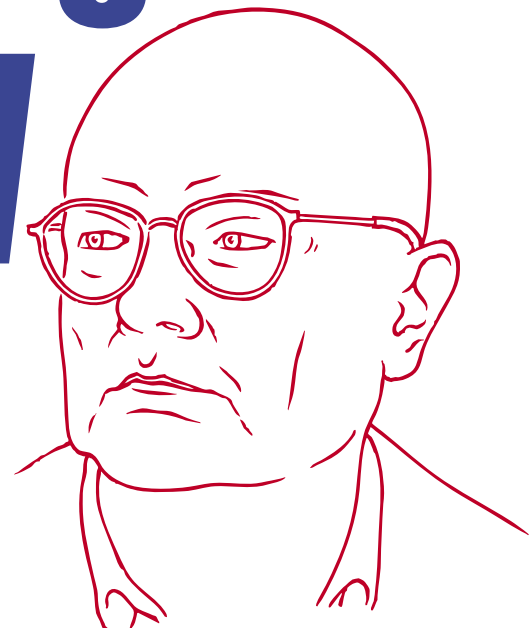


Lessons from Poland for U.S. Judges on Defending the Rule of Law



by Jay Weiner

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**An international group shares
cautionary tales and visions
of a path forward.**

A MERICAN JUDGES AND THE U.S. COURT SYSTEMS are targets of a copycat assault ripped from the pages of the global authoritarian playbook.

That's why, in mid-October, the Piper Fund's Judicial Integrity Project and the German Marshall Fund's (GMF) Rule of Law Action Network co-hosted "Lessons from Poland for U.S. Judges on Defending the Rule of Law."

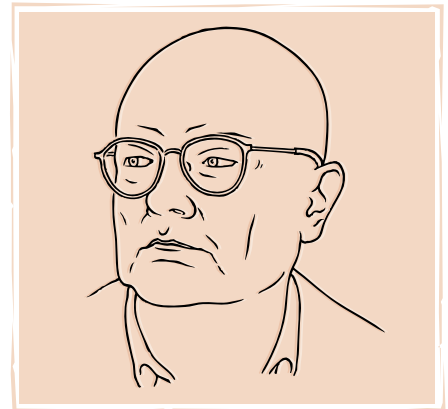
Meeting in Oakland, California, about 50 funders, lawyers, judges, and human rights advocates from Poland, Kansas, and California shared cautionary tales even as they began to develop a productive path forward.

"Transnational experts can provide us with the advice to help us with strategies to push back against what's happening to our judges and courts in the United States," said Judicial Integrity Project Senior Program Officer Kathy Bonnifield. "More importantly, we need to learn how to push forward to a democracy that works for everyone."

The gathering's conversations were confidential, but post-event interviews with participants revealed this: tactics used by political leaders in Poland between 2015 and 2023 to muzzle and harass judges, to discredit independent courts, and to undo the essential checks and balances of a democracy have migrated to Hungary, Turkey, the country of Georgia, and Italy.

They've landed, too, in the U.S., threatening to disrupt Kansas' judicial selection process, to dismantle the embattled Immigration Court system, and to raise the prospect of prison for a Wisconsin judge who came to the aid of a man facing deportation. **See the special section "The Chilling Effect," which focuses on this specific story in Wisconsin, page 8-9.**

"Your challenges are absolutely huge," said Maciej Nowicki, president of the Polish Helsinki Foundation for Human Rights. "But in Oakland, I heard a lot of good thinking about what the narrative strategies are that should and could be used, and also what kind of alliances should be there to build anti-repression and resilience mechanisms."



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The Polish experience shows that fighting attacks on the courts can succeed.

Key ingredients to that resistance include accessible communication, building solidarity among diverse organizations, and, as Judge Monika Frackowiak demonstrated, unrelenting courage.

Frackowiak is “absolutely one of the most iconic figures” of Polish resistance, Nowicki said. She was a civil judge in the Poznan District Court for seven years before the right-wing Law and Justice Party took control of the Polish government in 2015. Its nationalist platform includes, among other issues, anti-immigrant, anti-LGBTQ, and anti-abortion planks.

