AMERICAN JUDICATURE SOCIETY
Advocating for a fair system of justice

AJS NATIONAL CONFERENCE

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Keynote Presentation: Charles Geyh

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Just to highlight the circumstances in which I find myself, for those of you who had not noticed, I've been asked to follow the governor, the Chief Justice, the mayor, the chairman of the American Judicature Society, and a world-class journalist/public affairs guru, and precede two of the most accomplished scholars and law school deans on the planet. Wedged between these titans of public life, my task as keynote speaker is somehow to make an impression, and not just any impression, but a favorable one, which pretty much takes my go-to options of sock puppets and belching the alphabet off the table. I, for one, am not optimistic. Wish me luck.

It probably goes without saying that I'd rather be in Honolulu with you this morning. Unfortunately, this is our last week of classes for the semester. While the prospect of fleeing my responsibilities here for a long weekend in paradise has a lot of appeal, I have seventy hyperventilating first year law students about to take their exams who would regard it as poor form. So to get myself into the aloha spirit, I've busted out my best Hawaiian tie. But as I stand here alone in a closed room, emoting to an inanimate object, while temperatures hover in the 30s outside my office, I am forced to concede that this just isn't the same. It is nonetheless both a privilege and a pleasure to speak with you today at this important conference that is being held at a critical moment in the history of the American judiciary.

- In the first Part of my remarks this morning, I'll talk a bit about the highly partisan and polarized environment that pervaded the progressive era, the threats it posed to the judiciary's legitimacy and independence, and the reform agenda that AJS and its allies implemented in response to those threats
- Second, I will discuss the causes that underlie the comparably partisan and polarized environment that we encounter today.
- Third, I will identify some of the problems confronting the courts that have arisen in this new era

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- Fourth, and finally, I will offer some thoughts on how AJS and its allies might address those problems

First, let's talk about the early challenges that AJS faced. The American Judicature Society was founded in 1913, in one of the most politically polarized eras of American history. The progressives had ascended to power, winning election to Congress and state legislatures. Unhappy with conservative "Lochner era" courts that invalidated their reforms, progressives sought to curb the judiciary's independence.

While cycles of anti-court sentiment have come and gone since the nation was founded, the ferocity with which courts were attacked during the populist and progressive eras represented a high-water mark. Numerous proposals were introduced to end life tenure for federal judges and select them by popular election, to strip them of jurisdiction to hear commercial cases, and to end judicial review. In 1910, Congress established the Commerce court, but was unhappy with its early rulings, and disestablished the court three years later. Several western states amended their constitutions to include provisions to remove judges via recall elections. In 1912, President Taft, who would become an ally of AJS during his tenure as Chief Justice, threatened to block Arizona's application for statehood unless it removed a provision for the recall of judges, and Arizona did so, only to flip off the president and reinstate recall elections weeks after being admitted to the union.

In 1906, amid these developments, Roscoe Pound delivered a keynote address to the American Bar Association on the "Causes of Popular Dissatisfaction with the Administration of Justice." Four hallmarks of his address would later be embraced by AJS, which Pound helped to found seven years later. First, his approach was nonpartisan; despite Pound's personal reservations with the progressive agenda, his address was notable for its balance. Second, while many traditionalists in the legal community belittled the progressives, Pound took court critics and their concerns seriously. Third, his approach proceeded from the premise that preserving public confidence in the courts was critical to the judiciary's survival. Fourth, his approach was deeply substantive: This speech was no puff piece. In the course of his address, he

elaborated on four causes and twenty-one sub-causes of dissatisfaction with the justice system.

By fixating on procedural and structural remedies for popular unrest with the courts, Pound, the AJS, and like-minded reformers bypassed the polarizing partisan combat that had served only to fuel mutual hatred. Instead, they launched a good government movement that would generate a stunning array of reforms over the course of the next generation—reforms proposed, developed, and chronicled in the journal of the American Judicature Society, later known simply as Judicature. Those reforms included promulgating the ABA Canons of professional ethics, and later the canons of judicial ethics; expanding the use of specialized courts; developing alternative dispute resolution mechanisms; establishing the American Law Institute; devising uniform rules of practice and procedure; creating the infrastructure for modern judicial administration, including judicial conferences, circuit judicial councils, and administrative offices; and implementing a centerpiece of the AJS agenda: merit selection systems for state judges.

