inclusive, open and transparent, so I entered orders inviting the press and public to observe our virtual hearings and posted those orders for all to see.

In closing, “The law is not the private property of lawyers, nor is justice the exclusive province of judges and juries. In the final analysis, true justice is not a matter of courts and law books, but of a commitment in each of us to liberty and mutual respect. Jimmy Carter, *Dallas Times-Herald*, April 26, 1978.

I thank you for the opportunity to address our common interest in Judicial Independence today.