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DISFAVORING JUSTICE

*Raymond J. McKoski**

Alexander Hamilton and Thomas Jefferson agreed on very little. They did agree, however, that the institutional legitimacy of the courts depends on public confidence in the judiciary. Hamilton famously stated, “[c]ourts have neither Force nor Will, but merely judgment. If the public does not have confidence in courts' judgment, then the legitimacy of courts as a democratic institution is endangered.”¹ Less famously, Jefferson wrote to Supreme Court Justice William Johnson that confidence in the judiciary is not only “desirable to the judges” but also “important to the cement of the union.”²

The overarching principal that “[j]ustice must be rooted in confidence” thrives today.³ The courts, organized bar, and independent law-related organizations all recognize the importance of enhancing public trust in the judiciary.⁴ Of course, opinions vary on how to build public confidence in the judiciary. The most successful efforts are those that remedy system deficiencies that the public, the organized bar, law professors, the press,

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1. THE FEDERALIST NO. 78, at 522-23 (Alexander Hamilton) (Jacob E. Cooke ed. 1961).

2. Letter from Thomas Jefferson to William Johnson (Oct. 27, 1822), *quoted in* DONALD G. MORGAN, JUSTICE WILLIAM JOHNSON, THE FIRST DISSENTER 169 (1954).

3. *Metro. Props. Co. (FGC) v. Lannon*, [1969] 1 Q.B. 577, 598 (“Justice must be rooted in confidence, and confidence is destroyed when right-minded people go away thinking: ‘The judge was biased.’”).

4. *See Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1666 (2015) (“We have recognized the ‘vital state interest’ in safeguarding ‘public confidence in the fairness and integrity of the nation’s elected judges.’”) (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009)); *Republican Party of Minn. v. White*, 336 U.S. 765, 817-18 (2002) (Ginsburg, J., dissenting) (finding a compelling state interest in preserving public confidence in the judiciary); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 867-68 (2002) (acknowledging that the Court hesitated to overrule *Roe v. Wade* in part because a reversal of *Roe* would undermine public faith in the institutional legitimacy of the Court and the public’s acceptance of the Court’s decisions on controversial issues); Aharon Barak, *Forward: A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 16, 59 (2002) (“[A]nother essential condition for realizing the judicial role is public confidence in the judge.”); Jessica Conser, Comment, *Achievement of Judicial Effectiveness Through Limits on Judicial Independence: A Comparative Approach*, 31 N.C. J. INT’L L. & COM. REG. 255, 256 (2005) (“The paramount state objective is public confidence in the judicial system”); NATIONAL CONFERENCE ON PUBLIC TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM, NATIONAL ACTION PLAN: A GUIDE FOR STATE AND NATIONAL ORGANIZATIONS 6 (2002) (sponsored by the American Bar Association, Conference of Chief Justices, Conference of State Court Administrators; League of Women Voters, and National Center for State Courts), <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctcomm/id/20> (describing one purpose of the conference as “identifying the issues, strategies, and plans for addressing public trust and confidence in the judiciary”).

and the judiciary view as inimical to a fair and just legal system.⁵ Jefferson identified such a consensus evil when he observed that judges, may not only be tempted by bribery, but may be “misled by favor, by relationship, by a spirit of party, by a devotion to the Executive or Legislative[.]”⁶ Special treatment for favored individuals is condemned by all segments of the public as well as the legal profession.⁷ Indeed, since 1789, every federal judge has taken an oath to shun favoritism.⁸ But in spite of their oaths and the uniform condemnation of dispensing favors, judges continue to blatantly misuse their power and prestige to secure special treatment for family, friends, political supporters, former clients, and a multitude of others in court proceedings, police investigations, and other matters.⁹ Each time a judge bestows a favor, public trust suffers. The Arizona Supreme Court observed that “[n]othing threatens public confidence in the courts and the legal system more than a judge who abuses his power and exploits the prestige of his office for personal benefit.”¹⁰

5. Unfortunately, whether judges should be selected by election or appointment dominates the discussion on the best method to increase public confidence in the judicial system. *See* Roy A. Schotland, *Comment*, 61 LAW & CONTEMP. PROBS. 149, 150 (1996) (“[O]ne would hardly suspect that more sweat and ink have been spent on getting rid of judicial elections than on any other single subject in the history of American law.”). But building public trust cannot be based on proposals that implicate partisan interests. And the selection of judges has been a partisan issue since Hamilton and Jefferson chose sides in the dispute. *Compare* THE FEDERALIST NO. 78, at 529 (Alexander Hamilton) (Jacob E. Cooke ed. 1961) (opposing the popular election of judges because “there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the [C]onstitution and the laws”), *with* Letter from Thomas Jefferson to William Charles Jarvis (September 28, 1820), *in* 10 THE WRITINGS OF THOMAS JEFFERSON 161 (Paul Leicester Ford ed., 1899) (“When the legislative or executive functionaries act unconstitutionally, they are responsible to the people in their elective capacity. The exemption of the judges from that is quite dangerous enough. I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.”).

6. Letter from Thomas Jefferson to Abbe Arnoux (July 19, 1789), National Archives, Founders Online, <https://founders.archives.gov/documents/Jefferson/01-15-02-0275>.

7. *See infra* Part II.E.

8. *See* Judiciary Act of 1789, ch. 20, § 8, 1 Stat. 73, 76. The oath currently taken by federal judges proceeds:

I, _____, do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____, according to the best of my abilities and understanding, agreeably to the constitution, and laws of the United States. So help me God.

28 U.S.C.A. § 453 (2017); *see also In re Justin*, 809 N.W.2d 126, 137 (Mich. 2012) (finding that a judge’s use of power for personal benefit is inconsistent with his oath and “deleterious to the integrity and honor of the judiciary”).

9. *See infra* Part III.

10. *In re Abrams*, 257 P.3d 167, 174 (Ariz. 2011) (en banc).

Judges abuse the power and prestige of office in countless ways. For example, some judges invoke their positions and titles to solicit contributions for charities,¹¹ to advance political candidates and causes,¹² and to promote private financial interests.¹³ This article examines the most insidious form of the abuse of judicial office—the intervention of judges in adjudicatory and investigatory proceedings to affect favorable outcomes for themselves, family, and friends. The misuse of judicial power and prestige to confer this type of benefit severely damages public confidence in the courts by creating a two-tier justice system, one for “connected” people and another for everyone else.¹⁴

Inexplicably, lawyers, judges, and scholars have given scant attention to eliminating the abuse of judicial power and prestige. That oversight may be because discussing ticket-fixing, for example, is not as intellectually satisfying as joining the fray over the interplay between judicial independence and judicial accountability in the context of judicial selection methods. It may also be that judges and judicial disciplinary commissions do not recognize the serious consequences when judges abuse their office to assist “special people.” Or it may be that the legal profession does not want to end a judicial career simply because a judge calls a jail and demands the immediate release of a friend.¹⁵ But most likely, curtailing the misuse of judicial power and prestige receives little attention due to a lack of understanding why judges, who should know better, continue to violate long-standing, unambiguous ethical prohibitions against employing governmental power to further private interests.

Part II of this Article establishes that since 1924, each American Bar Association (ABA) Model Code of Judicial Conduct has specifically and expressly prohibited judges from using judicial power and prestige for anything other than official business. For example, the 2007 ABA Model Code of Judicial Conduct provides: “[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the

11. See, e.g., *In re McNulty*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 16, 2007); see also RAYMOND J. MCKOSKI, JUDGES IN STREET CLOTHES: ACTING ETHICALLY OFF-THE-BENCH 162-64 (2017) (describing instances of judges misusing the prestige of office by directly soliciting funds for charitable organizations).

12. See, e.g., *In re Kamins*, Stipulation (N.Y. Comm’n on Judicial Conduct Sept. 9, 2014) (stating that Judge Kamins “lent the prestige of his position to secure positive media coverage and endorsements” for a district attorney candidate); *In re Glickstein*, 620 So. 2d 1000, 1002-03 (Fla. 1993) (reprimanding a judge for writing a letter on official letterhead to a newspaper editor endorsing another judge for retention).

13. See, e.g., *In re Laatsch*, 727 N.W.2d 488, 491 (Wis. 2007) (reprimanding a judge for identifying himself as a judge in a Yellow Pages advertisement for his private law practice).

14. See *infra* Part II.E.

15. See, e.g., *In re Petrucell*, Public Censure (Cal. Comm’n on Judicial Performance (Aug. 27, 2015); see also *infra* Part V.B. (noting the hesitancy of judicial disciplinary commissions to permanently or temporarily remove judges from office for the misuse of judicial power and prestige).

judge or others, or allow others to do so.”¹⁶ Because every jurisdiction patterns its code of judicial conduct after one the ABA models, and each code includes an unambiguous rule barring the exploitation of the judicial office, no judge can claim ignorance of their ethical obligation. Part II further explains the public policy behind the unwavering efforts of the drafters of judicial codes to emphasize the importance of reserving judicial power and prestige for official purposes.¹⁷ Part III demonstrates the seemingly perpetual misuse of judicial power and prestige by judges to advance purely private interests.¹⁸ Part III also focuses on attempts by state judges to obtain favorable treatment in matters pending in court and matters under investigation by law enforcement officials for themselves, family, friends, co-workers, former clients, politicians, and friends of friends.¹⁹ For example, ticket-fixing by judges is the quid essential illustration of this form of corruption. Part IV investigates the following potential explanations for a judge’s misuse of office: quid pro quo arrangements; ignorance, incompetence, and stupidity; narcissism; confusion of morality roles; and the most convincing explanation, an over-developed sense of entitlement.²⁰ Part V suggests ways to reduce the misuse of judicial power and prestige, including education, meaningful discipline for offending judges, and addressing the sense of entitlement that permeates the thinking of judges who abuse their governmental positions.²¹

II. THE ABA MODEL CODE PROVISIONS GOVERNING THE MISUSE OF JUDICIAL POWER AND PRESTIGE

Judicial conduct codes specifically prohibit the misuse of judicial power and prestige because the drafters of the codes recognize that such misconduct has an especially devastating effect on the public’s faith in the impartiality and integrity of the judiciary.²² Another reason why judicial codes call special attention to the abuse of the judicial office is simply that lawyers write the codes and lawyers often suffer the adverse consequences when a judge exploits his or her authority. As a result, each of the four ABA Model Codes of Judicial Conduct repeatedly warns

16. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (Am. Bar Ass’n 2007).

17. *See infra* Part II.

18. *See infra* Part III.

19. *See id.*

20. *See infra* Part IV.

21. *See infra* Part V.

22. *See* Comparison of Jurisdictional Codes of Judicial Conduct to Model Code of Judicial Conduct, ABA Center for Professional Responsibility Policy Implementation Comm. (May 14, 2018) https://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/comparison.html.

judges to confine their use of judicial power and prestige to official duties.²³

A. *The ABA Canons of Judicial Ethics (1924)*

The ABA's first model judicial code admonished judges to avoid even the appearance that their official actions were influenced by "kinship, rank, position, or influence of any party or other person."²⁴ The 1924 Canons of Judicial Ethics (1924 Canons) further specified that a judge should not use the power or prestige of office to: (1) promote the business ventures of the judge or a third party; (2) persuade others to patronize the judge's or a third party's private business ventures; or (3) secure contributions to the judge's favorite charity.²⁵ Canon 26 advised judges to refrain from investments that might arouse suspicions that a special business relationship "warp[ed] or bias[ed] his judgment."²⁶ Similarly, judges were advised to avoid the appearance that social relationships or friendships influenced judicial conduct.²⁷ To prevent the "suspicion of being warped by political bias," the 1924 Canons cautioned judges against promoting the interests of a political party, making political speeches, endorsing candidates, and making political contributions.²⁸ Canon 30 further protected judicial integrity and impartiality from political taint by advising that a judge running for a judicial office should refrain from any conduct that "might tend to arouse reasonable suspicion that he is using the power and prestige of his judicial office to promote his candidacy or the success of his party."²⁹ Neither could a judge who maintained a private law practice "utilize his judicial position to further his professional success."³⁰ Finally, to make the prohibition crystal clear, the 1924 Canons cautioned judges not to administer the judicial office "for the purpose of advancing his personal ambitions or increasing popularity."³¹ Fifteen years after the adoption of the 1924 Canons, the ABA Committee on Professional Ethics and Grievances succinctly summarized the importance of the prohibition against the abuse of judicial power and prestige:

23. Every state's code of judicial conduct is based on one or more of the ABA Model Codes. See Dana Ann Remus, *Just Conduct: Regulating Bench-Bar Relationships*, 30 YALE L. & POL'Y REV. 123, 139 (2011).

24. CANONS OF JUDICIAL ETHICS Canon 13 (Am. Bar. Ass'n 1924).

25. *Id.* Canon 25.

26. *Id.* Canon 26.

27. *Id.* Canon 33.

28. *Id.* Canon 28.

29. *Id.* Canon 30.

30. *Id.* Canon 31.

31. *Id.* Canon 34.

[t]he judicial office is one of great power. The action of a court may vitally affect the life, the liberty, the property, and the happiness of any person subject to its jurisdiction. The judicial power should be used only as an instrument to accomplish the due administration of justice. It should never be used or seem to be used to advance either the private or political welfare of the person holding the judicial office.³²

Although by 1945 only eleven states had adopted the 1924 Canons,³³ most states eventually enacted some version of the ABA's first judicial code.³⁴ Notwithstanding that the ABA intended the Canons to serve only as aspirational guidelines, many states made the Canons mandatory and enforceable.³⁵ In those states, the Canons often provided the basis for disciplining judges who misused judicial power and prestige to advance their own or another's private interests.³⁶

B. *The ABA Code of Judicial Conduct (1972)*

The new ABA Code of Judicial Conduct (1972 Code) emphasized the importance of avoiding the misuse of judicial power and prestige in several ways. First, unlike the purely aspirational 1924 Canons, the 1972 Code was mandatory and enforceable.³⁷ Second, the 1972 Code continued many of the specific prohibitions against the exploitation of the judicial office found in the predecessor Canons. For instance, the new Code barred

32. ABA Comm. on Prof'l Ethics & Grievances Formal Op. 193 (1939).

33. *Republican Party of Minn. v. White* 536 U.S.765, 786 (2002) (quoting JOHN P. MACKENZIE, *THE APPEARANCE OF JUSTICE* 191 (1974)).

34. CODE OF JUDICIAL CONDUCT Preface (Am. Bar Ass'n 1972) ("Those [1924] Canons . . . have been adopted in most states."); see also Katherine A. Moerke, *Must More Speech be the Solution to Harmful Speech? Judicial Elections After Republican Party of Minnesota v. White*, 48 S.D. L. REV. 262, 266 (2003) ("Forty-three states adopted some version of the 1924 Canons.").

35. See Jeffrey M. Shaman, *The Impartial Judge: Detachment or Passion?*, 45 DEPAUL L. REV. 605, 606 (1996) (stating that although the 1924 Canons were adopted by a number of states, they were seldom enforced).

36. See, e.g., *Mahoning County Bar Ass'n v. Franco*, 151 N.E. 17, 30-31 (Ohio 1958) (disciplining a judge for using the power and prestige of judicial office to promote his own candidacy for prosecuting attorney in violation of Canon 30); *In re Vasser*, 382 A.2d 1114, 1116-17 (N.J. 1978) (finding that using judicial stationery to promote a private law practice violated Canon 31); *In re Jenkins*, 419 P.2d 618, 621 (Ore. 1966) (en banc) (finding that a judge violated Canons 13 and 29 by using his office to benefit himself and his wife); *Cincinnati Bar Ass'n v. Heitzler*, 291 N.E.2d 477, 484-85 (Ohio 1972) (disciplining a judge in part for allowing a corporation to use the judge's position as a board member to promote its business); *Bartlett v. Enea*, 359 N.Y.S.2d 364, 366-67 (App. Div. 1974) (removing a judge for arranging the dismissal of traffic tickets issued to his daughter's father-in-law and others in violation of Canons 4, 13, and 34).

