### Say No---2AC

#### Court say no:

Judicial approval is always in favor of creditors, tilting the legal playing field in their favor---that’s Velazquez.

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When a corporation files for bankruptcy, it is usually bad news for workers. That is because most corporations are usually looking to slash wages or seek other concessions from workers. Unions that fight back do so risk having the bankrupt corporation seek judicial approval to set aside their collective bargaining agreement. The news is not much better for public sector workers when a government goes into bankruptcy because the law forces governments to prioritize debt payments to financial creditors over workers. Certain funds, often called “vulture funds”, opportunistically purchased distressed governmental debt such as Puerto Rico’s cheaply and then used the bankruptcy process to extract profits at a cost to workers and the public. What happened in Puerto Rico’s bankruptcy challenged that convention. This article explains how unions learned from previous engagements to engage their membership, organize with public allies, and use the bankruptcy code to bargain for the common good to prevent pension cuts and protect their collective bargaining agreements.

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Once a government finally does file a bankruptcy petition, unions and their allied enter into another legal playing field that is tilted against them. This is especially true if unions have not begun the work of organizing both their local community and their membership. That is to say pre-planning shapes the playing field at the outset of a case. Vulture funds start with an advantage by sweeping up distressed bonds at steep discounts from their original values and assuming the property rights associated with those bonds once a governmental entity enters serious fiscal distress, and well before a government is contemplating a bankruptcy filing (Pintado and Rodriguez Banchs 2020).30 This allows the fund to create leverage as a creditor that gives it certain rights during a bankruptcy. Certain debts, such as secured debts or debts that come with a constitutional obligation for repayment, can increase the influence among other constituencies in the bankruptcy both before and during the case.

Courts interpret Bankruptcy trumping the NLRA, permanently resulting in pro-debtor outcomes---that’s Hunter

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In the case of labor law within bankruptcy, it is unclear which of the NLRA or the Bankruptcy Code should supersede the other, and which should be subjugated. Given that "[t]here is no supremacy clause to tell the courts which law should prevail," courts have resorted to statutory interpretation, legislative history, and intuition to square these two laws. 81 Though the NLRA contains a conflict of laws provision that stipulates its supremacy over the 1898 Bankruptcy Act,82 this provision was rendered moot with the passage of the 1978 Bankruptcy Code. 83 Indeed, because the Code contains no provision suggesting that labor law would supersede it, some courts have interpreted this to suggest that the Code, since it was enacted more recently, trumps the NLRA.84

Conflict between the goals of labor law and bankruptcy law emerges in several key areas during a reorganization. For example, while CBA bargaining and other NLRB processes take time, bankruptcy proceedings are under significant time constraints. While the NLRA allows workers to bargain for higher wages, bankruptcy is intended to help debtors cut costs and take other measures to preserve the vitality of struggling companies. Moreover, bankruptcy's power to eliminate burdensome contractual obligations contrasts with the statutory duties placed on companies by the NLRA, which invariably protect expensive labor contracts.

These tensions came to a head in 1984 in the Supreme Court case NLRB v. Bildisco & Bildisco.85 In 1980, Bildisco, a small, New Jersey-based building material distributer, filed for bankruptcy and sought to reject their CBA.86 At issue was whether the debtor could, through § 365 of the Bankruptcy Code, reject its employees' CBA, and whether unilateral changes to working conditions made by the employer after the filing constituted an unfair labor practice. 87 The Court ruled that the requirements of the NLRA were to be "subordinated to the exigencies of bankruptcy." 88 More specifically, the Court ruled that a debtor could unilaterally reject a CBA in bankruptcy because rejection was governed under § 365, which applies to the rejection of executory contracts. 89 While the Court mandated that the application for rejection be evaluated with a standard slightly more stringent than the business judgement rule, 90 critics responded that this dictum was meaningless when combined with the grant of unilateral rejection. 9 1