A century later, we find ourselves in an age that is as if not more politically fraught than the Populist and Progressive era, which brings me to the second part of my talk. The causes are complex and multifaceted, but four are of particular relevance here: First, loss of faith in American democracy and government; Second, deepening distrust of so-called "elites" and experts; third, the worldwide emergence of Populist leadership; and fourth, an increasingly polarized electorate.

First, is loss of faith in American democracy and government. A survey conducted earlier this year shows that Americans remain committed to democracy in principle. Over 90% of respondents believe 1) that we should have the right to free speech, even if others are offended; 2) that power should be transferred peacefully when one party is voted out of office; 3) that free and fair elections should be conducted without fraud; 4) that people should be treated equally regardless of race, religion, or other traits; and 5) that courts and judges should make decisions without interference from political leaders. But less than 50% of those surveyed believe that American democracy aligns with these principles; and when it comes to whether judges and

courts do in fact make decisions without interference from political leaders, that number drops below 40%. Consistent with the results of this survey, the percentage of Americans who trust the federal government all or most of the time has declined from 77% at the beginning of the Johnson administration, to 17% today–with data suggesting that the trust levels will continue to decline.

Second, diminished confidence in American government has been accompanied by growing distrust of the elites at the helm of that government. Waves of anti-elitism have come and gone throughout our history, resurfacing aggressively in the aftermath of the 2008 recession—a recession which, in the minds of many, cast a spotlight on the roles of wealthy elites in causing the financial crisis, and of government elites in bailing out the well-to do with insufficient heed to the plight of the middle class. This latest round of anti-elitism has targeted the wealthy, intellectuals, and experts, including scientists, the media, and career government officials.

Judges, of course, are consummate elites: A specialized corps of legal experts, with post-graduate degrees who sit aloft on benches, judging the masses. This rise of anti-elitism is to no small extent responsible for ending the mid-twentieth century movement toward "merit selection" systems for choosing state judges, the appeal of which was premised on the notion that commissions armed with specialized expertise are better equipped to assess the credentials and qualifications of expert judges, than average voters. And because unelected federal judges derive legitimacy from their perceived legal expertise, they are uniquely vulnerable to anti-elitism campaigns that question whether this elite corps of judges is committed to the rule of law or is simply so many politicians in robes. As Suzanna Sherry has observed, "many people no longer see judges as possessing *legal* expertise" because of attacks by "politicians, pundits, and legal academics," who "explicitly accus[e] the Justices of twisting the law to serve their . . . political goals."

When the public becomes disillusioned with its democracy, and distrustful of its government and the elites responsible for making public policy, it creates an opportunity for strong, self-proclaimed, men or women of the people to rise up and establish a more populist form of leadership—a third cause of today's fractious political environment. The

recent resurgence of populism is a world-wide phenomenon: The Tony Blair institute reports that over forty-five populist-style leaders have risen to power since the 1990s. Voter distrust of elites and experts and disaffection for government as usual correlate with a desire for stronger, more autocratic leaders, who can wrest control from elites and reclaim government in the people's name. Once elected, populist leaders have consolidated power by weakening institutional checks on their authority, via (among other strategies) stifling dissent within their own political parties, discrediting the media, and—of particular importance here—undermining the judiciary's role as a check on executive power by attacking its independence and legitimacy.

President Trump, who has styled himself as a populist leader, repeatedly discredited court rulings adverse to his interests, by characterizing them as the political machinations of "so-called" judges, "partisan judges," and "Obama judges." This campaign prompted a highly unusual rebuke from Chief Justice Roberts, who took issue with the implication that judges were less concerned about the rule of law than carrying water for the party and president who appointed them. The campaign to undermine the court's legitimacy reached a high-water mark in a series of tweets after the election, when President Trump wrote: "The people of the United States were cheated, and our Country disgraced" by the Supreme Court, which exhibited "no wisdom, no courage," and was "incompetent and weak on the massive election fraud that took place."

Populism is divisive by design. It seeks to position populist leaders and their insular base of ordinary folk against elites, immigrants, religious or racial minorities, the media, and anyone else who challenges the populist leader or his agenda. To that extent populism exploits and exacerbates a polarized electorate. And in the United States, the electorate has become increasingly polarized over the course of the past generation—a fourth factor contributing to our current political environment. Research shows that political leaders in the United States have become more polarized in two ways: ideologically, meaning in relation to their diverging positions on policy issues; and affectively, meaning in relation to their growing dislike for members of the opposing political party. With respect to the general public, average Americans have not become demonstrably more polarized along ideological lines—the data show that the range of

public opinion on policy questions has remained relatively stable over time. But the public has become much more affectively polarized. The percentage of Republicans who view Democrats unfavorably rose from 74% in 1994 to 91% in 2016, while the percentage of Democrats who view Republicans unfavorably increased from 59% to 86% over the same time frame.