37. CODE OF JUDICIAL CONDUCT Preface (Am. Bar Ass'n 1972) ("The canons and text establish mandatory standards unless otherwise indicated.").

a judge from soliciting funds for educational, religious, charitable, fraternal, and civic organizations, or permitting the use of his judicial prestige for such purpose.³⁸ Similarly, Canon 5C(1) prohibited a judge from exploiting his prestige in business and financial dealings.³⁹ Third, and most importantly, the drafters of the 1972 Code designed Canon 2B to broadly address the problem of judges dispensing or seeking favorable treatment for family and friends. Canon 2B provided that a judge should not “permit family, social, or other relationships” to influence the exercise of judicial power.⁴⁰ Canon 2B also protected against the misuse of judicial prestige by unambiguously⁴¹ stating “[a judge] should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him.”⁴² The drafters of the 1972 Code believed that this latter provision would prevent the judicial office from being “prostituted” to advance private interests.⁴³

Courts applied Canon 2B of the 1972 Code to a wide array of judicial misconduct. Pennsylvania disciplined a judge for his attempt to dissuade a district attorney from instituting criminal charges against two of the judge’s friends.⁴⁴ The Washington Supreme Court relied on Canon 2B in disciplining a judge for advising a supervising probation officer that if the probation officer wanted the judge’s continued support he must promote the judge’s girlfriend.⁴⁵ Judicial disciplinary bodies also invoked Canon 2B in cases in which judges advised police officers of their judicial status to avoid traffic citations,⁴⁶ in other “run-of-the-mill” ticket-fixing cases,⁴⁷ and in less blatantly improper contacts with other judges before whom a relative was scheduled to appear.⁴⁸ In *In re Klein*, the New York

38. *Id.* Canon 5B(2) (“A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose . . .”).

39. *Id.* Canon 5C(1) (“A judge should refrain from financial and business dealings that tend to . . . exploit his judicial position.”).

40. *Id.* Canon 2B.

41. *Dixon v. State Comm’n on Judicial Conduct*, 393 N.E.2d 441, 442 (N.Y. Ct. App. 1979) (Jasen, J., dissenting) (describing the demands of Canon 2B as “unambiguous”).

42. CODE OF JUDICIAL CONDUCT Canon 2B (Am. Bar Ass’n 1972). While Canon 2B provided that a judge should not lend judicial prestige to advance the interests of *others*, *others* included the judge. The 1990 ABA Model Code corrected the inartful wording. *See infra* Part II.C.

43. E. WAYNE THODE, REPORTER’S NOTES TO CODE OF JUDICIAL CONDUCT 49 (1973).

44. *Judicial Inquiry and Review Bd. v. Fink*, 532 A.2d 358, 365, 373 (Pa. 1987).

45. *In re Deming*, 736 P.2d 639, 654 (Wash. 1987) (en banc).

46. *See, e.g., In re Collester*, 599 A.2d 1275, 1277-78 (N.J. 1992).

47. *See, e.g., In re Inquiry Concerning a J. No. 1035*, 361 S.E.2d 157, 158 (Ga. 1987); *In re Miller*, 572 P.2d 896, 896 (Kan. 1977).

48. *In re Harned*, 357 N.W.2d 300, 301-02 (Iowa 1984); *see also* Fla. Judicial Ethics Advisory Comm. Op. 81-8 (1981) (advising that a judge may not use judicial stationery to write letters of complaint to automobile dealers and utility companies).

Commission on Judicial Conduct found that a judge violated Canon 2 by introducing a friend to other judges for the purpose of increasing the friend's chance of obtaining court-appointed receiverships.⁴⁹

C. *The Model Code of Judicial Conduct (1990)*

With a few minor changes, the 1990 ABA Model Code of Judicial Conduct (1990 Code) retained the substance of Canon 2B of the 1972 Code.⁵⁰ Canon 2B of the 1990 Code introduced gender neutral language, replaced “should not lend,” with “shall not lend,” and clarified that judges were prohibited from lending prestige to their own private interests as well as to private interests of third parties.⁵¹ It also added “political” associations to the list of relationships that a judge should not let influence judicial decisions. Thus, Canon 2B of the 1990 Code provided in pertinent part:

[a] judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.⁵²

Likely because of the inexplicable frequency with which judges violated old Canon 2B by intervening on behalf of family and friends in legal matters, the drafting committee of the 1990 Code found it necessary to illustrate several common ways in which judges misuse the power and prestige of office. First, the Commentary to Canon 2 of the 1990 Code stated the obvious: “[i]t would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by police.”⁵³ Moving to civil cases, the Commentary advised, “a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.”⁵⁴ The widespread use of court stationery to lend the prestige of office to a judge's non-judicial endeavors⁵⁵ explains the Code's warning, “judicial

49. *In re Klein*, Determination (N.Y. Comm'n on Judicial Conduct July 6, 1981).

50. MODEL CODE OF JUDICIAL CONDUCT Canon 2B (Am. Bar Ass'n 1990).

51. *Id.*

52. *Id.*

53. MODEL CODE OF JUDICIAL CONDUCT Canon 2C cmt. (Am. Bar Ass'n 1990).

54. *Id.*

55. *See, e.g., In re Peeples*, 374 S.E.2d 674, 677 (S.C. 1988) (finding that a judge misused judicial prestige by sending a letter on judicial stationery demanding that the recipient make \$300 monthly payments to the judge's friend); *In re Tyler*, Determination (N.Y. Comm'n on Judicial Conduct May 1,

letterhead must not be used for conducting a judge's personal business."⁵⁶

D. The Model Code of Judicial Conduct (2007)

Canon 2B of the 1990 Code provided that "[a] judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment."⁵⁷ Rule 2.4 of the 2007 ABA Model Code of Judicial Conduct (2007 Code) adopts this provision and adds "financial" to the list of affiliations that judges must not let influence adjudicatory or administrative decisions.⁵⁸ The Rule also broadens the old prohibition to include family, social, political, financial, or other *interests* or relationships.⁵⁹

Rule 1.3 of the 2007 Code addresses the misuse of judicial prestige by providing that "[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."⁶⁰ Rule 1.3 reflects several changes from similar provisions in Canon 2B of the 1972 and 1990 Codes. First, the 2007 Code substitutes the word "personal" for the word "private" in describing the interests covered by the rule.⁶¹ The substitution was made for purely "stylistic" reasons with no change in meaning intended.⁶² Second, the current Code prohibits not only the use of prestige to advance "personal" interests but also prohibits the use of prestige to advance "economic" interests.⁶³ While it is commonly understood that both "personal interests" and "private interests" encompass economic interests, the drafters of the 2007 Code wanted to make it clear that Rule 1.3 prohibits the use of judicial prestige to promote or augment financial, investment, and business endeavors.⁶⁴ Neither substituting "personal" for "private"

1989) (disciplining a judge in part for using court stationery to complain about work performed on her father's apartment building and using court envelopes for letters advising her father's tenants that the building's water supply was contaminated); *In re Muszynski*, 471 So. 2d 1284, 1284 (Fla. 1985) (disciplining a judge for sending a letter on judicial stationery directing that a police officer attend court to explain his contemptuous conduct in failing to lower the volume of his police radio while the judge was eating lunch); see also N.Y. Advisory Comm. on Judicial Ethics, Op. 88-02 (1988) (advising a judge not to use her official letterhead to assist a son or daughter applying for a scholarship).

56. MODEL CODE OF JUDICIAL CONDUCT Canon 2C cmt. (1990).

57. *Id.* Canon 2B.

58. MODEL CODE OF JUDICIAL CONDUCT R. 2.4 (Am. Bar Ass'n 2007). Financial relationships were included in the 1990 Code's catch-all prohibition against allowing "other interests" to influence judicial acts. See CHARLES GEYH & W. WILLIAM HODES, REPORTERS' NOTES TO THE MODEL CODE OF JUDICIAL CONDUCT 31 (2009).

59. MODEL CODE OF JUDICIAL CONDUCT R. 2.4 (Am. Bar Ass'n 2007).

60. *Id.* R. 1.3.

61. *Id.*

62. GEYH & HODES, *supra* note 58, at 23.

63. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (Am. Bar Ass'n 2007).

64. See GEYH & HODES, *supra* note 58, at 23.

interests or specifically mentioning “economic” interests in Rule 1.3 changes the meaning or application of Canon 2B of the 1972 or Canon 2B of the 1990 Code.⁶⁵

Third, the 2007 Code slightly modifies the provision in Canon 2B of the prior two ABA Model Codes directing that a judge shall not “convey or permit others to convey the impression that they are in a special position to influence the judge” and moved it to Rule 2.4(C).⁶⁶ No change in meaning was intended.

Fourth, Rule 1.3 advises judges that they cannot “allow others” to abuse the judge’s prestige.⁶⁷ The Joint Commission to Evaluate the Model Code of Judicial Conduct was concerned that, without such an admonishment, judges might “look the other way” if a friend or family member invoked the judge’s name when, for example, seeking to avoid a traffic ticket or when applying for a bank loan.⁶⁸ Rule 1.3 does not explain how a judge is to prevent a third person from attempting to exploit the judge’s status. Properly understood, the Rule requires a judge to (1) advise an offending third party of the judge’s duty under Rule 1.3 not to allow others to invoke the judge’s prestige and (2) ask the person to stop using the judge’s name.⁶⁹

The fifth change to Rule 1.3 has the most potential to affect the application of the long-standing prohibition against the misuse of judicial prestige. The 1972 and 1990 Codes both stated that a judge must not “lend” the prestige of office to further private interests.⁷⁰ The 2007 Code substitutes the word “abuse” for the word “lend” creating the rule that “[a] judge shall not abuse the prestige of judicial office.”⁷¹ *The Reporters’ Notes to the Model Code of Judicial Conduct* explains that the change was made because of the confusion created by the term “lend.”⁷² The Reporters relate that several judges had declined to write recommendation letters for their law clerks because, under the previous ABA Model Codes, to do so would “lend” the prestige of their judicial offices to the clerk’s

65. *See id.*

66. Compare MODEL CODE OF JUDICIAL CONDUCT R. 2.4(C) (Am. Bar Ass’n 2007) (“A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge”), with MODEL CODE OF JUDICIAL CONDUCT Canon 2B (Am. Bar Ass’n 1990) (“[N]or shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.”).

67. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (Am. Bar. Ass’n 2007).

68. *See* GEYH & HODES, *supra* note 58, at 23.

69. *Cf. id.* at 98 (suggesting that when a family member of a judge is running for public office, the judge must take reasonable steps to prevent family members from indicating that the judge endorses the family member’s candidacy).

70. CODE OF JUDICIAL CONDUCT Canon 2B (Am. Bar Ass’n 1972); MODEL CODE OF JUDICIAL CONDUCT CANON 2B (Am. Bar Ass’n 1990).

71. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (Am. Bar Ass’n 2007).

72. GEYH & HODES, *supra* note 58, at 22.

job search.⁷³ The judges' concern is surprising since the Commentary to the 1990 Model Code specifically provided that a judge may write a letter of recommendation or serve as a reference as long as the recommendation or reference was based on the judge's personal knowledge.⁷⁴ In fact, the 1990 Code added this commentary specifically to address the situation where a judge receives a request to write a reference for a clerk or other court employee.⁷⁵

As a second illustration of the confusion purportedly created by the word "lend," the Reporters explain that by disclosing their judicial status on book jackets, judges might "lend" the prestige of judicial office to the sale of books that they author.⁷⁶ Again, this illustration is surprising because no ethics committee interpreting the 1972 or 1990 Code had found an impropriety in identifying a judge as the author of a book. Indeed, judicial ethics advisory committees concluded just the opposite—mentioning an author's judicial status on a book cover or book jacket did not lend the prestige of office to advance private interests.⁷⁷

The drafters of Rule 1.3 assumed that changing the standard from lending prestige to abusing prestige would cabin the rule to serious offenses and exclude innocent or inconsequential uses of judicial prestige in the everyday affairs of judges.⁷⁸ Several states considered the change significant, as well as unwise, and refused to adopt the ABA's suggestion to replace "lend" with "abuse."⁷⁹ But as used in judicial codes, the terms lend and abuse are, for all practical purposes, interchangeable. Lend, as used in Rule 1.3 means, "to allow the temporary use of (something)."⁸⁰

73. *Id.*

74. MODEL CODE OF JUDICIAL CONDUCT Canon 2B cmt. (Am. Bar Ass'n 1990).

75. LISA L. MILORD, THE DEVELOPMENT OF THE ABA JUDICIAL CODE 14 (1992).

76. *See* GEYH & HODES, *supra* note 58, at 23.

77. *See, e.g.*, Fla. Judicial Ethics Advisory Comm. Op. 82-05 (1985) (advising that the title page of a book may describe the author's judicial position and experience); Ark. Judicial Ethics Advisory Comm. Op. 2005-06 (2005) (permitting a judge's robed photograph to appear on a book jacket). Judges routinely identify their judicial office on the cover or jacket of books that they author. *See, e.g.*, SANDRA DAY O'CONNOR, CHICO (2005) (describing the author as the "first woman Supreme Court Justice" on the book's front cover); RUTH BADER GINSBURG, MY OWN WORDS (2016) (exhibiting a photograph of Justice Ginsburg in her robe in a courtroom on the front cover and including a biographical sketch of Justice Ginsburg in the "About the Authors" section of the book); RICHARD A. POSNER, FRONTIERS OF LEGAL THEORY (2001) (identifying Richard A. Posner as "Judge, U.S. Court of Appeals for the Seventh Circuit," on the book jacket).

78. *Cf.* OHIO CODE OF JUDICIAL CONDUCT R. 1.3 (2017), Comparison to Ohio Code of Judicial Conduct (2009) (indicating that the "abuse" standard may be less restrictive than the "lend" standard).

79. *See, e.g.*, KAN. CODE OF JUDICIAL CONDUCT R. 1.3 (2009); GA. CODE OF JUDICIAL CONDUCT R. 1.3 (2016).

80. Ohio Board of Comm'rs on Grievances and Discipline, Op. 2011-3 (2011) (quoting BLACK'S LAW DICTIONARY 985 (9th ed. 2009)). Rule 1.3 of the Ohio Code of Judicial Conduct is identical to Rule 1.3 of the 2007 ABA Model Code. *See* Ohio Board of Commissioners on Grievances and Discipline, Op. 2011-3 (2011).

Abuse means, “to use ‘improperly’ or misuse.”⁸¹ Thus, a judge violated the “lend” standard of the 1972 and 1990 Model Codes whenever he or she temporarily used judicial prestige to advance private interests. That temporary usurpation of prestige to further a private interest constituted an “improper” use of judicial prestige under Canon 2B of both the 1972 and 1990 Codes. Indeed, the Commentary to Canon 2B of the 1990 Code indicated that the Canon prohibited the “improper use of the prestige of office” and cautioned against the “possible abuse of the prestige of office.”⁸² Under the “abuse” standard of the 2007 Code, a judge violates Rule 1.3 by improperly using judicial prestige to advance private or personal interests. Applying either the term lend or the term abuse, the result is the same. Simply put, both terms prohibit the “improper use” or “misuse” of judicial prestige. Two Ohio judicial ethics advisory opinions illustrate the interchangeability of the terms “lend” and “abuse” in the context of judicial code provisions governing judicial prestige.

In Opinion 91-29, the Ohio Board of Commissioners on Grievances and Discipline considered whether a judge may publicly endorse a lawyer running for an elective office in a bar association.⁸³ In 1991, when the opinion was issued, Canon 2B of the Ohio Code of Judicial Conduct provided that a judge shall not *lend* the prestige of office to advance private interests.⁸⁴ In Opinion 91-29, the Ohio Board of Commissioners determined that publicly supporting a bar candidate improperly lends the prestige of judicial office to the lawyer’s candidacy and therefore violated Ohio Canon 2B.⁸⁵ Twenty years later, the Ohio Board of Commissioners reexamined the question in light of the amendment to the state’s judicial code replacing the prohibition against “lending” judicial prestige with the prohibition against “abusing” judicial prestige.⁸⁶ The Board of Commissioners reaffirmed its earlier opinion reasoning that because endorsing a bar candidate was an improper use of judicial prestige, an endorsement violated both the “lend” and “abuse” standards.⁸⁷ As demonstrated by the two Ohio ethics opinions, the change in terminology from lend to abuse will have negligible impact because both terms mean no more or no less than improper use of judicial power or prestige.

Comment 1 to Rule 1.3 of the 2007 Code repeats the example appearing in the Commentary to Canon 2B of the 1990 Code stating that

81. Ohio Bd. of Comm’rs on Grievances and Discipline, Op. 2011-3 (2011) (quoting BLACK’S LAW DICTIONARY 10 (9th ed. 2009) and the OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/822> (online version Sept. 2011)).