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An early action was to remove the judge selection process from a merit-based judicial council to political appointments, thereby ensuring judges loyal to Law and Justice leaders. A law was enacted allowing the government to fire judges whose rulings it opposed. Over time, large state media companies became propaganda machines for the government, attacking court decisions and judges. Surveillance of political enemies and activists grew. Social media was used to distribute misinformation. As a handful of judges began to speak out, they were disciplined.

A 2019 Amnesty International report, “Poland: Free Courts, Free People,” highlighted Frackowiak’s case. She was one of the most productive judges in her district, resolving more than four times as many cases as the average. But she was active in publicly emphasizing the importance of independent judges and courts.

She often did so in non-traditional venues. One event included a moot court trial held at a rock festival to explain the value of an independent court system to young people. Because Frackowiak and a colleague were wearing their courtroom robes, a disciplinary prosecutor alleged she “offended the dignity of a judge.”

Despite personal attacks in government-leaning media, a series of disciplinary hearings, and even death threats, Frackowiak kept her job and her fearlessness. “If judges are silenced, who can dare to oppose, who can dare to resist?” Frackowiak said in a Zoom interview from Poland.

Echoes of Poland have been heard in Kansas and other states.

In 2015, the state's Legislature threatened to totally defund the Kansas court system if the state Supreme Court struck down a law that removed the court's administrative power. It was a blatant attack on the separation of powers between the legislative and judicial branches of government.

The issue was resolved favorably, but the Legislature is trying again. It placed a constitutional amendment on the August 4, 2026, primary ballot to remove merit from judge selection and to make Supreme Court justice selection by statewide election. Retired Supreme Court Justice Carol Beier is a leader in campaigning against the amendment. She fears the kind of candidate fundraising that triggered millions of dollars spent in recent Wisconsin and Pennsylvania Supreme Court races.

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This leads to the U.S. Immigration Courts, where, according to media reports, about 100 top-notch judges have been fired without explanation. Three of the dismissed judges spoke at the Piper Fund-GMF gathering.

Immigration courts reside under the Department of Justice. Project 2025, the policy manual for the Trump Administration, wants to transfer the immigration court system to the Department of Homeland Security, which also controls Immigration and Customs Enforcement, or ICE.

Precisely why some judges have been targeted is difficult to ascertain, said Kyra Lilien, who lost her job in Concord, California, earlier this year. It could be because some of them, while practicing attorneys, represented non-citizens in proceedings. Perhaps, as reported, some were dismissed because their records showed they had frequently granted asylum requests. But others, with decades of experience and cases with a wide



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range of results, were unceremoniously marched out of their offices and fired without explanation.

All were overwhelmed with thousands of heart-rending cases. Lilien said in an interview that, when she was fired, her docket was booked out for three years, meaning petitioners would have to wait at least that long for a decision on their fates.

Frackowiak waited eight years before Law and Justice lost control of Poland's parliament. Since 2023, the political and judicial atmosphere has brightened somewhat, she said, but, as a warning to Americans, she added: "It is very difficult to undo things that have been done."

Frackowiak and Nowicki emphasized that legalistic terminology—even the common term, "the rule of law"—is not always effective in communicating with those average citizens.

So, how to map a path forward?

First, judges must be engaged in communicating the issues. In the U.S., Poland, and most nations, judges are trained to be non-activist, with their work restricted to the courtroom. But Polish judges were buoyed by a decision from the Consultative Council of European Judges stating judges have a duty to speak out in defense of judicial independence and the law.

Retired Kansas Supreme Court Justice Beier said: "I think it's absolutely critical that judges be seen, to get out and communicate with average people about what the courts do and why they do it the way they do and why it's different from legislation."

When they do, however, Frackowiak and Nowicki emphasized that legalistic terminology—even the common term, "the rule of law"—is not always effective in communicating with those average citizens.

"In Poland, social support for judicial independence was not built on abstract rhetoric," said Nowicki. "It was built on the basic level of solidarity and human decency. Just like your immigration judges here, our judges were concrete people who were persecuted for doing their jobs, and we must stand with them. Any narrative should be connected with the vision that judges

are there to serve the people and be a shield against the very abusive practices of the state.”

Said Frackowiak: “The best strategy is to unite, not only among judges but also lawyers, academics, and NGOs. Cooperation is very important, and it was the key factor, I think, in surviving under Law and Justice. Having support from colleagues is so crucial, so you do not feel abandoned.”