By virtue of being the only branch of government that is not designated "political," there is room to hope that the judiciary has remained above the polarized partisan fray. In late 2019, an Annenberg survey reported public confidence in the Supreme Court at 68%--which is quite strong, relative to Congress and the president. By September of this year, however, Gallup reports that that number had dropped to 40%--A new low for the poll. The data suggest that the support the Supreme Court enjoys is increasingly unstable and contingent, as liberal and conservative trust in the Court swings back and forth with the ideological tilt of the Court's latest rulings and the political party of the appointing president.

In short, we confront diminished public confidence in government, and burgeoning distrust of elites and experts. We are witnessing growing support for a populist form of leadership that exploits an already polarized electorate and consolidates power by discrediting the motives of judges who would keep that power in check. These events have created an environment in which judges are increasingly seen as partisan policymakers indistinguishable from public officials in the legislative and executive branches of government, who cannot be trusted with their independence and must be controlled. This brings me to the third part of my presentation, where I'll discuss six developments that have emerged out of this partisan, polarized environment that threaten the legitimacy and independence of the courts: First, the federal judicial appointments process has become hyper-polarized and the selection process destabilized; second, longstanding conventions against packing and unpacking the federal courts for partisan gain are under attack; third, state judicial elections have become special interest funded partisan battlegrounds for ideological control of state supreme courts; fourth, judicial ethics has become increasingly partisan and polarized; fifth, fractured public confidence in the courts has become especially acute within

communities of color; and sixth, the average citizen's basic familiarity with the role of the courts in American government is deficient.

First, federal judicial selection has become politicized to the point of destabilizing the constitutional norms and conventions that have protected the judiciary's independence and legitimacy for generations.

The federal judicial confirmation process has always been partisan. Over time, however, the Senate and president adopted procedural conventions, like the filibuster, the blue slip, senatorial courtesy, and ABA review of candidate qualifications that when used in the spirit for which they were intended, encouraged consultation, consensus, and compromise in judicial selection. Such conventions produced a judicial workforce that (with exceptions) enjoyed broad-based support—a workforce that, in the public's mind, could be trusted with its independence.

These longstanding procedural conventions in judicial confirmation proceedings, however, have recently collapsed. In 2016, Senate Republicans denied Supreme Court nominee Merrick Garland a hearing that he would customarily receive. They repudiated the blue slip convention. They ended the filibuster option in Supreme Court confirmation proceedings, six years after Senate Democrats did the same for lower court nominees. These changes followed a period in which Senate leaders from both parties had exploited and abused the filibuster and other procedural norms to sandbag each other. Finally, President Trump eliminated the American Bar Association's pre-nomination role in vetting judicial candidates. President George W. Bush had taken a similar tack, but unlike President Bush, President Trump took the opportunity to appoint an unprecedented number of judges that the ABA rated unqualified.

The net effect is that the conventions that promoted an orderly appointments process have collapsed, and have been replaced by a bareknuckle, partisan brawl. Leaders of each major political party denigrate judges appointed by their opponents as activists or extremists, which leads the average American to conclude that the federal courts are populated not with jurists dedicated to the rule of law, but with ideological zealots.

A second troubling development is that longstanding conventions against court packing and unpacking for purely partisan gain, are also under fire. In 1801, with the first transition of political power in American history, the outgoing Federalists passed the so-called Midnight Judges Act, which packed the lower courts with sixteen new circuit judgeships, which they peopled with loyal Federalists, and reduced the size of the Supreme Court from six members to five, thereby depriving the new president of an appointment when the next justice retired. The incoming Jeffersonian Republicans promptly unpacked the circuit courts and restored the size of the Supreme Court to six. While this was indeed an early precedent featuring partisan court packing and unpacking, it ultimately became a precedent to avoid rather than follow. After repeal of the Midnight Judges Act Congress would never again remove judges by disestablishing their judgeships. Congress would adjust the size of the Supreme Court several times over the years, but never again for openly partisan purposes—a convention that thwarted FDR in his attempts to pack the Supreme Court during the New Deal.