82. MODEL CODE OF JUDICIAL CONDUCT Canon 2B cmt. (Am. Bar Ass’n 1990).

83. Ohio Bd of Comm’rs on Grievances and Discipline, Op. 91-29 (1991).

84. OHIO CODE OF JUDICIAL CONDUCT Canon 2B (1991) (emphasis added).

85. Ohio Bd. of Comm’rs on Grievances and Discipline, Op. 91-29 (1991).

86. Ohio Bd of Comm’rs on Grievances and Discipline, Op. 11- 3 (2011).

87. *Id.*

it is improper for a judge to allude to his or her judicial position to gain favorable treatment during a traffic stop.⁸⁸ For some unexplained reason, the Comments to Rule 1.3 delete the admonishment found in the Commentary to old Canon 2B that a judge should refrain from interfering on behalf of family members in civil lawsuits. Whatever persuaded the Joint Commission to omit that part of the 1990 Commentary, it certainly was not that judges had ceased misusing judicial prestige to influence private civil matters.⁸⁹ Comment 1 to Rule 1.3 also refines the prohibition against using court stationery “for conducting a judge’s personal business” found in the 1990 Code.⁹⁰ The drafters of the 2007 Code believed that the 1990 Code provision was too broad and that a judge could send a letter to a former college roommate, for example, discussing the good old days without misusing official prestige.⁹¹ Thus, Comment 1 to Rule 1.3 only bars the use of “judicial letterhead to *gain an advantage*” in conducting the judge’s personal business.⁹²

E. Bestowing Judicial Favors in Investigatory and Adjudicative Matters Destroys Public Confidence in the Judiciary

Why have the authors of judicial codes made such a concerted effort to prevent judges from using their official positions to influence the outcomes of even inconsequential matters like parking tickets? Why, in light of the never-ending litany of serious legal, moral, and ethical misdeeds of judges,⁹³ has the California Commission on Judicial Performance labeled “ticket-fixing” as “the quintessential bad act of a judge”?⁹⁴

The public grants the judiciary enormous power and prestige⁹⁵ in return for the promise that judges will impartially employ that power and

88. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 cmt. 1 (Am. Bar Ass’n 2007).

89. See, e.g., *In re Stevens*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 23, 1998) (disciplining a judge for using “the prestige of his office to advance his son’s interest in a private dispute”); Private Admonishment of a Justice of the Peace (Tex. State Comm’n on Judicial Conduct June 8, 2005) (finding that a judge misused official prestige in a private lawsuit when he used his title in a pre-suit demand letter and in pleadings) <http://www.scjc.texas.gov/disciplinary-actions/private-sanctions/fy-2005/priv-adm-of-jp-060805>.

90. MODEL CODE OF JUDICIAL CONDUCT Canon 2B cmt. (Am. Bar Ass’n 1990).

91. GEYH & HODES, *supra* note 58, at 23.

92. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 cmt. 1 (2007).

93. See Geoffrey Miller, *Bad Judges*, 83 TEX. L. REV. 431, 432-55 (2004) (providing hundreds of examples of judicial misconduct).

94. *In re Stanford*, Order of Removal, (Cal. Comm’n on Judicial Performance Jan. 11, 2012).

95. “Empirical studies have verified the relatively high level of prestige accorded to judges in our society, a status that has remained quite stable over the last seventy-five years.” Linz Audain, *The Economics of Law-Related Labor V: Judicial Careers, Judicial Selection, and an Agency Cost Model of the Judicial Function*, 42 AM. U. L. REV. 115, 120 (1992).

prestige to advance the legitimate interests of judicial branch of government.⁹⁶ Judges covenant to not use their public offices to advance private interests or to benefit favored individuals.⁹⁷ Thus, the personal integrity of the judiciary is diminished whenever a judge abuses the public's trust to obtain an advantage in his or her private life. For example, a judge who uses judicial letterhead to resolve a dispute with a telephone company⁹⁸ or to seek a waiver of late fees from an insurance agency,⁹⁹ causes the public to question the judge's character and integrity.¹⁰⁰ That is bad enough. However, even more detrimental to the judicial system is a judge who dispenses or seeks a favor for himself or another in an investigatory or adjudicatory proceeding. A judge who sends a letter on judicial stationery to an automobile dealer to complain about perceived defects in his automobile demonstrates a lack of character and integrity.¹⁰¹ A judge who adjusts the disposition of a traffic ticket for a "special" litigant demonstrates not only a lack of character and integrity, but also corrupts the judicial system.

Fixing cases creates a "two-track system of justice;"¹⁰² one for average, unconnected citizens and another for connected, influential people.¹⁰³ The litigants entitled to special treatment include judges; judges' families, friends, and acquaintances; court employees; politicians; and anyone else who a judge anoints as above the law.¹⁰⁴ The unequal and discriminatory application of the law allows select individuals to evade the rule of law. Additionally, granting special treatment to certain individuals is directly contrary to the judicial oath that requires judges to "administer justice without respect to persons."¹⁰⁵ When personal relationships trump the law, those held subject to the law become inferior, second-class citizens,

96. See Raymond J. McKoski, *Charitable Fund-Raising by Judges: The Give and Take of the 2007 ABA Model Code of Judicial Conduct*, 2008 MICH. ST. L. REV. 769, 779-80.

97. See *id.* at 780 ("The misuse [of office] violates the covenant between the judge and the people that the power and prestige bestowed upon the judicial office may be invoked by the temporary holder of that office only to advance the legitimate interests of the judicial branch of government.").

98. *In re Horowitz*, Determination, (N.Y. Comm'n on Judicial Conduct July 16, 2007).

99. *In re Gallagher*, 951 P.2d 705, 710-712 (Ore. 1998).

100. See STEVEN LUBET, *BEYOND REPROACH: ETHICAL RESTRICTIONS ON THE EXTRAJUDICIAL ACTIVITIES OF STATE AND FEDERAL JUDGES* 7 (Am Judicature Soc'y 1984).

101. See Fla. Judicial Ethics Advisory Comm. Op. 81-08 (1981).

102. *In re Stanford*, *supra*, note 94.

103. N.Y. STATE COMMISSION ON JUDICIAL CONDUCT, *TICKET-FIXING: THE ASSERTION OF INFLUENCE IN TRAFFIC CASES*, INTERIM REPORT 16-17 (1977).

104. See *infra* notes 109-142 and accompanying text.

105. See, e.g., 28 U.S.C. 453 (1990); *In re Justin*, 809 N.W.2d 126, 137 (Mich. 2012) ("Respondent's intentional abuses of judicial power to benefit himself, his spouse, and his staff are inconsistent with his oath of office and deleterious to the integrity and honor of the judiciary.").

“in other words chumps.”¹⁰⁶ A two-tiered justice system breeds disrespect for the courts even among those who receive favors.¹⁰⁷ Hostility arises when a litigant accustomed to receiving special treatment faces a judge who faithfully follows the law. As described by a chief judge testifying in a disciplinary proceeding against a judge supervised by the chief judge:

These people (who had received preferential treatment from the offending judge) were indignant with us when we imposed a sentence, because [the offending judge] didn't do this. Why are you doing this to me? Why are you sentencing me? Because [the offending judge] didn't do this. It was a different kind of justice in that courtroom than the justice that was received by or administered by the other three judges. And, yes, there were repercussions; there were people that were extremely angry, people who questioned our authority for doing what we were doing.¹⁰⁸

With good reason, the authors of judicial conduct codes unmistakably and emphatically prohibit the use of judicial power and prestige to advance private interests. Nevertheless, too many judges ignore the prohibition and routinely exploit their official position to benefit themselves and others. Part III demonstrates the pervasiveness of the problem.

III. THE PERVASIVE MISUSE OF JUDICIAL POWER AND PRESTIGE

Judges misuse their official power and prestige to benefit individuals with varying degrees of relationship to the judge. Of course, top on the list of beneficiaries are the judges themselves,¹⁰⁹ followed closely by family members including spouses,¹¹⁰ sons,¹¹¹ daughters,¹¹² brothers,¹¹³

106. December Green, *Corruption in Brazil*, in *POLITICAL CORRUPTION IN COMPARATIVE PERSPECTIVE: SOURCES, STATUS AND PROSPECTS* 50 (Charles Funderbuck ed., 2012).

107. *TICKET-FIXING*, *supra* note 103, at 17.

108. *Justin*, 809 N.W.2d at 138 n.48.

109. *See, e.g.*, *Spruance v. Comm'n on Judicial Qualifications*, 532 P.2d 1209, 1220 (Cal. 1975).

110. *See, e.g.*, *In re Pomrenke*, Opinion (Judicial Inquiry and Review Comm'n of Va. Nov. 27, 2017) (removing a judge for attempting to influence witnesses in his wife's corruption trial); *In re Magill*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 6, 2004); *Justin*, 809 N.W.2d at 136.

111. *See, e.g.*, *In re Sullivan*, Determination (N.Y. Comm'n on Judicial Conduct July 14, 2015); *In re Ramirez*, 135 P.3d 230, 233 (N.M. 2006); *In re Nesbitt*, Determination (N.Y. Comm'n on Judicial Conduct June 21, 2002); *Comm'n on Judicial Performance v. Brown*, 761 So. 2d 182, 183 (Miss. 2000); *In re Edwards*, 492 N.E.2d 124, 124 (N.Y. Ct. App. 1986).

112. *See, e.g.*, *In re Hamed*, 357 N.W.2d 300, 300 (Iowa 1984); *In re Pastrick*, Determination (N.Y. Comm'n on Judicial Conduct Aug. 17, 2005).

113. *See, e.g.*, *In re Snow's Case*, 674 A.2d 573, 574 (N.H. 1996).

brothers-in-law,¹¹⁴ sisters,¹¹⁵ nephews,¹¹⁶ nieces,¹¹⁷ grandsons,¹¹⁸ step-grandsons,¹¹⁹ granddaughters,¹²⁰ and spouses' first cousins.¹²¹ Significant others, such as girlfriends,¹²² and godfathers¹²³ also receive assistance. Judges help co-workers such as assistant public defenders,¹²⁴ other judges,¹²⁵ interns,¹²⁶ and court staff,¹²⁷ former clients,¹²⁸ patrons of the judge's side business;¹²⁹ state and county officials;¹³⁰ pastors;¹³¹ politicians;¹³² golfing-buddies;¹³³ athletes;¹³⁴ and political supporters.¹³⁵

114. *See, e.g., In re Kadur*, Determination (N.Y. Comm'n on Judicial Conduct May 28, 2003).

115. *See, e.g., Public Reprimand of Smith* (N.C. Judicial Standards Comm'n Apr. 1, 2009).

116. *See, e.g., id.; In re Hawthorne*, Public Reprimand (Tex. Comm'n on Judicial Conduct Nov. 9, 2017) (reprimanding Judge Hawthorne for requesting another judge to withdraw an arrest warrant issued for Judge Hawthorne's nephew); *In re Marcuzzo*, 770 N.W.2d 591, 594 (Neb. 2009).

117. *See, e.g., In re Burgess*, 85 So. 3d 604 (La. 2012) (censuring a judge for intervening on behalf of his niece who was seeking a protective order against her husband); *In re Parro*, 847 So. 2d 1178, 1181 (La. 2003).

118. *See, e.g., In re Leonard*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 26, 2002).

119. *See, e.g., In re LaBombard*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 12, 2007); *In re Lorona*, 875 P.2d 795, 799 (Ariz. 1994).

120. *See, e.g., In re Chase*, Determination (N.Y. Comm'n on Judicial Conduct June 10, 1997).

121. *In re Wait*, Determination (N.Y. Comm'n on Judicial Conduct Aug. 5, 1985).

122. *See, e.g., In re Deming*, 736 P.2d 639, 653-54 (Wash. 1987) (en banc).

123. *See, e.g., In re Platt*, (Cal. Comm'n on Judicial Performance Aug. 5, 2002).

124. *See, e.g., Disciplinary Counsel v. Oldfield*, 16 N.E.3d 581, 583-84 (Ohio 2014).

125. *See, e.g., In re Bartlett v. Enea*, 359 N.Y.S.2d 364, 365-66 (App. Div. 1974) (removing a judge in part for intervening in a case on behalf of a magistrate's friend at the request of the magistrate).

126. *See, e.g., In re Simpson*, 902 N.W.2d 383, 398, 405-06 (Mich. 2017) (suspending a judge for interfering with the investigation and prosecution of the judge's intern).

127. *See, e.g., In re Justin*, 809 N.W.2d 126, 136 (Mich. 2012) (removing a judge for dismissing traffic citations issued to the judge, his wife, and his staff).

128. *See, e.g., In re Santini*, 597 A.2d 1388, 1391-92 (N.J. 1991) (disciplining a judge for contacting a zoning officer, court clerk, and judge on behalf of a former client).

129. *See, e.g., In re Freeman*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 8, 1991) (describing a judge's effort to assist a customer of the judge's sporting goods store).

130. *See, e.g., In re Fuselier*, 837 So. 2d 1257, 1268-1271 (La. 2003) (intervening in traffic matters at the request of the mayor, state representative, and police chief); *In re Howard*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 22, 1999) (admonishing a judge for contacting another judge on behalf of the son of a town employee).

131. *See, e.g., In re Stanford*, Order of Removal (Cal. Comm'n on Judicial Performance Jan. 11, 2012).

132. *See, e.g., Fuselier*, 837 So. 2d at 1268-1271.

133. *See Kelly St. John, San Jose: Ticket-Fixing Judge Sentenced—Community Service, House Arrest*, SAN FRANCISCO CHRONICLE (July 27, 2004) <http://www.sfgate.com/bayarea/article/SAN-JOSE-Ticket-fixing-judge-sentenced-2704974.php>.

134. *See id.*

135. *See, e.g., Fuselier*, 837 So. 2d at 1269.

While judges misuse prestige to benefit friends¹³⁶ and acquaintances,¹³⁷ there is no prerequisite that a judge actually know the person receiving favorable treatment. Accordingly, judges have put their careers on the line for the son of a family friend,¹³⁸ a friend of the judge's friend's son,¹³⁹ a family member of an acquaintance,¹⁴⁰ a friend of a friend,¹⁴¹ and a defendant whose mother knew the judge's brother-in-law's sister.¹⁴² Some judges have claimed that they play no favorites and accept requests for favors from everyone and treat all requests "equally."¹⁴³

Similarly, the types of adjudicatory and investigatory matters that judges seek to influence have no limits. Judges use their official power and prestige to personally, or through third parties, dismiss criminal and traffic charges;¹⁴⁴ reduce charges;¹⁴⁵ continue court proceedings;¹⁴⁶ obtain the release of persons in custody;¹⁴⁷ reduce fine and restitution amounts;¹⁴⁸ withdraw arrest warrants;¹⁴⁹ release defendants on bond;¹⁵⁰ prevent arrests;¹⁵¹ reinstate licenses;¹⁵² convince tenants to vacate their homes;¹⁵³ collect debts;¹⁵⁴ forestall the execution of search warrants;¹⁵⁵ enter a park without paying the required fee;¹⁵⁶ bypass security

136. *See, e.g., In re Parker*, Letter of Removal from Office (Ark. Judicial Discipline and Disability Comm'n Dec. 31, 2016) (finding that a judge "improperly performed judicial acts to the benefit of many defendants who were either friends or former clients . . .").

137. *See, e.g., In re Skinner*, 690 N.E.2d 484 (N.Y. Ct. App. 1997) (dismissing charges against a "social acquaintance" in an ex parte proceeding).

138. *See, e.g., In re Kiley*, 546 N.E.2d 916, 917 (N.Y. Ct. App. 1989).

139. *See, e.g., id.*

140. *See, e.g., In re Platt*, (Cal. Comm'n on Judicial Performance Aug. 5, 2002).

141. *See, e.g., In re Kolbert*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 26, 2002).

142. *See, e.g., In re Smith*, Determination (N.Y. Comm'n on Judicial Conduct June 19, 2013).

143. *See* TICKET-FIXING, *supra* note 103, at 13.

144. *Id.* at 2; *see also In re McGowan*, Stipulation (N.Y. Comm'n on Judicial Conduct July 15, 2008).

145. TICKET-FIXING, *supra* note 103, at 2; *see also In re Schurr*, Determination (N.Y. Comm'n on Judicial Conduct Mar. 23, 2009).

146. *See, e.g., In re Kutribis*, 99 CC 3, Order (Ill. Cts. Comm'n Aug. 29, 2002).