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While § 1113 may seem straightforward, it has fomented numerous and varied interpretations. 109 Indeed, critics have decried it as "not a masterpiece of draftsmanship," 110 "unworkable," "flawed," and in need of a "congressional overhaul." 111 Both labor and business advocates suggest a rewrite. 112 While pro-business voices argue that under the current statute unions always win, 113 labor advocates have noted that rejection applications almost always result in prodebtor outcomes. 114 Commentators worried about the strength of the NLRA's protections perceive a resurgence of bankruptcy-led union busting reminiscent of the time before § 1113 when CBAs could be unilaterally rejected through § 365.115 Most visibly, the airline industry's bankruptcies have allegedly been used to "ravage" CBAs.116 "Notwithstanding [the] congressional intent" of § 1113, airlines have serially filed for bankruptcy in order to reject CBAs and lower the cost of labor. 117 While wages for pilots and flight attendants drop precipitously after bankruptcies, executive compensation remains high.118 That airlines maintain outsized executive compensation undermines the argument that airlines need these labor concessions in order to continue operating. 119

Section 1113 is also employed in other industries to dispose of CBAs. A recent decision by a federal district judge in Alabama approving the rejection of a mineworkers' CBA without requiring the employer to bargain with the union shows the flimsy protections provided under § 1113.120 An older, though telling, case allowed a meat-packing plant's rejection of a CBA even though the debtor's net worth was $67 million.121 Indeed, despite the different standards applied in the various courts, applications for rejection are invariably approved. 122 Clearly, there is no parity between labor law and bankruptcy law when the two meet in § 1113: Bankruptcy's goals of reorganization trump the NLRA's mission to provide statutory protections to organized workers. 123 Moreover, this interpretation of § 1113 is expanding. Courts are increasingly reading the statute to allow for rejection of expired collective bargaining agreements within bankruptcy proceedings and thus increasing the scope of § 1113's potential for abuse.

#### Even if, enforcement is watered-down---that’s Velazquez.

The Court will grant automatic stay, lower compensation, deprioritize worker claims, or negotiate unideal terms. All of which is key to reduce filings.

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Even though the focus of this article is on the Puerto Rico bankruptcy as governed by PROMESA, this article will provide a general overview of bankruptcy law to provide the tools to understand what is happening when a government seeks bankruptcy relief. To begin, bankruptcy provides a forum in which debtors (either corporations or people) can reorganize their debts and/or shed certain contracts (like collective bargaining agreements) when they no longer have the cash on hand to pay them as they come due. The whole point of bankruptcy is to provide the honest, but unfortunate debtor with a “fresh start”6 while ensuring that creditors who sue the indebted entity receive repayment based on the strength of their underlying legal claim and pursuant to rules of repayment priority (Jackson 1982). Put another way, when creditors sue for repayment, bankruptcy law protects the debtor from collection efforts by paralyzing all collection efforts temporarily. This is called an automatic stay.7 Bankruptcy law paralyzes lawsuits against a debtor and simultaneously lays out a framework for determining (1) who can get in line for payment and (2) where in line that creditor stands. Bankruptcy law essentially sets out rules delineating who gets paid by categorizing debts and the debt holders. It then sets up procedures for resolving disputes concerning payment priority and balances that against the needs of the debtor.8

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Not all unsecured creditors are created equal, however. Certain unsecured debtors may have “priority” status over other similarly situated creditors.18 For example, the lawyers and other officers charged with administering the corporate or governmental bankruptcy case get paid before almost anyone else (excluding child support and other “super-priority” claims).19 Any wage claims and claims for employer contributions to a benefit plan for amounts owed during the 180 days before the debtor files for bankruptcy receive fourth and fifth priority as an unsecured creditor, respectively.20 Workers’ compensation claims and any tort claims that a worker has against their employer would fall into the general unsecured creditors pool and receive no priority. If the debtor does not have enough money to pay all secured and unsecured creditors with greater priority, the debtor may receive a discharge having paid very little to those at the end of the line.21

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In contrast, in a public sector bankruptcy, workers and retirees have contractual claims that bankruptcy courts can break.32 Bankruptcy law provides mechanisms by which governments can set aside their collective bargaining agreements that are extremely deferential under 11 U.S.C. §365 and the Supreme Court's decision in NLRB v. Bildisco & Bildisco.33 In that case, the Supreme Court ruled that a debtor can set aside a CBA if it can show that the agreement burdens the estate and that the equities balance in favor of rejection.34 In other words, a very lenient standard for a debtor in bankruptcy to show. Unions have had their CBA's set aside for worse terms in several municipal bankruptcy cases.35

#### And it fails reorganization:

Bankruptcy supremacy makes a broad model of pro-social bankruptcy impossible, failing to create a norm---that’s Dawson.