This entrenched convention against court-packing has likewise come under fire. In 2017, Federalist Society Chairman Steven Calabresi coauthored a memo to both houses of Congress proposing that Congress double the size of the federal appellate judiciary for the explicit purpose of packing the circuit courts with conservative judges to neutralize the impact of Obama-era appointments. Upon their recent return to power, Democratic leaders have responded in kind, introducing legislation to pack the U.S. Supreme Court with additional justices, in retaliation for the political hardball that enabled President Trump and a Republican Senate to appoint Justices Gorsuch, Kavanaugh, and Barrett.

A third worrisome development is that in the past forty years, judicial election campaigns have become partisan battlegrounds for ideological control of state supreme courts, financed by special interests. In the 1980s, the reemergence of two-party politics in the south heralded new conflict and competition in judicial elections, beginning in Texas, where trial lawyers and the defense bar grappled to control how their supreme court was constituted. President Reagan's popular campaign to "get tough" on crime and drugs furnished additional grist for the judicial campaign mill, and in 1986, three

members of the California Supreme Court lost their retention elections because of their perceived refusal to uphold the death penalty. In the 1990s, the "soft on crime" mantra became a durable campaign issue for conservative judicial candidates across the country. Over the course of that decade, judicial campaigns subjected judges to defeat at the ballot box for rulings on a range of ideologically charged issues, from abortion and same-sex marriage to school funding and water rights.

This upsurge of political interest in judicial elections was not lost on the Chamber of Commerce. Over the course of the 20th century, many state courts had transformed the substantive law of products liability and punitive damages to become more plaintiff friendly. And so, the Chamber of Commerce began pouring unprecedented sums into state supreme court races, in the hope of electing more business-friendly judges, while the plaintiff's trial bar responded in kind, throwing its financial support behind pro-consumer plaintiff candidates.

So began the "new politics of judicial elections," in which state supreme court campaign spending doubled between the 1990s and the first decade of the new millennium, leading more than 80% of the public to suspect that their judges were being influenced by the campaign support they received. Spending has recently leveled off, which some might take as a sign that the issue is in our rear-view mirror but it is more likely a lull, signifying only that the Chamber of Commerce prevailed in its decades-long campaign. In the meantime, there are signs that a movement toward more openly partisan and polarized systems of judicial selection has begun. Recent reforms in North Carolina and Ohio, have shifted to partisan elections for their high courts, while Tennessee and Kansas have moved from merit selection to a federal model for some or all of their appellate judges.

A fourth troublesome development is that judicial ethics has become increasingly polarized and contentious. There has been a partisan squabble within the federal judiciary over whether it is improper for federal judges to be members of the Federalist Society, the American Constitution Society, and the American Bar Association. Mostly conservative critics, including judges, called Justice Ginsburg to task for criticizing then Presidential candidate Donald Trump, in violation of the Code of Conduct for U.S.

Judges. Meanwhile, while mostly liberal commentators criticized Justices Scalia and Thomas for being featured speakers at Federalist Society fundraisers, likewise in violation of the Code of Conduct for U.S. Judges. Conservative organizations began to host expense-paid educational seminars for federal judges at luxury resorts sponsored by corporations with litigation pending in the federal courts on issues relevant to the seminars, which liberal critics derided as junkets for judges and conservative commentators defended. The ethics of Supreme Court disqualification has likewise become a political football. Liberal commentators called Justice Scalia out for failing to recuse himself from a case in which Vice President Cheney was a party, after the two went duck hunting together while the case was pending. And they criticized Justice Thomas for failing to disqualify himself from the Obamacare case because his wife was working for an organization that opposed the Affordable Care Act. Meanwhile, conservative commentators challenged Justice Kagan's decision to participate in the Obamacare case given her role as Solicitor General in the Obama administration and criticized Justice Ginsburg's participation in cases involving President Trump, given her personal criticism of the President when he was a presidential candidate. Finally, ethics questions arising in Justice Kavenaugh's confirmation proceedings, concerning his integrity in the wake of sexual assault allegations, and his judicial demeanor and temperament when refuting his critics were resolved in Justice Kavanaugh's favor along straight party lines.

A fifth cause for concern is that public support for the courts is polarized not just in partisan terms, but racial terms as well. In response to a recent survey, 60% of the public generally shared the view that courts are fair and impartial—hardly a percentage worthy of a triumphant bellow—but that number plummets to 42% among African American respondents. Similarly, 57% of the public thinks that courts provide equal justice to all, but only 32% of African American respondents feel the same.