147. *See, e.g., In re Petrucell* (Cal. Comm'n on Judicial Performance Aug. 27, 2015); *In re Cowart*, 71 So. 3d 590, 598 (Miss. 2011),

148. TICKET-FIXING, *supra* note 103, at 2; *see also In re Keefe*, Complaint (N.Y. Comm'n on Judicial Conduct Aug. 15, 2016).

149. *See, e.g., In re VanBuskirk*, Determination (N.Y. Comm'n on Judicial Conduct May 23, 1989).

150. *See, e.g., In re Labombard*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 12, 2007).

151. *See, e.g., In re Kolbert*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 26, 2002).

152. *See, e.g., In re Thompson*, 169 So. 3d 857, 863 (Miss. 2015) (removing judge in part for attempting to convince the sheriff to lift the suspension on a bail bondsman's license).

153. *See, e.g., In re Merrill*, Determination (N.Y. Comm'n on Judicial Conduct May 14, 2007).

154. *See, e.g., In re Josey*, 292 S.E.2d 59, 60 (Ga. 1982) (suspending a judge for using the prestige of judicial office to collect a debt).

155. *See, e.g., In re Hensley*, Determination (N.Y. Comm'n on Judicial Conduct June 22, 2012); *In re Leonard*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 26, 2002).

156. *See, e.g., In re Pennington*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 3, 2003).

procedures;¹⁵⁷ influence school officials,¹⁵⁸ insurance companies,¹⁵⁹ medical doctors,¹⁶⁰ travel agents,¹⁶¹ banks,¹⁶² and telephone companies;¹⁶³ influence judges handling family law matters¹⁶⁴ and dog at large cases;¹⁶⁵ secure withdrawal of an order of protection;¹⁶⁶ and obtain charitable¹⁶⁷ and political¹⁶⁸ contributions.

In most areas of judicial conduct, judges learn from their colleagues' mistakes and tailor their behavior to comport with ethical rules and the pronouncements of judicial disciplinary commissions. But a segment of the judiciary appears unable or unwilling to abide by the unequivocal rule uniformly enforced by disciplinary commissions, that the abuse of the judicial office constitutes a serious ethical offense. The history of the misuse of judicial power and prestige by New York judges in adjudicative and investigatory matters illustrates the point.

A. *The Misuse of Judicial Power and Prestige: A Case Study*

In 1977, the New York State Commission on Judicial Conduct issued a report, "*Ticket-Fixing: The Assertion of Influence in Traffic Cases*," detailing judicial ticket-fixing practices in the state.¹⁶⁹ The New York Commission's investigation disclosed a systemic and widespread misuse of judicial power and prestige in traffic matters. More than 250 judges in thirty-eight of New York's sixty-two counties dispensed favors, requested favors from other judges, or both.¹⁷⁰ These were not isolated incidents.

157. See, e.g., *In re Moskos*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 3, 2016).

158. See, e.g., *In re Mosley*, 102 P.3d 555, 559 (Nev. 2004) (disciplining a judge for sending a letter on court stationery to a school principal requesting that the mother of the judge's son be barred from visiting the son at school).

159. See, e.g., *In re Gallagher*, 951 P.2d 705, 710-12 (Ore. 1998) (disciplining a judge for using judicial stationery to negotiate favorable terms in dealing with service providers and vendors).

160. *Id.*

161. *Id.*

162. See, e.g., *In re Coates*, Public Admonishment (Cal. Comm'n on Judicial Performance April 12, 2000) (admonishing a judge for using judicial stationery to request that a line of credit be converted from "unsecured" to "secured" in connection with refinancing the judge's home).

163. See, e.g., *In re Horowitz*, Stipulation (N.Y. Comm'n on Judicial Conduct June 21, 2007).

164. See, e.g., *In re Young*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 29, 2000).

165. See, e.g., *In re Van Woeart*, Determination (N.Y. Comm. on Judicial Conduct Aug. 20, 2012).

166. See, e.g., *In re Williams*, Determination (N.Y. Comm'n on Judicial Conduct May 17, 2002).

167. See, e.g., *In re Brown*, 662 N.W.2d 733 (Mich. 2003) (disciplining a judge in part for "sponsoring" a charitable golf-outing); *In re Quall*, Public Admonishment (Cal. Comm'n on Judicial Performance June 2, 2008) (disciplining a judge in part for soliciting items for a charity auction).

168. See, e.g., *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1659, 1673 (2015) (upholding the discipline of a judge for personally soliciting campaign contributions).

169. TICKET-FIXING, *supra* note 103.

170. *Id.* at 1.

One judge admitted granting special treatment in 500 cases.¹⁷¹ The Commission acknowledged that no investigations were conducted in twenty-four of New York's counties and that only a small fraction of the corrupt practice had been uncovered.¹⁷² In the "overwhelming majority" of fixed cases, no money or other benefit inured to the judge.¹⁷³ Thus, the majority of illegal dispositions including charge reductions, dismissal of charges, reduced or no fines, and sham bail forfeitures, simply reflected personal favors for special litigants.¹⁷⁴

After discussing the detrimental effects of ticket-fixing on the state's justice system, the New York Commission emphasized that its purpose in publishing the report was "to alert the public, the courts, district attorneys, police officials, and any town and village justices and other judges who are engaging in these practices, to the seriousness of this misconduct."¹⁷⁵ The Commission further promised that it would continue investigating ticket-fixing allegations and take appropriate disciplinary steps against offenders.¹⁷⁶ True to its word, the Commission publicly disciplined more than 140 judges involved in the scandal detailed in the 1977 report.¹⁷⁷ According to one Commissioner, the Report together with the resulting disciplinary proceedings "placed every judge in the State on notice that ticket-fixing would not be tolerated."¹⁷⁸

Because the "abhorrent" practices disclosed by the Commission's investigation made the front page of the *New York Times*,¹⁷⁹ and resulted in the discipline of more than 140 judges¹⁸⁰ over a period of five years,¹⁸¹ it is unlikely that any state judge failed to "receive the memo" that ticket-fixing violated the New York Code of Judicial Conduct. Nevertheless, ticket-fixing continued.

171. *Id.*

172. *Id.* at 3.

173. *Id.* at 2.

174. TICKET-FIXING, *supra* note 103, at 5-11.

175. *Id.* at 20.

176. *Id.*

177. N.Y. COMM'N ON JUDICIAL CONDUCT, REPORT OF THE NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT REGARDING LICENSE PLATES THAT IDENTIFY A PRIVATELY-OWNED AUTOMOBILE AS REGISTERED TO A JUDGE 26 (2013) ("After the Commission uncovered a widespread pattern of ticket fixing throughout the state in the late 1970's, more than 140 judges were disciplined for engaging in this misconduct.").

178. *In re Cook*, Determination (N.Y. Comm'n on Judicial Conduct Aug. 31, 2005) (Mr. Emery, dissenting).

179. Tom Goldstein, *Judicial Study Finds 250 Judges Involved in Fixing of Tickets*, N.Y. TIMES, June 20, 1977, at 1.

180. See N.Y. COMM'N ON JUDICIAL CONDUCT, *supra*, note 177.

181. See, e.g., *In re Zygmunt*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 2, 1980); *In re Wright*, Determination (N.Y. Comm'n on Judicial Conduct Feb 11, 1981); *In re Prichard* Determination (N.Y. Comm'n on Judicial Conduct June 10, 1982).

In April 1979, while the New York Commission on Judicial Conduct was still processing disciplinary proceedings against the judges identified in its 1970's ticket-fixing investigation, Judge Deluca convinced Judge D'Amaro to meet him for a private conversation.¹⁸² In that conversation, Judge Deluca sought leniency for a defendant appearing before Judge D'Amaro because the defendant was from a good family and had a wife dying from cancer.¹⁸³ Rejecting Judge Deluca's assertion that any wrongdoing was committed, the Commission reiterated the overarching principle enunciated in its 1977 report: "[r]equests by one judge to another for special consideration for any person are 'wrong and always have been wrong.'"¹⁸⁴

In May 1980, while the Commission continued the process of disciplining judges whose abuse of office was disclosed by the 1970s investigation, Judge Robert M. Jacon presided over a case in which a client was charged with disorderly conduct.¹⁸⁵ Judge Jacon told the client not to attend court on the return date. Instead, the judge spoke with the arresting officer and secured the officer's agreement to adjourn the case in contemplation of dismissal.¹⁸⁶ The judge then dismissed the case.¹⁸⁷ In June 1980, Judge Edwards, by telephone and by letter, sought to influence a colleague's handling of a traffic citation issued to another judge's son.¹⁸⁸ Later in 1980, Judge Albert Montaneli contacted the arresting officer, prosecutor, and presiding judge seeking leniency for a friend charged with serving alcohol to minors.¹⁸⁹

In January 1981, Judge Louis Kaplan contacted another judge's court clerk to obtain a continuance in a friend's case.¹⁹⁰ In disciplining Judge Kaplan, the New York Commission once again condemned the two-tier justice system described in its 1977 Report:

[b]y intervening in a case in another court to obtain an adjournment for a friend, respondent lent "the prestige of his . . . office to advance

182. *In re Deluca*, Determination (N.Y. Comm'n on Judicial Conduct July 2, 1984).

183. *Id.*

184. *Id.*

185. *In re Jacon*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 28, 1983).

186. *Id.*

187. *Id.*

188. *In re Edwards*, Determination (N.Y. Comm'n on Judicial Conduct Sept. 18, 1985) (removing Judge Edwards for contacting another judge several times between 1980 and 1983 concerning cases involving Judge Edward's son).

189. *In re Montaneli*, Determination (N.Y. Comm'n on Judicial Conduct Sept. 10, 1982) (censuring Judge Montanelli); *see also In re Milks*, Determination (N.Y. Comm'n on Judicial Conduct Jan. 20, 1982) (disciplining part-time judge Ruth Milks for using her judicial title and prestige in 1980 to collect a debt on behalf of her private employer).

190. *In re Kaplan*, Determination (N.Y. Comm'n on Judicial Conduct May 17, 1983).

the private interests of others” Respondent took advantage of his position to get from a court clerk what his friend or any other person could only have obtained from a judge for good cause shown: an adjournment of a case scheduled for the following day. Such interventions by a judge cloaked in the authority of his office have in the past met with public sanction, even when done for understandable reasons.¹⁹¹

In April 1982, Judge Reedy intervened on behalf of his son and a friend’s son, both of whom had traffic tickets pending before another judge.¹⁹² In December 1982, Judge McGee entered the robing room of Judge Duffy.¹⁹³ Judge McGee advised Judge Duffy that McGee’s nephew would appear before Judge Duffy that evening on a criminal charge.¹⁹⁴ He further advised Judge Duffy that his nephew recently graduated law school and that he hoped Judge Duffy would set a low bail amount.¹⁹⁵ In December 1982 and January 1983, Judge Seiffert sought special treatment for his stepson and two acquaintances in traffic and criminal matters.¹⁹⁶ According to the New York Commission, Judge Seiffert went “to extraordinary lengths to pressure prosecutors to agree to charge reductions not available to other defendants.”¹⁹⁷ Also in January 1983, Judge Calabretta telephoned a colleague at home and requested a continuance in a friend’s partnership dissolution case.¹⁹⁸ In 1983, Judge Ronald L. Fabrizio was disciplined for seeking special treatment in traffic matters for a family friend and the dentist of the judge’s brother.¹⁹⁹ In November 1983, a New York Supreme Court Judge telephoned a town court justice at 4:00 a.m. to seek the release of friends held in police custody.²⁰⁰ Most telling is the misconduct of Judge Skramko who, on June

191. *Id.*

192. *In re Reedy*, Determination (N.Y. Comm’n on Judicial Conduct June 29, 1984). Judge Reedy was previously disciplined for “failure to supervise the preparation and handling of court accounts, reports and records.” *In re Reedy*, Determination (N.Y. Comm’n on Judicial Conduct December 28, 1981).

193. *In re McGee*, Determination (N.Y. Comm’n on Judicial Conduct Apr. 12, 1984).

194. *Id.*

195. *Id.*

196. *In re Seiffert*, Determination (N.Y. Comm’n on Judicial Conduct Oct. 26, 1984).

197. *Id.*

198. *In re Calabretta*, Determination (N.Y. Comm’n on Judicial Conduct Apr. 11, 1984) (admonishing Judge Calabretta for abusing judicial prestige); *see also In re Mayville*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 15, 1984) (removing a judge for, among other things, misusing judicial prestige to collect debts for relatives, a co-judge, and the town clerk).

199. *In re Fabrizio*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 26, 1984) *see also In re Wait*, Determination (N.Y. Comm’n on Judicial Conduct Aug. 5, 1985) (removing a judge for granting relatives favorable case dispositions in 1981, 1982, and 1983).

200. *In re Gassman*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 26, 1986) (imposing an admonishment); *see also In re Lombardi*, Determination (N.Y. Comm’n on Judicial Conduct Jan. 2, 1986) (censuring a judge for ordering the release of a prisoner at the request of a friend).

8, 1983, advised Judge Davis that a friend had received a traffic citation.²⁰¹ Judge Skramko suggested that the matter could be settled by reducing the charge and imposing a fifty-dollar fine.²⁰² When Judge Davis balked at the suggestion, stating that he did not “do business that way,” Judge Skramko responded, “[u]s judges do that all the while.”²⁰³ It is difficult to argue with Judge Skramko’s expertise in the misuse of judicial prestige since he had been previously disciplined for ticket-fixing as part of the 1970s investigation.²⁰⁴

When stopped in April 1984 for driving under the influence, Judge Kremenick told the officer, “I’m the judge. You can’t do this to me. I’ll have your job.”²⁰⁵ At his first court appearance, Judge Kremenick repeatedly advised the arraignment judge, “I’m the judge, and you can’t do this.”²⁰⁶ Later that same year, at the request of a friend, Judge Manning contacted a prosecutor and arranged for the adjournment of a case in contemplation of dismissal, which was an unusual disposition for a larceny case in the judge’s court.²⁰⁷ The New York Commission removed Judge Conti from office for conduct occurring in 1984 that included reassigning a case to his court, altering court documents to reflect a lesser charge, and dismissing a case involving the son of another judge.²⁰⁸

In 1985, Judge Little was asked by a bank vice-president to reduce a traffic charge for the vice president’s daughter to ensure that insurance premiums would not increase.²⁰⁹ Judge Little reduced the ticket to a parking violation.²¹⁰ The judge testified at the disciplinary hearing “that it is his practice to grant such requests when made by a person of integrity.”²¹¹ Exhibiting the same approach to two-tiered justice, Judge LoRusso felt entitled to contact the police and demand (1) that his friend’s son be released from custody, and (2) that he be addressed during the conversation as Judge LoRusso rather than Mr. LoRusso.²¹² At his disciplinary hearing, Judge LoRusso admitted that he should not have

201. *In re Skramko*, Determination (N.Y. Comm’n on Judicial Conduct Aug. 23, 1984).

202. *Id.*

203. *Id.*

204. *In re Skramko*, Determination (N.Y. Comm’n on Judicial Conduct May 20, 1980) (censuring Judge Skramko for misusing his judicial office to influence the outcome of cases).

205. *In re Kremenick*, Determination (N.Y. Comm’n on Judicial Conduct June 28, 1985).

206. *Id.*

207. *In re Manning*, Determination (N.Y. Comm’n on Judicial Conduct Aug. 15, 1986).

208. *In re Conti*, Determination (N.Y. Comm’n on Judicial Conduct March 27, 1987). The Commission also found that Judge Conti had improperly dismissed a charge filed against his long-time friend and personal attorney).

209. *In re Little*, Determination (N.Y. Comm’n on Judicial Conduct Nov. 19, 1987).

210. *Id.*

211. *Id.*

212. *In re LoRusso*, Determination (N.Y. Comm’n on Judicial Conduct June 29, 1987) (imposing a censure).

asked for the prisoner's release but added that in a similar future situation he would call the police, vouch for the credibility of the prisoner's parents, and request that the police "allay the parent's anxiety."²¹³ Also in 1985, the New York Commission disciplined other judges for abusing the power and prestige of office, including a judge who conducted a friend's bail hearing at the judge's home in a case over which the judge lacked jurisdiction;²¹⁴ a judge who "fixed" a case for his wife's employer;²¹⁵ and a judge who continued a case at a political leader's ex parte request.²¹⁶

The remainder of the decade showed no improvement in the misuse of the judicial office by New York judges.²¹⁷ Nor did confining the use of judicial power and prestige to official purposes fare any better in New York State in the 1990s.²¹⁸

213. *Id.*

214. *In re Winick*, Determination (N.Y. Comm'n on Judicial Conduct Jan. 29, 1987).