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In the corporate reorganization context, the political consequences of favoring secured versus unsecured creditors might be inconsequential; however, the consequences of favoring bankruptcy policy over labor policy are important and serious.

If we try to apply the Norm/Power Paradox in this context, we would ask whether there was a broad or narrowly defined legal norm the court must apply. If broad, then the judge should exercise the public litigation model. If narrow, then less judicial involvement is required. When applying a broad norm, such as feasibility, we might expect the judge to engage in more public litigation-style case management: The court should gather more information and promote and facilitate consent. When applying more specific norms, that judicial involvement is less necessary.

Whether the bankruptcy-labor context is one that calls for more active judicial management depends on whether section 1113 is thought of as reflecting a broad or narrow norm. If the "necessary to permit the debtor's reorganization" is viewed simply as asking the question "does the debtor need to reject the collective bargaining agreement in order to reorganize?," then this appears to be a fairly narrow norm. Active judicial management is not necessary, and this dispute looks much more like a private litigation model. But if the standard is read as asking "are these proposed modifications necessary?," the norm is much broader, and it is difficult to map that onto a granular remedy. The section 1113 rejection process, then, looks to involve more of a public law judging model, with fact-gathering, consultation, and consensual resolution.

### Pressure Fails---2AC

#### A clear process without external pressure sustains judicial independence and rule of law.

McDougall ’21 [Ian; April 8; General Counsel for LexisNexis Legal & Professional, and President of the LexisNexis Rule of Law Foundation; LexisNexis Insights, “Respecting Rule of Law Through The Judicial Process,” https://www.lexisnexis.com/community/insights/b/blog/posts/respecting-rule-of-law-through-the-judicial-process]

There are four elements of the Rule of Law that LexisNexis uses as its definition: Equality before the law, access to the law, independent judiciary and access to remedy. Of course, the importance of the last two points is their interconnectivity. Having access to remedy (the object of which is to produce an outcome that can be considered reasonable and/or logical) requires that the judiciary is independent of outside influences. That they decide cases solely based on the evidence and the law. That they are not corrupted or pressured by political or personal gain, for example. There are many instances around the world where either political pressure or corruption means that the rule of law is impeded. Once this is happening, the Rule of Law is absent and the consequences are dire.

We know that the absence of the Rule of Law lowers per capita GDP (meaning we are all poorer because of its absence). Countries with low Rule of Law also have higher infant mortality rates, lower life expectancy and many other socio-economic measures are worse whenever the Rule of Law is absent.

In a previous blog, I wrote about how the COVID-19 pandemic led to the court system having to “move online”. Because of the need for separation, because the justice system still needed to function, and because the technology now allows it relatively easily, many hearings, and even some trials, were moved to an online format. In these emergency times this was clearly an understandable contingency. (Or, perhaps contingency is not the right word because some applications have been undertaken remotely for some time.) The novel element here was that full trials were being undertaken entirely online, including full criminal trials.

Often, the deployment of technology is a very good thing! It enables something to happen which otherwise would not be possible or which is made more efficient by the deployment of technology. So, with that in mind, let me turn to the comments of the Chancellor of the High Court of England and Wales, Sir Julian Flaux. For those who may not know, this is the senior judge of the Chancery Division of the England & Wales High Court. As an example of the work of the Chancery Division, it incorporates the Insolvency and Companies Court, the Patents Court and the Intellectual Property Court.

Sir Julian Flaux’s comments on the impact of remote hearings is worth taking note of. He said, firstly about the efficiency and other benefits,

“I know that even if a remote hearing is a more efficient way of justly and fairly resolving a dispute, it has its price. [My emphasis]. The infrastructure – screens, bandwidth, cameras – needs to be in place, and even if it is, conducting remote hearings is more tiring for all concerned. We have, in the past, done it, and done it well, but at some personal cost. The extra mile to which all in the legal system have gone is not something I take for granted, and it is not a price that can continue to be exacted."

He added:

“After the experience of the last 12 months, we have a clearer view about the sort of cases that will and will not suit a remote hearing. Committal hearings, those elements of a trial involving an assessment of a witness’s credibility and (on occasion) interim applications involving a litigant in person are all examples of matters that are often best conducted live, though even then there are exceptions.”