A sixth and final troubling development is that the average citizen's basic familiarity with how American government works is deficient. Fewer than 20% of Americans can name the three branches of government—fewer, one infamous survey reported, than can name the Three Stooges. Two-thirds of the public cannot identify a

single member of the U.S. Supreme Court and fewer than 3% of American teenagers can identify the Chief Justice. Most survey respondents are unable to identify any state judge at any level of their court system. And a majority is unaware that their state even has a constitution. A pair of political scientists has shown that some of these studies employ flawed methodology that exaggerates the extent of voter ignorance. They note that when asked whether U.S. Supreme Court justices are appointed, whether they serve for life, and whether they exercise judicial review, a majority can answer each question correctly. But these authors may be overly optimistic. Only 44% of respondents managed to answer all three questions correctly, meaning that only a minority of the public knows that the Supreme Court is comprised of life tenured judges who exercise judicial review. And when one of those political scientists asked the same three questions of respondents about their state supreme court, only 7% could answer all three questions correctly, which he conceded to be "dismally low."

Which brings to the fourth and final part of my talk—the path to reform. The challenges we confront are daunting. The temptation to drop the mic, run screaming from the room, hit the beach, and get a head start on day drinking is considerable. I cannot help but suspect that Roscoe Pound, Herbert Harley, Albert Kales, and others who founded AJS in 1913 had moments when they felt the same. But they persisted, they persevered, and they triumphed. We must do the same. And we must do it in the AJS spirit of nonpartisan, good government reform—even as we recognize that the task is complicated by the sad reality that in a political environment this toxic, there will inevitably be critics who view any and all reforms through the lens of partisanship.

It would be presumptuous of me to propose a new AJS agenda. Agenda setting needs to be a collaborative process undertaken by like-minded lawyers, judges, academics, and other engaged citizens. And agenda-setters cannot be limited to people like me in the old guard. They must include up and comers with fresh ideas—and trust me, they are out there. There is a cadre of young scholars who have already made their mark. And I have twenty smart and insightful seminar students watching these proceedings remotely today, who are writing papers on how to preserve court legitimacy, how best to select state judges, and how to protect judicial impartiality and

improve judicial disqualification. These students represent the next generation of reformers, waiting in the wings to take the stage.

And so I do not seek to impose my own agenda. Instead, my ambition is simply to prime the pump with some ideas that can help to get the conversation started. I have six ideas. Then I promise to sit down and shut up.

First, perhaps it is time to take a fresh look at state judicial selection. AJS has been wedded to merit selection for over a century, for reasons that are sound and well developed, thanks in no small part to the extraordinary talents of Seth Anderson, who directed the AJS Hunter Center for years, before he directed AJS itself. But the political reality is that no state has adopted a merit selection system in over a quarter century, while some states have begun to abandon it. In an era marked by heightened distrust of public officials and experts, proposing to transfer the authority to select public officials as powerful as judges from voters to commissions the public perceives as backroom elites, is a hard sell. Adding retention elections neither satisfies the public's preference for choosing the officials who govern them, nor eliminates the threat to judicial independence that elections present: indeed, the data show that judges decide cases in measurably different ways when retention elections are impending.

Without abandoning its longstanding support for merit selection, AJS might want to consider plan B. How about a commission-assisted election model, in which a nominating commission prescreens candidates for the state high court, who then run in a contested election for a single fifteen-year term or until a specified age? Such an approach would weed out unqualified candidates, respect the public's preference for electing its judges, and avoid the need for retention elections, which the data show compromise a judge's independence when retention elections are impending. The spectacle of big money in judicial races would persist, but the data show that when judges are not subject to reelection, they are less beholden to their campaign supporters. Lingering perception problems could be addressed by well-crafted disqualification rules. Perfect? Of course not. Better than merit selection? Maybe not. But better than partisan free-for-alls in states unwilling to adopt merit selection? Maybe. I sympathize with the sentiment of merit selection proponents who argue that their

recent failures do not justify making concessions but signal the need to double down and make their case more persuasively. But as history marches on, public opinion shifts, and the decades of frustration mount, it may be time for hard conversations.

Second, why not consider the possibility of proposing term limits for U.S. Supreme Court justices—a proposal that has been offered by conservatives and progressives alike? If Supreme Court terms were limited to a specified period of years and vacancies were filled at fixed intervals, it could equalize the influence of appointing presidents, reduce the Senate's incentive for procedural gamesmanship, and ensure a steady stream of fresh talent on the Court. And if the justices retained their tenure and salary and remained eligible to sit on circuit and district courts after their terms on the high court ended, the reform could likely be implemented by legislation without the need for a constitutional amendment.