215. *In re Robertiello*, Determination (N.Y. Comm'n on Judicial Conduct Feb. 23, 1988).

216. *In re Levine*, Determination (N.Y. Comm'n on Judicial Conduct Jan. 23, 1989).

217. For examples of judges disciplined for conduct involving the misuse of judicial prestige that occurred between 1986 and 1989, see *In re Reyome*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 24, 1987) (censuring a judge for releasing, at a friend's request, a defendant who had been jailed by another judge); *In re Molnar*, Determination (N.Y. Comm'n on Judicial Conduct July 18, 1988) (removing a judge because he told a defendant that if she agreed not to report his sexual advances he would assess a small fine in a dog ordinance case, but if she reported his conduct her dog would be killed and her son taken away); *In re Watson*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 17, 1988) (censuring a judge in part for ordering a police captain to release the judge's friend because the arrest was "a lot of crap"); *In re Abbott*, Determination (N.Y. Comm'n on Judicial Conduct Apr. 5, 1989); *In re Cosby*, Determination (N.Y. Comm'n on Judicial Conduct Sept. 9, 1989) (disciplining a judge for threatening that he would stop cooperating with a police department "if they're going to report D.W.I.s on Republican candidates"); *In re D'Amanda*, Determination (N.Y. Comm'n on Judicial Conduct Apr. 26, 1989) (censuring a judge for, on three occasions, attempting to avoid traffic tickets by invoking his judicial status); *In re Hanofee*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 27, 1989) (censuring a judge for, among other things, telephoning another judge to seek favorable treatment for a lawyer and the lawyer's client); *In re Kiley*, Determination (N.Y. Comm'n on Judicial Conduct Apr. 3, 1989) (removing a judge in part for contacting a prosecutor and judge to volunteer information in support of a defendant's release on bond); *In re Tyler*, Determination (N.Y. Comm'n on Judicial Conduct May 1, 1989) (removing a judge in part for contacting another judge about her husband's litigation and using court stationery in three personal disputes); *In re VanBuskirk*, Determination (N.Y. Comm'n on Judicial Conduct May 23, 1989) (admonishing a judge in part for intervening on a litigant's behalf to obtain withdrawal of an arrest warrant); *In re Kristofferson*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 25, 1990) (finding that a judge "used the prestige of his judicial office to advance the interests of one party to a dispute"); *In re Slavin*, Determination (N.Y. Comm'n on Judicial Conduct Feb. 28, 1990) (admonishing a judge for misusing judicial prestige to advance private interests by intervening in a dispute involving his son, and making threats against persons who knew that he was a judge).

218. For examples of judges disciplined for the misuse of judicial prestige for conduct occurring between 1990 and 1999, see *In re Freeman*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 8, 1991) (admonishing Judge Freeman for writing a letter on judicial stationery to another judge requesting that the judge reinstate an individual's gun permit); *In re Winkworth*, Determination (N.Y. Comm'n on Judicial Conduct Sept. 23, 1992) (admonishing a judge for using his judicial title in an attempt to avoid a DUI arrest); *In re McCormick*, Determination (N.Y. Comm'n on Judicial Conduct June 9, 1993) (admonishing a judge for going to a complainant's home and trying to convince her to drop criminal charges); *In re Henderson*, Determination (N.Y. Comm'n on Judicial Conduct Mar. 18, 1994) (admonishing a judge for volunteering his judicial title during a traffic stop and asking the officer, "[i]sn't

The new millennium brought a mix of tried-and-true and novel means to abuse judicial prestige in the Empire State. Judges continued to assert their judicial power during confrontations with the police by both verbally advising the officers of their official positions and by handing officers judicial identification cards.²¹⁹ Judges also continued to intervene on

there anything we can do?”); *In re Poli*, Determination (N.Y. Comm’n on Judicial Conduct Oct. 7, 1994) (admonishing a judge for going to the police station to arraign his son and set a recognizance bond); *In re Ronces*, Determination (N.Y. Comm’n on Judicial Conduct Sept. 30, 1994) (admonishing a judge for stopping eight motorists during 1990, 1991, and 1992 to enforce traffic laws, usually identifying himself as a judge and showing his judicial identification); *In re Lindell-Cloud*, Determination (N.Y. Comm’n on Judicial Conduct July 14, 1995) (censuring a judge for abuse of power for increasing a defendant’s fine because the defendant had previously fired the judge from a nursing job); *In re Cerbone*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 21, 1996) (finding that a judge abused judicial prestige by visiting a complainant at her home and speaking favorably of the defendant whose family members were close friends of the judge); *In re D’Amico*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 21, 1996) (admonishing a judge for repeatedly invoking his judicial status during his arrest for indecent exposure); *In re Hoag*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 20, 1996) (admonishing a judge for using judicial stationery in private disputes); *In re Kaplan*, Determination (N.Y. Comm’n on Judicial Conduct May 6, 1996) (admonishing a judge for improperly intervening in a child abuse investigation on behalf of a friend); *In re Chase*, Determination (N.Y. Comm’n on Judicial Conduct June 10, 1997) (removing a judge for intervening with another judge and the police three times on behalf of his daughter); *In re Engle*, Determination (N.Y. Comm’n on Judicial Conduct Feb. 4, 1997) (censuring a judge for sending a letter to another judge on judicial stationery repeatedly mentioning his judicial status and seeking leniency for a friend charged with DUI); *In re Purple*, Determination (N.Y. Comm’n on Judicial Conduct Sept. 29, 1997) (finding that a judge abused his office by intervening with the sheriff on his son’s behalf); *In re Hooper*, Determination (N.Y. Comm’n on Judicial Conduct June 29, 1996) (admonishing a judge for amending the charges against two defendants and accepting pleas of guilty to the amended charges in *ex parte* proceedings); *In re Merrill*, Determination (N.Y. Comm’n on Judicial Conduct Mar. 17, 1998) (admonishing a judge for invoking his judicial position in an attempt to convince a tenant to vacate the premises owned by the judge’s friend); *In re Putnam*, Determination (N.Y. Comm’n on Judicial Conduct Feb. 6, 1998) (admonishing a judge for using the prestige of office in an attempt to influence the outcome of a case before another judge); *In re Stevens*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 23, 1998) (admonishing a judge for using the prestige of office to advance his son’s interests in a private dispute); *In re Howard*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 22, 1999) (admonishing a judge for sending a letter to a judge seeking leniency for a party); *In re Knott*, Determination (N.Y. Comm’n on Judicial Conduct June 11, 1999) (censuring a judge in part for invoking his judicial status during a traffic stop); *In re Going*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 29, 2000) (removing a judge in part for issuing an *ex parte* order terminating the suspension of the driver’s license of a long-time acquaintance); *In re Howell*, Determination (N.Y. Comm’n on Judicial Conduct Apr. 6, 2000) (admonishing a judge for misusing judicial prestige by writing to another judge to advance a prosecutor’s position).

219. *See, e.g., In re Werner*, Determination (N.Y. Comm’n on Judicial Conduct June 21, 2002) (disciplining a judge for handing a law enforcement officer his judicial identification card instead of a driver’s license); *In re Landicino*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 28, 2015) (disciplining a judge for handing an officer a driver’s license and judicial identification card and volunteering that he was coming from a judicial conference); *In re Maney*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 20, 2010) (disciplining a judge for identifying himself as a family court judge and requesting “professional courtesy” when stopped for DUI); *In re Hensley*, Determination (N.Y. Comm’n on Judicial Conduct June 22, 2012) (finding that a judge made two gratuitous references to his judicial position and presented judicial identification during the execution of a search warrant at the judge’s fraternal club); *In re Knott*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 6, 2012) (disciplining a judge for asking a police officer “[d]o you know who I am?” when the officer served the judge with a leaving the scene of an accident ticket); *In re Leonard*, Determination (N.Y. Comm’n on

behalf of friends and relatives in traffic matters,²²⁰ family law matters,²²¹ civil and criminal matters,²²² orders of protection,²²³ personal disputes,²²⁴ and ordinance violations.²²⁵ There seems to have been an upswing in the use of official court stationery to buttress a judge's attempts to exert influence in private matters. For example, judges employed official stationery to seek sentencing leniency for the son of a longtime family friend;²²⁶ to seek college readmission for a judge's son;²²⁷ to influence the disposition of pending charges;²²⁸ to deter a neighborhood band from

Judicial Conduct Dec. 26, 2002) (finding that a judge improperly asserted her judicial status during a police search at the apartment of the judge's daughter); *In re Pennington*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 3, 2003) (disciplining a judge for advising a law enforcement official that he was "the fucking judge here in this village" when confronted for entering a park without paying the entry fee).

220. *See, e.g., In re Schilling*, Determination (N.Y. Comm'n on Judicial Conduct May 8, 2012) (removing a judge in part for intervening in a traffic matter involving his co-judge's wife); *In re Kennedy*, Stipulation (N.Y. Comm'n on Judicial Conduct Mar. 10, 2005) (stating that the judge "pressured" a state trooper to give special treatment to a defendant who received a speeding ticket and was a business associate of the judge's wife's employer); *In re Taft*, Stipulation (N.Y. Comm'n on Judicial Conduct Apr. 11, 2008) (stating that the judge dismissed his doctor's traffic ticket after calling the doctor to obtain the circumstances surrounding the issuance of the ticket); *In re Hunt*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 9, 2011) (censuring a judge for contacting an officer on behalf of a friend and advising the officer that the defendant and his family were "good people" and asking the officer to do "whatever you can do").

221. *See, e.g., In re Young*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 29, 2000) (censuring a judge for calling a hearing officer handling a friend's family law case and advising the hearing officer that his friend's ex-husband was being a "hard ass" and refused to pay a child's college expenses).

222. *See, e.g., In re Kolbert*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 26, 2002) (disciplining a judge for identifying himself as a judge and requesting that a police officer not serve an arrest warrant); *In re Crandall*, Stipulation (N.Y. Comm'n on Judicial Conduct Feb. 25, 2014) and Formal Written Complaint (Oct. 30, 2013) (alleging that a judge intervened in a dispute between the police and the judge's daughter and intervened in a traffic matter on behalf of the son of a former public official).

223. *See, e.g., In re Williams*, Determination (N.Y. Comm'n on Judicial Conduct May 17, 2002) (censuring a judge for calling another judge on behalf of a friend and asking that an order of protection be rescinded); *In re Magill*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 6, 2004) (disciplining a judge for delivering his daughter's case file to the clerk of another judge and requesting that an order of protection be entered).

224. *See, e.g., In re Coleman*, Stipulation (N.Y. Comm'n on Judicial Conduct June 10, 2004) (stating that the judge asserted the prestige and influence of her office during a personal dispute between the judge and four concert attendees); *In re Dumber*, Determination (N.Y. Comm'n on Judicial Conduct Apr. 18, 2004) (censuring a judge for invoking his judicial status in a dispute with a snowmobile dealer); *In re Ashbaugh*, Stipulation (N.Y. Comm'n on Judicial Conduct Oct. 13, 2007) (stating that a judge misused the prestige of office to advance the interests of the judge's nephew in the nephew's dispute with his girlfriend).

225. *See, e.g., In re Van Woeart*, Determination (N.Y. Comm'n on Judicial Conduct Aug. 20, 2012) (censuring a judge for contacting another judge about a dog at large case).

226. *In re Martin*, Determination (N.Y. Comm'n on Judicial Conduct June 6, 2002).

227. *In re Nesbitt*, Determination (N.Y. Comm'n on Judicial Conduct June 21, 2002).

228. *In re Brooks*, Stipulation (N.Y. Comm'n on Judicial Conduct Oct. 14, 2005); *In re Sharlow*, Determination (N.Y. Comm'n on Judicial Conduct Mar. 22, 2005).

playing loudly;²²⁹ to dispute a telephone bill;²³⁰ to discuss church membership fees;²³¹ and to improperly influence a parole board.²³² The frequent use of judicial stationery for unofficial communications led the New York Commission on Judicial Conduct to make special mention of the problem in its 2002 and 2003 Annual Reports.²³³ One particular letter on judicial letterhead and signed with the judge's title was reproduced and highlighted by the Commission:

I am the Judge from the Town of Chemung, Chemung County. I would like to ask if you would consider in reviewing the attached ticket that my relative had received while en route to his residence from the Chemung County area.

I don't normally request help in matters like this one, but he is a manager with a large paper company in Rochester and he needs to avoid any points. His company is Weyheuser Packaging.

I had called your office, but you were not available. I will have John send in his yellow copy this week. Again, if you can help out I would appreciate this, and if not, I will understand.²³⁴

The twenty-first century brought new technology to assist judges in improperly asserting judicial prestige. One judge used a cell phone to request that a police chief show leniency toward the judge's son,²³⁵ and another judge sent an email to a colleague "hoping" that she could be dismissed as a defendant in several dog at large cases.²³⁶ Narrating a dash cam video, Judge Daniels demonstrated to the clerk of the judge assigned to the case how Judge Daniels' employee was not responsible for the school bus accident.²³⁷

In the new century, some judges resorted to deception in seeking special consideration for friends. One judge wrote a letter to a neighboring

229. *In re Glover*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 11, 2005).

230. *In re Horowitz*, Stipulation (N.Y. Comm'n on Judicial Conduct June 21, 2007).

231. *Id.* Complaint filed March 20, 2006, attached to the Stipulation.

232. *In re Smith*, Determination (N.Y. Comm'n on Judicial Conduct June 19, 2013).

233. N.Y. COMM'N ON JUDICIAL CONDUCT, ANNUAL REPORT 2002, at 31 (2002), available at <http://www.scjc.state.ny.us/Publications/AnnualReports/nysejc.2002annualreport.pdf>; N.Y. COMM'N ON JUDICIAL CONDUCT, ANNUAL REPORT 2003, at 25 (2003), available at <http://www.scjc.state.ny.us/Publications/AnnualReports/nysejc.2003annualreport.pdf>.

234. *In re Bowers*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 12, 2004).

235. *In re Sullivan*, Determination (N.Y. Comm'n on Judicial Conduct July 14, 2015).

236. *In re Van Woert*, Determination (N.Y. Comm'n on Judicial Conduct Aug. 20, 2012).

237. *In re Daniels*, Determination (N.Y. Comm'n on Judicial Conduct Mar. 25, 2011). (The judge dismissed the ticket without the defendant appearing in court.)

court seeking special consideration in a traffic case for an individual the judge described as his relative.²³⁸ In fact, the recipient of the ticket was not related to the judge.²³⁹ In 2013, Judge Violanti concocted an elaborate scheme to fix a ticket.²⁴⁰ Apparently, to not inconvenience a friend who received a traffic ticket, the judge asked a police officer to pretend to be the judge's ticketed friend, come to court, and ask that the ticket be dismissed.²⁴¹ The police officer complied and Judge Violanti dismissed the ticket.²⁴² In 2016, four of the eight formal disciplinary determinations issued by the New York Commission involved the misuse of judicial prestige.²⁴³ And in its 2018 Annual Report, the New York Commission on Judicial Conduct once again pleads with judges to stop misusing the prestige of office.²⁴⁴ Unfortunately, the unabated misuse of judicial prestige to further private interests is not limited to the New York judiciary.

B. *The Exploitation of the Judicial Office is a National Problem*

In 2015, Frank Vatterott, a former Missouri judge, claimed that ticket-fixing “goes on in every city, every state. It just does.”²⁴⁵ And while hopefully this is a vast overstatement, it is not difficult to demonstrate that nationwide, judges continue to assert their judicial office for improper purposes.

One commentator described ticket-fixing in Mississippi as a “chronic problem.”²⁴⁶ That characterization appears justified by the frequency in which the Mississippi Commission on Judicial Performance disciplines

238. *In re Bowers*, Determination (N.Y. Comm'n on Judicial Conduct Nov. 11, 2004).

239. *Id.*

240. Harold McNeil, *Off Main Street/The Offbeat Side of the News*, BUFFALO NEWS (N.Y.), Dec. 10, 2016, available at <http://buffalonews.com/2016/12/10/off-main-street-offbeat-side-news-2>.