Therefore, something which I think is clear to anyone who has been involved in litigation is that, even with fantastic technology, there is often no substitute for in-person hearings and trials. Online, you cannot assess witnesses properly. The displaying of documents is administratively cumbersome. Conversations are regularly strained; with one person talking over another resulting in one of them being silenced completely - instead of in a live situation where humans are able to hear two people at once. I watched two online trials (as, I am pleased to say given my concerns about justice being seen to be done, was made available by the Court service). Let me give you my considered view; they were awful. For all of the reasons above and for those that Sir Julian goes into. It is worth my quoting at some length due to the importance of these comments;

“We have all experienced the informality that can creep in when we are conducting cases from our kitchen tables or studies. We have had to become tolerant of those interruptions: bad WiFi connections, rings on the doorbell, noises from others in our family or barking dogs. Counsel taking instructions via WhatsApp and parties speaking more freely among themselves or litigants in person, perhaps feeling disinhibited and behaving less appropriately [My emphasis], or even on a more mundane level having to remind those who are not speaking to put themselves on mute to avoid feedback, can be distracting for the judge and participants.

This has been a small price to pay [comment: really?] as we worked to keep the justice system in the [Chancery Division] fully operational and we have been able to work with the assistance of practitioners such as you with your accrued sense of what is proper in a courtroom. However, as we start to think about the longer-term use of remote hearings, we need to guard against unintended consequences of informality [my emphasis].”

He went on:

“To talk about the dignity of the court probably sounds self-regarding and maybe even a little pompous. But an element of formality in a courtroom is important and serves to demonstrate the seriousness of the decisions being taken. Particularly in cases involving individuals and the economically disadvantaged, the outcome of a hearing can, and frequently does, have life changing consequences. [My emphasis]. When the court is making a compulsory order, it is compelling someone to do something that they do not want to do, and the person who is subject to the order needs to understand the consequences of not complying with that order.”

This is an important element of the system which, in these increasingly egalitarian times, is thought of as being old fashioned, elitist, or somehow less important; Respect. Respect for the importance of the process. Respect which arises not out of some deference to a person but out of deference to the importance of the Rule of Law itself.

I have long held the belief that the rituals, formal dress and the general gravitas of the court should be maintained. Seemingly anachronistic rituals, dress, deference are crucial because they remind us of the importance of the process. When it has been mentioned to me that Person A feels intimidated about being in court, I have replied:

#### Judicial independence contains inevitable terror, disease, famine, and next-generation war---extinction.

Keilitz ’19 [Ingo, Katharine Jennings, Susan Ehrlich, Caroline Broun, Kathryn Floyd, and Michael Buenger; Winter 2019; PhD, Former Vice President of the National Center for State Courts, Principal of Court Metrics, and visiting Scholar of the Public Policy Program at the College of William & Mary, Research Associate of W&M’s Global Research Institute; Court Manager, “Courts Have a Significant Role to Play in the Whole-of- Government Approach (WGA) to Our Safety and Security,” vol. 34]

Courts must get ready for a riskier world today. We and, therefore, they face unprecedented threats to our safety, security, and welfare, including natural disasters, pandemics, terrorist attacks, biological and chemical attacks, and cyberattacks by increasingly sophisticated adversaries using not only weapons of mass destruction but also weapons of mass disruption. Such threats and others discussed in this article warrant the attention of courts and their justice partners, not just to mitigate the risks to the continuity of their own operations but also to protect society as a whole.

During and after the war in Kosovo (1998-99), the courts in Kosovo lost some of their case records, including case registers and case files. When the Kosovo courts resumed operations after the war, court staff inventoried and compared the case files against the case registers. They found that case files were lost or missing during the withdrawal of the Serbs from Kosovo. Most of the missing records were civil-case files, predominantly inheritance and property-dispute cases. The land registry books in Kosovo were taken by the outgoing Serbian regime and were never returned to Kosovo. In 2013 the Serbian government agreed to provide copies of land registries but not the original records. To date, some of those records have been delivered, but the vast majority are still missing, creating a backlog of cases that the courts cannot decide or adjudicate fairly. All parties to a dispute have records claiming ownership. All documents are authentic, one set issued by the Government of Kosovo, the other set by the Government of Serbia. What documents are accurate when there are no land registries to determine the history of a property, for example? What can courts do when the property has been sold and resold multiple times to different parties, and yet there is another party claiming ownership?