Said U.S. immigration judge Lilien: “I was really struck by how [Frackowiak] engaged youth and civil society, artists and musicians, creative persons to make this a popular cause. We have to communicate more broadly to the public: ‘Why does this destruction of the immigration court system matter to you?’”

Melissa Hooper, GMF’s Senior Fellow and Head of the Rule of Law Action Network, said Frackowiak impressed her by suggesting communications that are “more about listening and going to where people are, asking people what’s going on in their communities, and how threats against judges will impact your ability to get a fair shake. If you’re dealing with a landlord, if you’re dealing with some employment issue, try to draw those connections” to the value of an independent judiciary.

Days after their conversations in Oakland, Frackowiak and Nowicki marched with thousands in San Francisco at the second “No Kings” rally.

“I liked it because it was peaceful and not like martyrdom,” said Nowicki. “The kind of humor and light atmosphere I saw is really good to overcome fear.”

Added Frackowiak: “It’s so important to have the positive message, not that we are always against something, like this particular government, but we are for something. We’re for democracy and equal rights.”



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—Judge Monika Frackowiak, Civil District Court, Poland

The Chilling Effect



JUDGE HANNAH DUGAN

“The visual of putting a judge in handcuffs is just such blatant intimidation and it’s so clear the [Trump] Administration is trying to say, ‘You are under our control!’”

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IT’S CALLED THE “CHILLING EFFECT,” and its ramifications will be felt on December 11 in Milwaukee in the case of United States of America vs. Hannah C. Dugan. That’s when jury selection begins in the trial of Dugan, a judge for nine years in Wisconsin’s Circuit Court and former president of the Milwaukee Bar Association, for allegedly helping an undocumented non-citizen dodge federal immigration agents from the Milwaukee County Courthouse.

That incident occurred on April 18, but it wasn’t until a week later that FBI agents arrested Dugan at the courthouse, handcuffed her, and staged a visible “perp walk.” FBI Director Kash Patel posted the image of Dugan in handcuffs on his X site with the caption, “No one is above the law.” Soon after, in a television interview, U.S. Attorney General Pam Bondi said: “We are sending a very strong message today. We will come after you, and we will prosecute you. We will find you.”

German Marshall Fund (GMF) Senior Fellow and Head of the Rule of Law Action Network Melissa Hooper said: “The visual of putting a judge in handcuffs is just such blatant intimidation and it’s so clear the [Trump] Administration is trying to say, ‘You are under our control!’”

A bipartisan group of 150 retired judges wrote to Bondi, forcefully stating that Dugan’s arrest “undermines the rule of law and destroys the trust the American people have in the nation’s judges to administer justice in the courtrooms and in the halls of justice across the land.”

Maciej Nowicki of the Polish Helsinki Foundation for Human Rights isn't surprised by what he's learned about the Dugan case during the Piper Fund-GMF's "Lessons from Poland for U.S. Judges on Defending the Rule of Law" gathering in Oakland in October. Nowicki has been monitoring the years-long humanitarian crisis on the Poland-Belarus border and helping get legal aid for migrants. "One of the main mechanisms of ruling in semi-authoritarian or authoritarian countries is criminalizing solidarity with migrants," Nowicki said. The methods: legal harassment, "show trials," and, ultimately, character assassination of leaders, which sounds eerily like the Dugan case.

While authoritarian governments may target individual judges, their actions ripple across the legal system, affecting other judges, the actions they take, the decisions they make, and, more importantly, those whose lives are at stake in the court systems.

For example, in the U.S. Immigration Court, as some judges were summarily dismissed, the remaining judges were instructed to rule on immigration cases solely on the submitted legal documents and not to conduct hearings. Or else.

"So, there's pressure to deny more cases, complete them without a hearing and get your numbers up to avoid getting fired," said Kyra Lilien. "I do think that many of my colleagues are really trying to do their job with integrity. But it feels increasingly impossible to do that."

The impact on those facing deportation is devastating. For example, according to a report by the Associated Press, denial of continuances, which allow migrants extra time to seek legal counsel, has skyrocketed.

There's other subtle fallout from the chilling effect, and that's the decision of qualified people to question the value of public service. As much as Lilien was dedicated to her job as an immigration judge, she doesn't believe, if given the chance under a new Administration, she'd want it again, what with the "permanent damage already done" to the court system.

The chilling effect is lasting. It can trigger a talent drain.

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