241. *Id.*

242. *Id.*

243. *In re Dixon*, Determination (N.Y. Comm'n on Judicial Conduct May 26, 2016) (censuring a judge for misusing judicial prestige in her private lawsuit); *In re Keefe*, Stipulation (N.Y. Comm'n on Judicial Conduct Aug. 5, 2016), Formal Written Complaint, Charge VIII (Nov. 13, 2014) (alleging that the judge abused judicial prestige by contacting a victim and asking the victim to reduce her restitution request); *In re Moskos*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 3, 2016) (disciplining a judge for using the prestige of office on three occasions to circumvent security procedures); *In re Whitmarsh*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 28, 2016) (disciplining a judge in part for misusing the prestige of office by including her title in Facebook posts); see also *In re Simon*, Determination (N.Y. Comm'n on Judicial Conduct March 29, 2016) (finding an abuse of judicial power).

244. N.Y. COMM'N ON JUDICIAL CONDUCT, ANNUAL REPORT 2018, at 19-20 (2018); see also Richard Emery, *Judges Using Their Offices to Benefit Themselves or Others: Part I*, N.Y. LAW J., Oct. 24, 2017, at 3; Richard Emery, *Judges Using Their Offices to Benefit Themselves or Others: Part II*, N.Y. LAW J., Oct. 27, 2017, at 3.

245. Editorial, *Missouri Supreme Court Must End the Ferguson Shake-Down*, ST. LOUIS DISPATCH, Mar. 8, 2015, at A18.

246. Cynthia Gray, *Ticket-Fixing*, JUDICIAL CONDUCT REP., Summer 2006, at 1, 1.

judges for fixing tickets, attempting to fix tickets, and otherwise asserting their official position in litigation-related matters. From 1987 through 1997, ten judges were disciplined (one judge twice) for abusing their power and prestige.²⁴⁷ Between 2006 and 2015, the Mississippi Commission disciplined eleven judges for prestige-related offenses including: (1) traditional ticket-fixing;²⁴⁸ (2) conduct “akin” to ticket-fixing;²⁴⁹ (3) directing an arresting officer not to appear in court to facilitate dismissal of a DUI ticket;²⁵⁰ (4) demanding that the sheriff release a friend from custody;²⁵¹ (5) attempting to prevent the arrest of the judge’s tenant;²⁵² (6) trying to convince the sheriff to reinstate the license of a bail bondsman;²⁵³ and (7) requesting that a judicial colleague set a low bond for a friend.²⁵⁴ The fact that the Mississippi Supreme Court took a “firm stance on ticket-fixing” in 1993 has not dissuaded judges from the unethical practice.²⁵⁵

Heading the list of Illinois judges invoking their judicial status in an effort to avoid traffic citations is former Illinois Supreme Court Justice James D. Heiple. On multiple occasions, Justice Heiple used his judicial identification badge or his familiar refrain, “[d]o you know who I am,” in dealing with law enforcement officers trying to do their job.²⁵⁶ Illinois judges have also intervened in pending matters to solicit assistance for friends, relatives, and automobile mechanics.²⁵⁷

247. *In re Hearn*, 515 So. 2d 1225 (Miss. 1987); *In re Hearn*, 542 So. 2d 901 (Miss. 1989); *In re Cowart*, 566 So. 2d 1251 (Miss. 1990); *In re Seal*, 585 So. 2d 741 (Miss. 1991); *In re Hopkins*, 590 So. 2d 857 (Miss. 1991); *In re A Justice Court Judge*, 580 So. 2d 1259 (Miss. 1991); *In re Chinn*, 611 So. 2d 849 (Miss. 1992); *In re Gunn*, 614 So. 2d 387 (Miss. 1993); *In re Bowen*, 662 So. 2d 551 (Miss. 1995); *In re Dodds*, 680 So. 2d 180 (Miss. 1996); *In re Russell*, 691 So. 2d 929 (Miss. 1997).

248. *In re Gordon*, 955 So. 2d 300 (Miss. 2007) (disciplining a judge for fixing fourteen tickets); *In re Thompson*, 972 So. 2d 587 (Miss. 2008); *In re Boone*, 60 So. 3d 172, 179 (Miss. 2011) (disciplining a judge for offering to “fix” a defendant’s fine in return for a sex act); *In re McKenzie*, 63 So. 3d 1219, 1222-23 (Miss. 2011) (disciplining a judge for fixing, or attempting to fix, nine tickets for six defendants); *In re Carver*, 107 So. 3d 964, 975 (Miss. 2013).

249. *In re Bradford*, 18 So. 3d 251, 253 (Miss. 2009).

250. *In re Sanford*, 941 So. 2d 209, 218 (Miss. 2006).

251. *In re Cowart*, 71 So. 3d 590, 592 (Miss. 2011).

252. *In re Fowles*, 121 So. 3d 904, 912-13 (Miss. 2013).

253. *In re Thompson*, 169 So. 3d 857, 863 (Miss. 2015).

254. *In re Dearman*, 73 So. 3d 1140, 1141 (Miss. 2011).

255. *In re Gunn*, 614 So. 2d 387, 389 (Miss. 1993).

256. *In re Heiple*, 97 CC 1, Order (Ill. Cts. Comm’n Apr. 30, 1997). Other Illinois disciplinary actions for similar misconduct include, *In re Raccuglia*, 99 CC 2, Order (Ill. Cts. Comm’n Oct. 9, 2001); *In re Travis*, 02-CC 2, Order (Ill. Cts. Comm’n Feb. 28, 2003); *In re Norquist*, 07 CC 1, Order (Ill. Cts. Comm’n Aug. 9, 2007).

257. See *In re Simpson*, 11 CC 1, Order (Ill. Cts. Comm’n Nov. 7, 2011) (censuring a judge for putting in a good word with a second judge for his automobile mechanic and then trying to convince the second judge not to report the matter to the state judicial disciplinary authority); *In re Travis*, 02 CC 2, Order (Ill. Cts. Comm’n Feb. 28, 2003) (disciplining a judge for contacting the chief judge of another circuit court concerning an outstanding arrest warrant for the judge’s daughter); *In re Kutribis*, 99 CC 3,

In 2012, the California Commission on Judicial Performance removed a judge for creating a “two-track” system of justice. The judge diverted to his own courtroom traffic tickets issued to a son-in-law, friends, and a juror, and waived or suspended all, or practically all, fines and fees in those cases.²⁵⁸ In the same year, the California Commission publicly censured a judge who requested preferential treatment for a spouse from a subordinate traffic court commissioner.²⁵⁹ Since 2012, California judges have received public or private discipline or cautionary letters for: (1) suggesting a disposition of the judge’s son’s case to the clerk and pro tem judge assigned to the case;²⁶⁰ (2) using judicial prestige and court resources to advance the interests of a friend;²⁶¹ (3) expressing irritation to two assistant district attorneys because the judge’s letter of recommendation for a job applicant obviously “means nothing” since the individual was not hired by the district attorney;²⁶² (4) calling a county jail and ordering the release of a member of the judge’s cigar-smoking men’s club;²⁶³ (5) invoking the judicial title during a traffic stop;²⁶⁴ (6) selecting the judicial officer to hear the judge’s post-decree divorce matter;²⁶⁵ (7) misusing official prestige in a personal legal matter;²⁶⁶ and (8) lending the prestige of office to advance the personal interests of another in a legal dispute between the judge’s friends.²⁶⁷

At a disciplinary hearing before the Judiciary Commission of Louisiana, Judge Perrell Fusselier explained how his distaste for “bad manners” prevented him from refusing ticket-fixing requests:

[t]hen the Mayor of Alexandria or Lake Charles calls and says, “By the way, my next door neighbor or my daughter is going to school

Order (Ill. Cts. Comm’n Aug. 29, 2002) (disciplining a judge in part for contacting another judge to obtain a continuance in a case).

258. *In re* Stanford, Order of Removal (Cal. Comm’n on Judicial Performance Jan. 11, 2012); *see also In re* Platt (Cal. Comm’n on Judicial Performance (disciplining a judge for fixing four tickets and contacting judges on other tickets); *In re* Danser, Public Censure (Cal. Comm’n on Judicial Performance June 2, 2005) (disciplining a judge for fixing tickets in twenty-four cases); *In re* Wasilenko, Censure (Cal. Comm’n on Judicial Performance Mar. 2, 2005) (disciplining a judge for diverting tickets of relatives and friends to his courtroom and employing favored procedures and granting lenient dispositions).

259. *In re* Salvador Sarmiento, Public Censure (Cal. Comm’n on Judicial Performance July 5, 2012).

260. *In re* Mills, Public Admonishment (Cal. Comm’n on Judicial Performance July 30, 2013).

261. CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE, ANNUAL REPORT 2013, at 20 (2014) (summarizing private admonishments issued in 2013).

262. *In re* Steiner, Public Censure (Cal. Comm’n on Judicial Performance Sept. 2, 2014).

263. *In re* Petrucell, Public Censure (Cal. Comm’n on Judicial Performance Aug. 27, 2015).

264. CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE, ANNUAL REPORT 2015, at 25 (2016) (summarizing advisory letters issued in 2015).

265. *In re* Trice, Public Censure (Cal. Comm’n on Judicial Performance Feb. 4, 2016).

266. CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE, ANNUAL REPORT 2016, at 27 (2017) (summarizing private disciplines issued in 2016).

267. *Id.* at 29 (summarizing advisory letters).

at McNeese in Lake Charles and got arrested, . . . can you help me?” Well, it would be not only bad manners, but unrealistic to say “I’m sorry, Mayor, I’ve known you since we were in law school together at Tulane, but I can’t speak to you about this at all.” . . . I’m not gonna tell him, “No, I’m not going to call.” You know, I would call [the prosecutor] and say, “Look, the Mayor called,” or something like that, “You have to take action. But out of courtesy, just out of respect, he called, I’m telling you he called, would you please call him back and y’all take care of your business.” That’s how I would handle it. If that’s misconduct or improper ex parte communications, . . . I think that’s the real world.²⁶⁸

The Texas Commission on Judicial Conduct publicly reprimanded a judge for selecting more than 839 traffic citations for special consideration between January 2010 and April 2011.²⁶⁹ In 2013, another Texas judge received a reprimand for contacting employees of a county juvenile detention center, a district court judge, and a county commissioner in an effort to secure the release of a friend’s daughter from custody.²⁷⁰ During those contacts, the Texas judge identified himself as a judge, asked one official “[d]o you know who you’re talking to,” and “[you] have picked the wrong little girl that has friends in high places to mess with.”²⁷¹ In the same year, the Texas Commission publicly reprimanded a judge for hijacking a bond hearing from another judge so that he could release his girlfriend from custody.²⁷² In 2016, at least ten Texas judges received either public or private discipline for the misuse of official power and prestige.²⁷³

268. *In re Fuselier*, 837 So. 2d 1257, 1271 (La. 2003); see also *In re Alfonso*, 957 So. 2d 121, 122, 124 (La. 2007) (suspending a judge for abusing judicial power and “exploit[ing] her judicial position to satisfy personal desires” by issuing an arrest warrant without probable cause at her neighbors’ request); *In re Best*, 195 So. 3d 460, 462 (La. 2016) (disciplining a judge for improperly terminating a defendant’s probation, making ex parte inquiries regarding the defendant, and considering that the defendant and his family attended the judge’s church).

269. *In re Romo*, Public Reprimand (Tex. Comm’n on Judicial Conduct July 3, 2014); see also Dave Hendricks, *The Fix: In Hidalgo Municipal Court, It’s Who You Know*, THE MONITOR (McAllen, Tex.), Apr. 8, 2012, available at http://www.themonitor.com/news/local/article_b0423083-d9a4-5404-83a1-e771d187228c.html.

270. *In re Sharp*, 480 S.W.3d 829, 834 (Tex. 2013).

271. *Id.*

272. *In re Nicholds*, Public Reprimand (Tex. Comm’n on Judicial Performance Sept. 9, 2013). Judge Nicholds had been disciplined in 2011 for attempting to use judicial prestige to assist his girlfriend’s daughter with a pending criminal case. *Id.*

273. *In re Scales*, Public Reprimand (Tex. Comm’n on Judicial Performance July 18, 2016) (reprimanding a judge for unilaterally amending a ticket from a speeding to a parking violation); *In re Glickler*, Public Admonishment (Tex. Comm’n on Judicial Performance July 12, 2016) (disciplining a judge in part for identifying himself as a judge during a traffic stop); *In re Brady*, Public Warning (Tex. Comm’n on Judicial Performance March 3, 2016) (disciplining a judge for following a motorist for seven

In 1957, Philadelphia opened a “no-fix” traffic court “to do away with the time-honored custom of letting politically favored traffic violators get away with nominal fines or no fines at all.”²⁷⁴ The Chief Magistrate of the new “no-fix” court challenged “skeptics to try to fix a ticket.”²⁷⁵ Unfortunately, the skeptics prevailed when a massive ticket-fixing scheme was uncovered during a federal grand jury investigation of the Philadelphia traffic courts in 2011.²⁷⁶ A more recent FBI investigation into allegations that Tennessee Judge Casey Moreland permitted personal relations to affect judicial decisions resulted in the judge’s indictment²⁷⁷ and a reprimand from the state supreme court.²⁷⁸

As documented in Part III, it is not difficult to demonstrate the continued and persistent exploitation of the power and prestige of judicial office. The struggle lies in explaining why the abuse continues and in fashioning a remedy to curtail the abuse.

miles “vehemently” signaling for her to pull over, causing the police to pull the vehicle over, threatening to throw the motorist in jail for 72 hours, and threatening the motorist with contempt for disrespecting him on the street); *In re Jones*, Public Warning (Tex. Comm’n on Judicial Performance Feb. 29, 2016) (disciplining a judge for unilaterally amending speeding tickets to parking violations as a “one-time” deal to help persons with a commercial driver’s license); *In re Herrera*, Public Reprimand (Tex. Comm’n on Judicial Performance Feb. 25, 2016) (disciplining a judge for retaining his own divorce case for four months because he was trying to save his marriage and did not want anything done on the case and wanted to avoid court hearings). For Texas private disciplinary orders in 2016, involving the misuse of judicial prestige, see Private Admonishment and Order of Additional Education of District Judge (3/09/16) (“[t]he judge lent the prestige of his judicial office to advance the private interests of a defendant by permitting court staff to send letters and other communications to another judge in a manner that was perceived by the recipient as an improper attempt to obtain favorable or special treatment for the defendant.”); Private Admonishment and Order of Additional Education of Justice of the Peace (9/08/16) (disciplining a judge for misusing judicial prestige to advance her and a family member’s private interests); Private Admonishment and Order of Additional Education of Justice of the Peace (7/28/16) (disciplining a judge for allowing family relations to influence the judge’s official conduct in setting bond and releasing a family member from custody). The Texas private disciplinary orders are available at Texas Commission on Judicial Performance, Disciplinary Actions, Private Sanctions, <http://scjc.state.tx.us/disciplinary-actions.aspx?t=Private+Sanctions&stype=FY+2016&ptype=1182>.

274. *‘No-Fix’ Traffic Court Opens in Philadelphia*, N.Y. TIMES, Sept. 4, 1957, at 25.

275. *Id.*

276. See *United States v. Lowry*, Nos. 13–39–02, 03, 04, 05, 2014 WL 5795575 (E.D. Pa. Nov. 6, 2014); *In re Tynes*, 149 A.3d 452 (Pa. Ct. of Judicial Discipline 2016); *In re Sullivan*, Order (Pa. Ct. of Judicial Discipline Jan. 13, 2016); see generally John Hurdle, *Philadelphia Judges Indicted in Ticket Case*, N.Y. TIMES, Jan. 31, 2013, at A20. Ticket-fixing had gone on for some time in Pennsylvania. See, e.g., *In re Kelly*, 757 A.2d 456, 458 (Pa. Ct. of Judicial Discipline 2000) (disciplining a judge for asking another judge for a “not guilty” in a friend’s traffic case).

277. See Stacey Barchenger, *Feds: Moreland Tried to Pay Woman \$6,100 to Recant Allegations Against Him*, TENNESSEAN, Mar. 28, 2017, 10.04 a.m. CT, <http://www.tennessean.com/story/news/crime/2017/03/28/judge-casey-moreland-charged-federal-government-corruption/99726856>.

278. *In re Moreland*, Letter of Public Reprimand (Tenn. Bd. of Judicial Conduct Oct. 22, 2014), available at http://www.tsc.state.tn.us/sites/default/files/docs/moreland_-_public_reprimand_11-3-2014.pdf (disciplining Judge Moreland for convincing a court commissioner to reverse his decision and release a defendant after Judge Moreland received a call concerning the matter from a lawyer and social friend).