Third, how about inviting representatives from all three branches of government to a series of AJS-hosted summits in Washington, on court-related issues? The purpose of these summits would be to improve interbranch communication, promote mutual understanding of challenges confronting the courts, and repair the informal norms that have guided the political branches of government and preserved the judiciary's independence for generations. To promote candor and reduce the incentive for public posturing, the summits could be convened in less formal settings, behind closed doors, The Brookings Institution hosted a series of such tri-branch meetings in the 1970s and '80s, and by accounts of those in attendance, were quite successful.

Fourth, recent politicization of judicial ethics bespeaks a weakening consensus on ethics norms within the judiciary itself. In the federal courts it unrealistic to expect that judges will take ethics seriously enough to strive for such consensus when the Supreme Court itself has not bothered to adopt its own Code of Conduct, and when the Judicial Conference of the United States—unlike the vast majority of state systems--rejects the default that lower court judges should be subject to discipline when they violate the code of judicial conduct. In state systems, rank and file judges are handed ethics rules revised by supreme court committees assigned to tweak the latest ABA model code but are often not called upon to participate in ways meaningful enough for

them to internalize and buy in to the ethics norms they are expected to embrace. AJS, which long served as a leader in the judicial ethics arena (thanks to the tireless efforts of Cindy Gray, a national treasure who must agree to be cloned before she is permitted to retire from ncsc), is well positioned to play a role in restoring the needed consensus. It could encourage the Supreme Court to adopt its own code of conduct; it could recommend that the federal judiciary better integrate judicial ethics into its disciplinary process; and it could facilitate efforts to achieve comprehensive buy-in to ethics norms by rank and file judges.

AJS might likewise have a role to play in judicial disqualification reform, by joining forces with the Brennan Center for Justice, the Institute for the Advancement of the American Legal System and others. Reforms worth considering include ending over-reliance on self-disqualification by the very judges whose impartiality is in doubt; addressing deficiencies in procedures for the disqualification of state supreme court justices, who often have the final say on their own impartiality; and revisiting the failure of states to develop rules for the disqualification of judges who preside over the cases of their campaign supporters.

Fifth, AJS could play a part in revitalizing civics education. Simply standing up and declaring that kids these days are ignorant and need more civics is cheap and easy, but insufficient. The challenge is to overcome a generation of inertia. The challenge is to find room for civics education in school curriculums that are fixated on math, reading, and standardized test results. And the challenge is to present civics information in a meaningful way that achieves results. I am the law school advisor to our Outreach for Legal Literacy program, in which our students go to grade schools throughout our county, teaching civics education throughout the year, in conjunction with fifth grade social studies teachers, culminating in mock trials at the law school, where our faculty serve as judges. The Rendell Center for Civics and Civic Engagement creates curriculum content and pedagogical tools for social studies teachers. These are important projects that can lay the foundation for what needs to be a national effort.

Sixth, and finally, AJS scholars—most notably the exceptionally able social scientist, Malia Reddick—have produced empirical research on how best to diversify the

ranks of state judicial systems—a concern that has only become more acute in the years since her departure. Diversification of the judiciary along lines of race, gender, and other dimensions serves more than a symbolic function. It does more than enhance the legitimacy of the courts in the eyes of groups who are underrepresented on the bench. It has the potential to improve the quality of judicial decision-making. Social scientists have shown that a judge's race and gender can skew how they decide cases when race and gender are at issue. And studies have also shown that the influence of a judge's race and gender is largely neutralized on appellate panels in which the judges are of mixed race and gender. In other words, a more diverse judiciary enhances an exchange of perspectives and a cross-fertilization of ideas that keeps biases in check. And so AJS might reengage the issue of how best to diversify the ranks of the judiciary—a task that may include exploring ways to revitalize civics education to the end of promoting a diverse pipeline of students to college and law school who are energized by the prospect of becoming lawyers, and later, judges. And it could include exploring ways to better inform judges on the prevalence of implicit bias, how to recognize it, and how to manage it.

To conclude where I began, AJS confronts a brave new world in which the threats to the judiciary's independence and legitimacy are at least as serious today as they were when the organization was founded over a century ago. Ninety percent of Americans want to believe in their democracy. They want to believe in a democratic republic that embraces the rule of law. And they want to believe in an independent and impartial judiciary that makes the rule of law possible. AJS, armed with a nonpartisan, good-government reform agenda, is uniquely positioned to cut through the partisan, polarized clutter and give the American people what they need and what they seek: an all-important reason to believe.