

President's Perspective

On April 2, 2024 the College issued a press release and statement condemning abusive ad hominem remarks made by former President Trump via his Truth Social account. These personal attacks were directed at several state and federal judges handling matters in which Mr. Trump was a named defendant, and he also continued his attacks on the motives of the prosecutors pursuing those matters. As reflected in the College's statement, the attacks included accusations that the judges and prosecutors were "sick," "deranged," "evil," "corrupt" and "crooked." The Truth Social comments included a posting of a photograph of one of the judge's daughters, along with an accusation that she was "a Rabid Trump Hater." One posted comment included a false claim that the judge's daughter had disseminated on a social media site a photo-shopped picture of the former President behind bars. These recent attacks prompted United States District Judge Reggie B. Walton to appear on a news program, noting that such widely disseminated comments can undermine the public's trust in the rule of law, and that they also carry the threat of potential physical harm to judges seeking to carry out their duties. The College's statement, Judge Walton's news interview, and statements made by the ABA and other organizations received significant public attention.



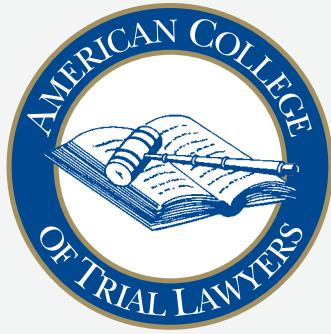
Many Fellows of the College and many state and federal judges – some of whom are Judicial Fellows – applauded the College’s statements. But a handful of Fellows questioned the propriety or the wisdom of the College taking sides on what they believed to be a political issue, and they wondered whether the College had issued similar statements condemning attacks on the judiciary that had been launched from the other side of the political aisle. We have. In fact, the College has, fairly recently, condemned disparaging statements attacking judges made by Democratic elected officials, including intemperate attacks on two Supreme Court Justices by Senator Chuck Schumer and on a federal District Court Judge by California Governor Gavin Newsom. I urge all who are interested to review the College’s recent press releases and public statements on the topic of judicial independence, which are available on our website.

But some Fellows wondered whether, with this April 2 statement, the College was becoming too politicized and asserted that we should not have issued such a statement during the course of a political campaign.

Here are my thoughts. In September 2006, long before Donald Trump was a candidate for office of any kind, the College issued its seminal White Paper *Judicial Independence: A Cornerstone of Democracy Which Must Be Defended*.

The White Paper, which I urge every Fellow to read, describes the historical framework for the principle of judicial independence in this country and demonstrates that it is a key safeguard of the Rule of Law. The White Paper provides examples from the civil rights era of federal judges in the Southern states who experienced polemical attacks from elected officials as well as violent attacks by outraged citizens. These judges’ homes were vandalized and their family members threatened following the issuance of judicial orders mandating school and public facilities desegregation, and the enforcement of Black citizens’ voting rights. The White Paper also surveyed legislative and executive incursions on judicial independence -- some legitimate and others less so -- including efforts by the political branches to “overrule” a judicial decision by precluding jurisdiction over specific issues, defunding the judicial branch, or pursuing the impeachment of judges.

Our 2006 White Paper concluded with a call to action, stating: “Lawyers must recognize genuine threats to judicial independence and, when they arise, call attention to them and confront them.” And the White Paper, approved by the College’s Executive Committee and Board of Regents nearly twenty years ago, concluded with the following statement of policy: ▶



Consistent with the purposes for which it was created, it is the policy of the American College of Trial Lawyers to undertake to address in an appropriate manner threats to judicial independence wherever they manifest themselves. The professional obligations of lawyers, individually and collectively, both to our system of justice and to those who serve on the bench, demand no less of us.

In 2018, the College formed a Task Force on Judicial Independence which drafted a sequel to the 2006 White Paper, *The Need to Promote and Defend Fair and Impartial Courts*. That paper was issued by the College's Board of Regents in March 2019 and it summarized the increasing threats to judicial independence posed by the actions and statements of President Trump, statements and initiatives designed to curb judicial independence by other national and local politicians from both major parties, a proliferation of false and misleading media reports and social media commentary attacking judicial decisions, local recall elections triggered by unpopular rulings, and coercive budget cuts imposed by state legislatures. I also commend review of that 2019 White Paper to all Fellows.

The Task Force on Judicial Independence has since been made a permanent General Committee of the College. The Committee's mandate is, among other things "to coordinate, publicize and track the College's timely re-

sponse to threats to the judiciary or attacks on judges." It should be no surprise to our Fellows that this Committee has been extremely busy since its formation. The Committee currently consists of twenty-seven members from throughout the United States and Canada; three of those members are former federal judges who served on the bench with great distinction. In May 2023, given the increasing level of vitriolic attacks on judges by politicians of both major parties, the Committee developed a set of guidelines for the Executive Committee to use in determining when the College should respond to attacks on judges and justices. Significant among those guidelines is the statement that a formal public response from the College should ordinarily be issued within forty-eight hours of the event giving rise to the response. There are additional guidelines suggesting that, at times, the College's response might better come from a local State or Province Committee, rather than the Executive Committee or Board of Regents, depending on the nature of the matter prompting the attack. Our local State and Province Committees have issued such statements on several occasions during my time as a Regent and officer of the College.

Finally, there are several substantive guidelines developed by the Judicial Independence Committee describing when a response from the College is called for; these guidelines are designed to separate legitimate criticism of a judicial ruling by a party or politician from an attack that

threatens judicial independence. The guidelines state that the College should speak out when there is **“any threat, even if implicit, of physical violence or injury”** or **“any attempt to cause fear or humiliation of the judge or to chill the judge’s independence.”** The College also should respond to **“a public official’s statements that intend, or appear to intend, intimidation of a judge in his/her decision, before or after the decision”** with due consideration given to that public official’s freedom of expression concerning matters before the courts. And the College should speak when a statement **“characterize[es] a judge as being of a certain perspective/ bias/ allegiance.”** The guidelines also call for the College to “be alert to prosecutors facing attacks for prosecutorial decisions they have made” because “we know these attacks threaten the safety of prosecutors and their families.”

With respect to the April 2, 2024 public statement by the College, the Judicial Independence Committee met promptly after former President Trump’s attacks on the judges and prosecutors handling his cases, drafted the statement, approved it unanimously – which does not always occur – and forwarded it to the College’s Executive Committee. The Executive Committee also approved the statement unanimously and forwarded it to the full Board of Regents and our Past Presidents for comment before it was released. Speaking for myself, I had no hesitancy in concluding that these statements by the former President went beyond the bounds of legitimate free expression and constituted a serious attack on judicial independence. Moreover, I believe they posed a risk of intimidation and even the threat of potential acts of violence being aimed at the targets of such vitriolic attacks. As the Judicial Independence Committee’s statement concluded, and the Executive Committee agreed – “speech that is intended, or appears intended, to provoke violence or to intimidate those engaged in public service – such as judges and prosecutors – has no place in our system and puts our very democracy at risk.” The College’s April 2 statement concluded that such criticisms of judges, prosecutors, and their family members “should be universally condemned.”

As the College determined in its 2006 White Paper, it is our longstanding policy to address threats to judicial independence, including ad hominem attacks on judges for engaging in the performance of their judicial duties.

We may not always be able to respond promptly, as we were in this instance, but it is the College’s stated policy to respond to such statements; and we recognized that our obligations as lawyers “demand no less of us.” I hope that this commentary is helpful to all those who had questions or concerns about the College’s April 2, 2024 public statement.

Bill Murphy