IV. EXPLAINING THE MISUSE OF JUDICIAL POWER AND PRESTIGE

A few judges have sought to legitimize the practice of dispensing favors on the absurd rationale that they consider all requests for special treatment equally, but not everyone asks for a favor.²⁷⁹ Most judges, however, admit that the practice violates the law, ethics codes, and the prime directive of judging—fair and impartial treatment for all. So why do judges persist in the blatantly improper practice? The explanation in a small number of cases is that the judge is corrupt and has agreed to a quid pro quo arrangement.²⁸⁰ In these cases, the judge sells services to the highest bidder. A few judges explain the actions by claiming general ignorance of the impropriety of granting favors and specific ignorance of ethics code provisions governing the use of judicial power and prestige.²⁸¹ Sometimes the ethical shortcoming of bestowing a judicial favor to benefit a son or daughter might be explained by the judge's confusion between the morality roles of judge and parent.²⁸² And on occasion, a judge's improper conduct may be triggered by a diagnosable mental disorder such as narcissism.²⁸³ But, Professor Steven Lubet offers the most likely explanation for the practice of granting special treatment to a select few—a misplaced sense of entitlement.²⁸⁴

A. *Quid Pro Quo Arrangements*

Some judges rent out their judicial power and prestige for a return benefit. That benefit takes many forms including cash,²⁸⁵ gifts, and personal services. Gifts have included automobiles, health club memberships, beds, televisions, apartments,²⁸⁶ cigars,²⁸⁷ and contributions to political campaigns.²⁸⁸ Although the preferred personal

279. See *TICKET-FIXING*, *supra* note 103, at 13.

280. See *infra* Part IV.A.

281. See *infra* Part IV.B.

282. See *infra* Part IV.C.

283. See *infra* Part IV.D.

284. Steven Lubet, *Stupid Judge Tricks*, 41 S. TEX. L. REV. 1301, 1310-11 (2000); see also *infra* Part IV.E.

285. See, e.g., *United States v. Murphy*, 768 F.2d 1518, 1525 (7th Cir. 1985) (en banc) (explaining how lawyers known as “miracle workers” could fix a traffic case for \$100 to the judge and \$10 to the arresting officer); *United States v. Vignola*, 464 F. Supp. 1091, 1095, n.8 (E.D. Pa. 1979) (reporting the testimony of a process server that he paid a judge \$100 a week to fix traffic tickets).

286. See, e.g., *United States v. Frega*, 179 F.3d 793, 798 (9th Cir. 1999) (describing the benefits received by the judge and his family to include “automobiles, car repairs, money orders, an apartment, health club memberships, and a queen-sized bed”); *Vignola*, 464 F. Supp. at 1095 n.8 (stating that the judge received five color television sets).

287. Michael Brick, *Former Judge Convicted of Bribery in Divorce Cases*, N.Y. TIMES, Apr. 19, 2007, at A22.

288. See, e.g., Martha Neil, *Former Judge Pleads Guilty, Admits Taking Bribe to Cut Jury Verdict*

service sought by judges appears to be sex acts,²⁸⁹ other services purchased in return for favorable case dispositions include automobile repairs²⁹⁰ and political campaign support.²⁹¹ Whatever form the benefit takes, these transactions constitute the crime of bribery.²⁹² They are calculated acts motivated by personal greed or a determination that the potential benefits of the corrupt deal outweigh the potential costs. Much more common and more difficult to explain is the misuse of judicial prestige that either returns no direct benefit to the offending judge or benefits the judge in an insignificant way.

B. Ignorance, Incompetence, and Stupidity

On occasion, judges explain acts of favoritism by claiming ignorance of the rules prohibiting the use of judicial prestige and power to further private interests. These judges lay the blame on failure to study the applicable law, “skimming” rather than reading the law, or failing to pay attention at judicial training sessions.²⁹³ Usually the judges offering this defense are non-lawyers, sometimes with no education beyond high school.²⁹⁴ Obviously, disciplinary bodies refuse to accept ignorance-of-

from \$5.2M to \$1M, A.B.A. J. (Jan. 12, 2015) http://www.abajournal.com/news/article/former_judge_plads_guilty_admits_taking_bribe_to_reduce_verdict_from_5.2m; see also Plea Agreement, United States v. Maggio, No. 4:15CR0000-1 BSM, (E.D. Ark. Jan. 9, 2015) <http://www.arkansasbusiness.com/public/maggio.plea.pdf>.

289. See, e.g., State Bar Ass’n v. Funderburk, 284 So. 2d 564, 566-68 (La. 1973) (revoking a judge’s law license for requiring a defendant to perform oral sex acts in order to avoid incarceration); *In re Boylan*, 744 A.2d 158, 159, 162 (N.J. 2000) (disciplining a judge for soliciting sexual favors from defendants in return for reduced fines); Miranda Materazzo, *Former Justice House Pleads Guilty to Receiving Bribe, Being Rewarded for Misconduct*, WATERTOWN DAILY TIMES (NY) (Feb. 27, 2017) (reporting a judge’s guilty plea to charges that he solicited sexual favors from a defendant in exchange for reducing the defendant’s fine) <http://www.watertowndailytimes.com/news03/former-justice-house-pleads-guilty-to-receiving-bribe-being-rewarded-for-misconduct-20170227>; see also Stacey Barchenger, *Records: Judge Moreland Ordered Women’s Probation*, TENNESSEAN (Nashville, Tenn.) (Feb. 11, 2017) at A4 (reporting that a woman “told at least two people she had a sexual relationship with [Judge] Moreland, and told one friend that it was to get out of a DUI case”).

290. See, e.g., United States v. Frega, 179 F.3d 793, 798 (9th Cir. 1999).

291. See, e.g., *In re Fuselier*, 837 So. 2d 1257, 1268-1269 (La. 2003).

292. See 4 BLACKSTONE, COMMENTARIES 139 (1787) (“Bribery . . . is where a judge or other person concerned in the administration of justice takes any undue reward to influence his behavior in office”); 18 U.S.C § 201 (defining the offense of bribery of public officials and witnesses).

293. See, e.g., *In re Feinberg*, 833 N.E.2d 1204, 1208 (N.Y. 2005) (rejecting a judge’s explanation that he had only “skimmed” the provisions of the Surrogate’s Court Procedure Act); *In re Britton*, 936 So. 2d 898, 906 (Miss. 2006) (noting the judge’s explanation that he had not read relevant precedent and had not read materials distributed at judicial conferences).

294. See, e.g., *In re Bailey*, 541 So. 2d 1036, 1039 (Miss. 1989); see also *In re Sullivan*, Amended Opinion and Order 2 (Pa. Ct. of Judicial Discipline May 13, 2016) (noting that Judge Sullivan had no formal legal training) <http://www.pacourts.us/courts/court-of-judicial-discipline/court-cases/traffic-court-judge-michael-j-sullivan-no-5-jd-14>.

the-law explanations from judges, including untrained judges.²⁹⁵ In defending the requirement that public confidence in the judiciary demands competent and impartial judges at every level, the Mississippi Supreme Court observed:

Some say this is unrealistic, that our Justice Court Judges for the most part have no formal training in the law. No doubt these public servants are at a disadvantage. The people have insisted only that each shall be a “high school graduate or have a general equivalency diploma.” Miss. Const. Art. 6, § 171 (1890), as amended. Yet the time is at hand when we insist that our justice court judges be nothing less than just that-judges.

When a person assumes the office of Justice Court Judge in this state, he or she accepts the responsibility of becoming learned in the law. When such a person takes the oath of office, he or she yields the prerogative of executing the responsibilities of the office on any basis other than the fair and impartial and *competent* application of the law to the facts.²⁹⁶

While not offered frequently as a defense, judges sometimes plead pure “stupidity” as an excuse for violating judicial conduct codes.²⁹⁷ But stupidity can hardly explain why judges misuse their offices. First, it does not take an unusually high IQ to grasp the idea there is no separate set of rules for friends. Second, most judges found to have misused judicial prestige receive disciplinary sanctions short of removal from office.²⁹⁸ If disciplinary commissions believed that special treatment for friends demonstrates an intellectual inability to serve as a judge, every judge

295. *In re Martin* 245 S.E.2d 766, 773 (N.C. 1978) (“A trial judge cannot rely on his inexperience or lack of training to excuse acts which tend to bring the judicial office into disrepute.”). But some disciplinary bodies consider a judge’s incompetency or lack of legal education as a mitigating factor in determining an appropriate sanction. *See, e.g., In re Orsini*, 181 A.2d 771, 772 (N.J. 1962) (considering the fact that the judge was “ill-equipped for judicial office [and] was selected wholly upon political considerations,” as a mitigating factor in a “ticket fixing” case); *see also In re Sullivan*, Amended Opinion and Order 2 (Pa. Ct. of Judicial Discipline May 13, 2016) (considering as a mitigating factor that “Judge Sullivan has no formal legal education and, naturally, does not have the appreciation for all of the finer points of ethical standards one might expect of someone with such a background”) <http://www.pacourts.us/courts/court-of-judicial-discipline/court-cases/traffic-court-judge-michael-j-sullivan-no-5-jd-14>.

296. *Bailey*, 541 So. 2d at 1039; *see also In re Boykin* 763 So. 2d 872, 875 (Miss. 2000) (“Negligence, ignorance, and incompetence are sufficient for a judge to behave in a manner prejudicial to the administration of justice which brings the judicial office into disrepute.”).

297. *See, e.g., In re Ellender*, 889 So. 2d 225, 228 (La. 2004) (“Judge Ellender pleaded stupidity, ignorance and lack of judgment . . .”).

298. *See infra* Part V.B.

guilty of favoritism would be removed from office.²⁹⁹ Dispensing special consideration to friends indicates an ethical deficiency rather than an intellectual deficiency.³⁰⁰

C. *Confusing Morality Roles*

Judges serve in many roles in addition to the public role as a neutral magistrate. Likely the most important of these non-professional stations in life is that of a family member. As a judicial officer, an individual must comply with the judiciary's prime directive—fair, impartial, and unbiased application of the law. As a parent, sibling, or child, a judge's legal and moral obligations are quite different. A parent, for instance, is entitled and expected to show favoritism and partiality toward their children. Unavoidably, the morality roles of a judge as public officer and as a private family member sometimes conflict. For example, after receiving a late-night telephone call from his son who had been arrested for possession of cocaine, a judge ordered his son's release on a recognizance bond.³⁰¹ Arguably, concern for his son's safety overrode the judge's sworn legal and ethical duty not to preside in a relative's case and not to let family relationships influence judicial conduct.³⁰² In other words, the judge chose a moral obligation as a father over an oath as a judicial officer. Less blatant, but equally improper, a New York judge made pleas for leniency to a police officer and police chief concerning the arrest of the judge's son on animal cruelty charges.³⁰³ Although recognizing that "parental instincts" sometimes cloud judicial judgement, the New York Commission on Judicial Conduct refused to permit the judge's moral role as a father to justify violating the ethical duties assigned to members of the judiciary.³⁰⁴

Judicial codes have long resolved conflicts in moral responsibilities by specifically and repeatedly informing judges that they must keep parental and other personal relationships separate from their judicial duties.³⁰⁵ For example, Rule 1.3 of the 2007 ABA Model Code of Judicial Conduct

299. See Steven Lubet, *Stupid Judge Tricks*, 41 S. TEXAS L. REV. at 1308-09 (2000).

300. Cf. Lawrence B. Solum, *Judicial Selection: Ideology v. Character*, 26 CARDOZO L. REV. 659, 674 (2005).

301. *In re Van Rider*, 715 N.E.2d 402, 403 (Ind. 1999).

302. *Id.* at 404.

303. *In re Sullivan*, Determination (N.Y. Comm'n on Judicial Conduct July 14, 2015).

304. *Id.*; see also *In re Brown*, 761 So. 2d 182, 184 (Miss. 2000) (sanctioning a judge in part for calling another judge to try to get his son's DUI case dismissed).

305. See, e.g., CANONS OF JUDICIAL ETHICS Canon 13 (Am. Bar Ass'n 1924) ("[A judge] should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position, or influence of any party or other person.").

instructs judges not to abuse the prestige of office to advance the personal or economic interests of others.³⁰⁶ Rule 2.2 of the 2007 ABA Model Code provides that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”³⁰⁷ Rule 2.4 squarely addresses family and other relationships by warning judges not to “permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”³⁰⁸ Finally, the 2007 ABA Code requires disqualification from any matter in which a family member appears as a party, witness, or lawyer.³⁰⁹

Moreover, parental moral obligations do not explain violations of unambiguous rules of judicial conduct prohibiting influence pedaling. A parent’s moral obligation to their arrested child could be fulfilled by the ethically permissible options of posting bond, hiring a top-flight criminal defense team, or taking the matter to the “highest court in the land.” Moreover, most judges who “help” a child with a legal problem by violating the ethical prohibition against the misuse of prestige, simply feel entitled to do so.³¹⁰ Those same judges would not consider themselves entitled to violate other ethics rules also designed to protect the integrity of the judicial system such as the prohibitions against bribery and the destruction of evidence.

Even if a deeply held sense of moral responsibility did explain a judge’s misconduct in legal matters involving family members, it would not explain identical misconduct in assisting non-relatives.³¹¹ Role morality fits into structured relationships recognized by society “which have some pattern of conduct associated with them.”³¹² These special relationships carry responsibilities and expectations established by law, tradition, and custom.³¹³ Thus, relationships such as parent-child, teacher-student, doctor-patient, lawyer-client, and judge-litigant carry certain interpersonal expectations and responsibilities. But judges often misuse judicial power and prestige where no special relationship exists. There is simply no moral responsibility owed to a family member of an

306. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (Am. Bar Ass’n 2007).

307. *Id.* R. 2.2.

308. *Id.* R. 2.4(B).

309. *Id.* R. 2.11(A)(2).

310. *See infra* Part IV.E.

311. *See supra* notes 124-142 (citing disciplinary actions in which a judge misused judicial power or prestige to assist non-relatives).

312. DOROTHY EMMET, RULES, ROLES AND RELATIONS 169 (1966).

313. *See id.* at 14.

acquaintance³¹⁴ or a friend of the judge's friend's son.³¹⁵

D. Narcissism

In some cases, flaunting ethical rules by dispensing judicial favors could be attributed to a Narcissistic Personality Disorder (NPD).³¹⁶ The *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* specifies eleven types of personality disorders, including Narcissistic Personality Disorder.³¹⁷ According to DSM-5, “[a] personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.”³¹⁸ A diagnosis of NPD requires the presence of at least five of the following diagnostic criteria:

1. A grandiose sense of self-importance;
2. Preoccupation with fantasies of unlimited success, power, or brilliance;
3. A belief that he or she is “special” and unique;
4. Requires excessive admiration;
5. Possesses a sense of entitlement;
6. Takes advantage of others to further his or her own goals;
7. Lacks empathy;
8. Often envious of others or thinks other are envious of him or her; and
9. Demonstrates arrogant, haughty behaviors or attitudes.³¹⁹

Few judges have interposed a defense of NPD in a disciplinary proceeding not only because narcissists are loathed to admit any fault³²⁰

314. See *In re Platt*, (Cal. Comm’n on Judicial Performance Aug. 5, 2002) (disciplining a judge in part for asking another judge to release a family member of an acquaintance of the judge on a recognizance bond); see also *In re Bowers*, Determination (N.Y. Comm’n on Judicial Conduct Nov. 12, 2004) (censuring a judge for requesting special consideration for a business acquaintance).

315. *In re Kiley*, 546 N.E.2d 916, 917 (N.Y. Ct. App. 1989).

316. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 669-72 (5th ed. 2013) (DSM-5).

317. *Id.* at 645.

318. *Id.* (italics omitted).

319. *Id.* at 669-70.