What occurred in Kosovo is an example of what can happen when a court system’s records vanish, as occurred in the aftermath of the civil war between Kosovo and Serbia, undercutting history, finality, reliability, and certainty. What was considered settled, e.g., the existence or the acquittal of a crime, the ownership of a house, the parentage of a child, finality of a separation or divorce, recompense for a wrong, the existence of a business, the nature of a contract, and the presence of civil rights, becomes unsettled. This unsettling of individual cases has occurred, and will occur, and not just in the context of war, although the impact usually is limited and confined to the parties in individual cases. Certainly, courts have mechanisms to settle issues in individual cases and to reestablish finality and reliability through various procedures. However, what happens when the court data loss is on a massive scale? When thousands or millions of court records are compromised or lost, when people can no longer rest on what was predictable and reliable? The settled is unsettled; the reliable becomes unreliable. Social cohesion frays. Bad actors take advantage of the ensuing political, social, and economic chaos.

More recently in May and June 2019, the computer systems of two courts in the United States were crippled. The computer network that supports the Georgia state court system was taken offline by court officials following a ransomware cyberattack in late June (Murdoch, 2019). Ransomware is a type of malware, software that is designed to disrupt, damage, or gain unauthorized access to a computer system, encrypting computer files until a sum of money is paid, usually in Bitcoin or another cryptocurrency because it is difficult to trace.

Officials of the First Judicial District Court in Philadelphia reported that the court’s websites and computer programs were shut down as a precaution after a virus was found on a limited number of computers. In response, the court’s website, employee email accounts, and electronic filing (e-file) were temporarily suspended (Shaw, 2019). The shutdown disrupted civil cases more than criminal ones. Online criminal dockets, which are on a statewide system, were still accessible. But the online civil-docket search was not functioning. Law firms that handle civil cases had to resort to hand delivery by court employees or bike couriers to file motions and other documents. More than a week after the attack, there still were no answers as to why it happened, when it would be fixed, or how much it would cost, not only to the court but also to those who were affected. To safeguard other systems in Philadelphia, including that of the courts, the city’s Office of Innovation and Technology “shut down certain court IT functions to fully review and clean the operating systems,” a city spokesperson said.

These are examples among the growing threats of cyberattacks and hefty ransomware demands facing United States’ institutions and cities, states, and other political divisions. Cyber criminals exploit vulnerabilities in state and local governments’ aging computer systems. Once the malware infects a computer, it encrypts files and spreads into an entire network to infect more and more machines in a court’s computer system. Governments, especially courts, have limited resources to attract cybersecurity experts. In the past, ransomware attacks were mostly limited to individual computers. Now hackers are going after larger targets such as governments, including court systems (Calvert and Kamp, 2019: A3), many of which are unable to afford to pay at least the initial ransom demand or unwilling to give in to extortion.

Broader Response Needed

As the Kosovo, Georgia, and Philadelphia cyberattacks illustrate, determined state-sponsored or private adversaries can debilitate a nation-state, affecting, perhaps catastrophically, its residents, its economy, and its institutions without the use of deadly force. In the United States, much of the responsibility for preparedness and response to threats to security and safety falls to state and local public-health practitioners, law enforcement, and emergency responders. In transnational threats, responsibility falls to the military and intelligence community. We contend that such threats to our safety and security require a much broader approach, and a higher level of urgency and cooperation, including rapid and honest communication, broad coordination, collaboration, and responses across all three branches of government–executive, legislative, and judicial–as well as nongovernmental agencies, an approach referred to as a Whole-of-Government Approach (WGA).

The WGA is rooted in commonsense assumptions, most notably that the complex and intractable problems of national and transnational safety and security that we explore in this article defy solutions by the actions of just one or two government entities, such as the military and intelligence communities. Rather, a WGA stresses the principle of unity of action and the importance of all interagency and coalition partners coordinating their respective efforts (White, 2014).

Box 1. Stephen Hawking on Why a WGA Response Is Hard Today. Stephen Hawking, the world-renowned physicist and cosmologist, worried about the size and complexity of the perils that humanity faces and our limited individual knowledge of solutions. In his posthumously published book, Brief Answers to Big Questions, he addressed the question: “Will we survive on earth?” He believed that we now have the technological power to destroy every living creature on earth. The “threats are too big and too numerous,” including global warming, disease, famine, nuclear war, autonomous weapons, and decimation of animal species, he writes (Hawking, 2018: 147). At the same time, our store of information in books and other forms of storage has grown exponentially, and the time scale of accumulation of even more information has shrunk over the last 300 years. This has brought unimaginable benefits, but the evolution of our record of information and knowledge is severely limited by two factors: the complexity of the intractable problems we face around the globe (see United Nations, Sustainable Goals) and the hyper-specialization of knowledge and expertise of the problem solvers. No one person today can be a master of more than a tiny corner of knowledge. And the more complex the problem, the more unlikely it is that one person or even one group of persons can solve it. This is an area where quantumcomputer power could help in the future (five years?) by combining knowledge across multiple disciplines into a single artificial intelligence system. For a benign example, Alexa, Siri, Watson, and other digital assistants with access to information in many areas could help us solve our problems that people with a narrow range of expertise cannot.

Unprecedented Threats

The 21st-century threats to our homeland security are more diverse and serious than ever and affect every aspect of our lives directly or indirectly (White House, 2019). The threat landscape spans natural and manmade disasters; epidemics and pandemics ; chemical, biological, radiological, nuclear, and explosive (CBRNE) attacks; cyber incidents and espionage; transnational criminal organizations’ operations; and violent conflicts (see figure below; White House, 2017b; Pickart, 2018; Coats, 2019; ASPR, 2019). Discussing each type of threat illustrated in Figure 1 is beyond the scope of this article, but a brief description of the threats and hazards we face today bears a comment or two.

The biggest driver of change today is technology. Advances promise to change our lives for the good and, at the same time, raise the specter of doom. This duality is problematic in categorizing and defining the threats in Figure 1. For instance, the rapid and global advances in genetic engineering and synthetic biology hold great promise for the development of life-saving therapies, but these same tools in the hands of terrorists can be used to create deadly weapons with the potential to inflict enormous harm on public health, safety, and security, including economic security (ASPR, 2019: 5; White House, 2018a: 4). The threats are not hyperbole. In recent years, several chemical weapons attacks and emerging infectious disease outbreaks (i.e., newly appearing in a population) garnered global media attention. In 2013 and 2017, sarin attacks in Syria killed a total of more than 1,400 people (Barnard and Gordon, 2017; Bauer, 2019). There was a sarin attack in the Tokyo subway in 1995. Subsequent deadly chemical-weapons attacks involved chlorine gas, sulfur mustard, and assassinations with the nerve agents VX and Novichok (Coats, 2019; White House, 2018c).

The two largest Ebola outbreaks ever recorded occurred and continued during the same time frame. Both the 2014-2016 outbreak in West Africa and the ongoing 2018-2019 outbreak in the Democratic Republic of the Congo (DRC) were declared a “public health emergency of international concern” by the World Health Organization (WHO), indicating that the disease outbreak is serious, poses international public-health risks, and requires an international response (WHO, 2014, 2016a and b, 2019). In the United States, public officials, including judges in several states, had acted to curtail the spread of Ebola in this country when 11 individuals who were infected or who had been exposed to Ebola returned to the United States in 2014-2016 (CDC, 2019a). Similarly, judges in several states tried to contain the alarming outbreak of measles, which had already affected 1,164 individuals in 30 states, the largest number of cases in the United States since before the disease was declared eliminated here in 2000 (CDC, 2019b).

Even the frequency and intensity of natural disasters such as droughts, floods, tornadoes, hurricanes, and downpours are increasing (ASPR, 2019). As we wrote this article in the summer of 2019, broad swaths of the United States from California to New Jersey were hit by a record-breaking number of devastating tornadoes. At the same time, millions of people were enduring hurricanes, extreme heat, unremitting rainfall, and destructive flooding. The threats of such natural disasters, as well as pandemics, epidemics, and terrorist attacks, including cyberattacks, demand a coordinated and rapid response by many actors from dozens of governmental and nongovernmental entities.

In this article, we will focus our discussion primarily on the CBRNE and cyber threats (see Figure 1) to illustrate the risks to public health, safety, security and our way of life and the potential role of the third branch of government in preparedness, response, and resilience. For most of these threats, we cannot anticipate whether and how courts will be called upon to respond, but the risks and threats indicate the necessity for advanced planning, education, and coordination well before court decision making is required.