320. See DREW PINSKY AND S. MARK YOUNG, THE MIRROR EFFECT: HOW CELEBRITY NARCISSISM IS SEDUCING AMERICA 100 (2009) (“[N]arcissists rarely have qualms about lying in order to maintain their carefully constructed image, making it harder for a therapist to recognize where the patient’s version of events leaves off and the real story begins.”); see also GALE ENCYCLOPEDIA OF MENTAL DISORDERS 647 (2003) (noting that narcissists are “prone to lie about themselves”). In addition, NPD is difficult to diagnose. See PINSKY & YOUNG, *supra*, at 99-100 (discussing the difficulty in diagnosing

but also because NPD “is not readily amenable to treatment.”³²¹ Therefore, by offering the diagnosis in response to a disciplinary complaint, a judge almost certainly concedes the appropriateness of a long suspension or permanent removal from office.³²² One judge who took the risk was George M. Parker.³²³

At his hearing before the Ohio Board of Commissioners on Grievances, Judge Parker attempted to mitigate his misconduct by offering expert testimony that he suffered from NPD.³²⁴ But Judge Parker’s demanding, arrogant, and demeaning behavior greatly exceeded simply intervening in cases to achieve a favorable outcome for a relative or friend. Among other things, Judge Parker jailed a defendant’s mother for raising her hand to ask a question;³²⁵ coerced guilty pleas;³²⁶ presided over a defendant’s guilty plea and sentencing after witnessing law enforcement officials seize the stolen property that formed the basis for the charge;³²⁷ took an arresting officer into his chambers after recessing a trial, and proceeding in an irritated, short-tempered, and agitated manner “slammed his hands down in frustration” when the officer refused the judge’s demand to agree to a reduced charge;³²⁸ engaged in boorish and humiliating treatment of a domestic violence victim;³²⁹ called 911 to order a police officer to report to the judge’s chambers in a non-emergency situation because the judge thought no one at the police department would answer non-emergency lines, and then falsely blamed the prosecutor for the telephone call and later offered another false explanation for his action;³³⁰ telephoned a defendant’s drug dealer from the courtroom;³³¹ demanded to know why a Jewish defendant attended a Catholic high school;³³² and insisted that a domestic violence victim state whether she “forgave” the offender.³³³

As Judge Parker’s conduct exhibited the classic signs of the disease, an independent forensic psychiatrist had no difficulty concluding that the

NPD). One difficulty in diagnosing NPD is that there must be evidence of onset of the disorder in adolescence or early adulthood, usually long before a person receives a judicial position. *See* DSM-5, *supra* note 316, at 645.

321. *Disciplinary Counsel v. Parker*, 876 N.E.2d 556, 569 (Ohio 2007).

322. *See id.* at 574 (imposing an eighteen-month suspension from office).

323. *Id.* at 559 (stating that Judge Parker offered his diagnosis of narcissistic personality disorder as a factor in mitigation)

324. *Id.* at 567-69.

325. *Id.* at 560-61.

326. *Id.* at 561-63.

327. *Id.* at 561.

328. *Id.* at 562.

329. *Parker*, 875 N.E.2d at 563.

330. *Id.* at 564-65.

331. *Id.* at 565.

332. *Id.*

333. *Id.* at 566.

judge suffered from NPD.³³⁴ It did not take a trained eye to detect the judge's need to be admired, his grandiosity and bullying of "subordinates," his oversensitivity to what he considered slights to his "special" position, his quickness to anger, his precise vision of a proper case outcome and sense of entitlement to assure that outcome, and his lack of empathy.³³⁵ Just as CEOs suffering from NPD can "suck the life out of an organization," it is easy to image Judge Parker sucking the life out of a courtroom.³³⁶

Perfectly normal judges, just as other healthy individuals, occasionally exhibit narcissistic traits.³³⁷ But these isolated occurrences do not control the lives of most judges nor do they impair the judges' ability to objectively measure their conduct against applicable legal and ethical standards.³³⁸ NPD appears infrequently in the population³³⁹ and cannot explain the systematic misuse of judicial power.³⁴⁰ The more likely explanation for this type of judicial misconduct lies in one of the diagnostic criteria for NPD, a sense of entitlement.³⁴¹

E. Psychological Entitlement

The "curse" of an unjustified sense of entitlement³⁴² is often offered to explain the improper actions and inactions of powerful people including politicians, professional athletes, the wealthy, celebrities, union leaders, and others.³⁴³ For some reason, a sense of entitlement has seldom been

334. *Parker*, 875 N.E.2d at 567-69.

335. See Jayne W. Barnard, *Narcissism, Over-Optimism, Fear, Anger, and Depression: The Interior Lives of Corporate Leaders*, 77 U. CIN. L. REV. 405, 410-11 (2008).

336. *Id.* at 410.

337. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 672 (5th ed. 2013) (DSM-5) ("Many highly successful individuals display personality traits that might be considered narcissistic."); see also DREW PINSKY AND S. MARK YOUNG, THE MIRROR EFFECT: HOW CELEBRITY NARCISSISM IS SEDUCING AMERICA 89 (2009) ("All healthy individuals exhibit narcissistic traits throughout their lives.")

338. See PINSKY & YOUNG, *supra* note 337, at 90.

339. See *id.* at 97 ("[N]arcissism that can be definitively diagnosed and treated as a personality disorder, is relatively rare."); DSM-5, *supra* note 309, at 671 (stating that "prevalence estimates for narcissistic personality disorder . . . range from 0% to 6.2% in community samples.")

340. *Disciplinary Counsel v. Parker*, 876 N.E.2d 556, 569 (Ohio 2007).

341. See *supra* note 319 and accompanying text (listing the diagnostic criteria for NPD).

342. W. Keith Campbell, et al., *Psychological Entitlement: Interpersonal Consequences and Validation of a Self-Report Measure*, 83 J. PERSONALITY ASSESSMENT 29, 30 (2004) <http://www.psychology.uga.edu/sites/default/files/PESentitlementPaper.pdf>.

343. See *id.* at 29-30; see also Editorial, *NY's Entitled Pols*, N.Y. POST, (May 30, 2017), at 22 (politicians); Danny Picard, *John Farrell Will Be Fired by Red Sox Because of Player Entitlement*, METRO-BOSTON (May 25, 2017), 2017 WLNR 16395702 (professional athletes); John Tozzi, *Income Inequality Makes the Rich More Scrooge-Like, Study Finds*, HOUSTON CHRONICLE, (Nov. 26, 2015), at 3 (wealthy); Corina Knoll & Richard Winton, *Allred Again in Scandal's Glare: Taking on Bill Cosby Presents High Profile Attorney with Another Stint in the Spotlight Fighting for Women*, L.A. TIMES, (Nov.

suggested as the cause of the misdeeds of the most powerful governmental officials on the planet—judges.³⁴⁴

In a sociological and political sense, power connotes “a relationship with others that entails the ability to control their actions.”³⁴⁵ Otherwise stated, power is “a property possessed by an actor that enables him to alter the will or actions of others so that they conform to his will.”³⁴⁶ Not surprisingly, persons in positions of power commonly possess an inflated view of themselves, overestimate “the extent to which they actually possess control over outcomes,” overestimate their positive personal characteristics, and “adhere strictly to their own, pre-existing opinions rather than incorporating the views of others.”³⁴⁷ Equally disturbing, power leads to an enhanced sense of entitlement,³⁴⁸ “a stable and pervasive sense that one deserves more and is entitled to more than others.”³⁴⁹ Usually this means that affected individuals sincerely believe that they are entitled to special treatment because of their status or position in relation to “subordinates.”³⁵⁰ Those with an overactive sense of entitlement are more likely to engage in unfair behavior, cheat, steal, lie,³⁵¹ hold grudges, and exhibit “a strong capacity for vengefulness.”³⁵² Most significantly in the context of judges and judicial ethics codes, entitled people “report greater unethical decision making tendencies and behaviors.”³⁵³

A sense of entitlement is most dangerous when it accompanies a position of almost absolute power to affect individuals, families, government entities, businesses, and civic and charitable organizations

13, 2015), at 1 (celebrities); Editorial, *Scott Walker is Dangerous: His Union-Bashing is All About the Rich*, PITTSBURGH POST-GAZETTE, (July 27, 2015), at A7 (union leaders).

344. Professor Steven Lubet was the first to recognize the role that a sense of entitlement plays in a judge’s misuse of official power and prestige. See Lubet, *Stupid Judge Tricks*, 41 S. TEX. L. REV. 1301, 1310-11 (2000).

345. Marion Crain, *Feminism, Labor, and Power*, 65 S. CAL. L. REV. 1819, 1825 (1992).

346. *Id.* (quoting MARILYN FRENCH, *BEYOND POWER: ON WOMEN, MEN AND MORALS* 505 (1985)).

347. Takuya Sawaoka, Brent L. Hughes & Nalini Ambady, *Power Heightens Sensitivity to Unfairness Against the Self*, 41 PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 1023, 1023-24 (2015).

348. *Id.* at 1023.

349. W. Keith Campbell, et al., *Psychological Entitlement: Interpersonal Consequences and Validation of a Self-Report Measure*, 83 J. PERSONALITY ASSESSMENT 29, 30-31 (2004) <http://www.psychology.uga.edu/sites/default/files/PEsentitlementPaper.pdf>.

350. See Joshua B. Grubbs & Julie J. Exline, *Trait Entitlement: A Cognitive-Personality Source of Vulnerability to Psychological Distress*, 142 PSYCHOLOGICAL BULLETIN 1204, 1208, 1211 (2016).

351. Sawaoka, *supra* note 347, at 1024.

352. See Grubbs, *supra* note 350, at 1208, 1216.

353. Sawaoka, *supra* note 347, at 1024; see also Deborah L. Rhode, *Lawyers as Leaders*, 2010 MICH. ST. L. REV. 413, 419 (stating that entitled leaders may feel “free to disregard legal or ethical rules and standards of respect that are applicable to others, to those ‘little people’”).

in virtually every aspect of their existence. Since 1803, the judicial system has had the last word on most issues.³⁵⁴ Virtually every social, political, and economic controversy finds its way to the courtroom including who will serve as president,³⁵⁵ who can own guns,³⁵⁶ who can get married,³⁵⁷ the design of cheerleading uniforms,³⁵⁸ and when parents can visit their children.³⁵⁹ Typically, only judges holding office under the federal constitution or a state constitution wield such vast power. Judges in courts of limited jurisdiction possess severely circumscribed authority to affect people's lives. For example, the State of Washington statutorily limits the jurisdiction of municipal court judges to city ordinances violations and similar actions brought to enforce or recover penalties or forfeitures established by city ordinances.³⁶⁰ Washington municipal court judges may not sentence an offender to more than a \$5,000 fine or 364 days in jail.³⁶¹ But judges of limited authority exhibit a sense of entitlement at least equal to judges invested with greater power.³⁶² Thus, the degree of constitutional or statutory authority does not account for a judge's sense of entitlement or misuse of judicial prestige. Judges attain their "special" status and sense of entitlement in many ways independent of the amount of authority they possess over the lives of others.

1. Becoming Entitled

The unique power and prestige accompanying the judicial office render judges the most susceptible to developing and acting upon a misplaced sense of entitlement.

a. Unchallenged Authority in the Courtroom

Most basically, the titles "Judge" and "Your Honor" connote a special, superior position to everyone else in a courtroom who must rise when the judge enters. The superiority of the judge is constantly reinforced by

354. See *Marbury v. Madison*, 5 U.S. 137 (1803) (establishing the doctrine of judicial review).

355. See *Bush v. Gore*, 531 U.S. 98 (2000).

356. See *District of Columbia v. Heller*, 554 U.S. 570 (2008).

357. See *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

358. See *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017).

359. See *In re Marriage of Marshall*, 663 N.E.2d 1113, 1119 (Ill. App. Ct. 1996) ("Matters of child visitation privileges rest largely in the broad discretion of the trial court . . .").

360. WASH. REV. CODE § 35.20.030 (2016); see also Janet G. Cornell, *Limited Jurisdiction Courts-Challenges, Opportunities, and Strategies for Action*, TRENDS ST. CTS. (2012) ("Forty-six states have clearly identified limited-jurisdiction courts.") <http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/courts-and-the-community/3-6-limited-jurisdiction-courts.aspx>.

361. WASH. REV. CODE § 35.20.030 (2016).

362. See, e.g., *In re Sullivan*, Order (Pa. Ct. of Judicial Discipline Jan. 13, 2016) (Philadelphia Traffic Court Judge); *In re Boykin*, 763 So. 2d 872, 874 (Miss. 2000) (Justice Court Judge).

uniformly recognized symbols of power including the judge's elevated seating, robe, gavel, and the flags and governmental seal flanking the judge. Supplicants sit in church like pews waiting acknowledgement by the person unmistakably in charge.³⁶³ No one in the courtroom refers to the judge by his or her name because the judge is no longer a mere mortal but the embodiment of the law and symbolic dispenser of justice.³⁶⁴ In other words, "judges become . . . not ordinary men, subject to ordinary passions, but 'discoverers' of final truth, priests in the service of a godhead."³⁶⁵

Because "[a] courtroom is a hallowed place where trials must proceed with dignity,"³⁶⁶ judges possess nearly absolute authority to direct and control what transpires in court.³⁶⁷ Sometimes, judges unjustifiably demand deferential treatment commensurate with their "enlarged sense of self-importance" and entitlement.³⁶⁸ A judge's stern warning³⁶⁹ or the approach of a court security officer quickly serves to reprimand individuals instigating affronts or perceived affronts to the judge. If deemed necessary, a judge may unilaterally cite an offender for direct criminal contempt and impose a sentence. If the sentence includes immediate incarceration, the court security officer will execute the order without question because the courtroom hierarchy is never in doubt.³⁷⁰ A judge's unqualified control over the courthouse and the people in it has led some judges to declare that, at least when on the bench, they are God.³⁷¹ Further enhancing a judge's sense of entitlement is the deference afforded judges by the civil justice system.

363. Orlando I. Martinez-Garcia, *The Person in Law, The Number in Math: Improved Analysis of the Subject as Foundation for a Nouveau Regime*, 18 AM. U. J. GENDER SOC. POL'Y & LAW 503, 513 (2010) (noting that the organization and structure of many courtrooms "are similar to those of the church and ancient temple").

364. See Oscar G. Chase & Jonathan Thong, *Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness-Related Factors*, 24 YALE L.J. & HUMAN. 221, 226 (2012) ("The judge's robe and the other ceremonial symbols of the courtroom are in this sense "social signs" that the judge has put aside her individuality and assumed the role of an authority acting "under law"— that is, deciding according to neutral principles.").

365. Max Lerner, *Constitution and Courts as Symbols*, 46 YALE L.J. 1290, 1312 (1937).

366. *Illinois v. Allen*, 397 U.S. 337, 351 (1970) (Douglas, J., separate opinion).

367. See *United States v. Columbia Broadcasting Sys.*, 497 F.2d 102, 106-07 (5th Cir. 1974) ("Ordinarily the trial judge has extremely broad discretion to control courtroom activity . . ."); *State v. Castoran*, 739 A.2d 97, 99 (N.J. Sup. Ct. 1999) (stating that a judge has "wide discretion" to control the courtroom).

368. Donald C. Langevoort, *Ego, Human Behavior, and Law*, 81 VA. L. REV. 853, 881 (1995).

369. See, e.g., *In re Hammermaster*, 985 P.2d 924, 929 (Wash. 1999) (en banc) (reporting that a judge told a defendant, "shut up before you go to jail").

370. Cf. *infra* notes 386-387 and accompanying text (describing how police officers literally followed a judge's order to bring an attorney before the court using excessive force).

371. See, e.g., *Gottlieb v. SEC*, 310 Fed. Appx. 424, 425 (2d Cir. 2009) (reporting that a judge told a litigant "I am God in my courtroom"); Pamela Coyle, *Benchstress*, 81 A.B.A.J., Dec. 1995, 60, 60 (reporting that a Louisiana judge told a witness that in court he was God).

b. Immunity from Civil Lawsuits

The doctrine of judicial immunity further increases a sense of entitlement by immunizing judges from any personal monetary consequences for their official actions.³⁷² So long as a judge acts in his or her judicial capacity and has not acted in “the clear absence of all jurisdiction,”³⁷³ the judge is protected against a suit for money damages.³⁷⁴ Absolute judicial immunity is justified by the legitimate concern that “[i]f judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits.”³⁷⁵ The doctrine permits judges to decide cases without fear that they will wind up as defendants in lawsuits filed by disgruntled litigants.³⁷⁶ The enormously broad scope of judicial immunity defeats liability even when a judge acts maliciously or corruptly,³⁷⁷ deprives a party of due process,³⁷⁸ acts on bias and bad faith,³⁷⁹ or causes an injustice.³⁸⁰ Thus, judicial immunity bars money damage lawsuits when a judge in bad faith considers ex parte communications,³⁸¹ refuses to stay a jail sentence as mandated by state law,³⁸² or receives a bribe.³⁸³ As illustrated by *Mireles v. Waco*,³⁸⁴ judicial immunity even protects a judge who, because of a touch of narcissism or hypersensitivity to perceived affronts, causes physical harm to a

372. *Bradley v. Fisher*, 80 U.S. 335, 347-48 (1871).

373. *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). *Sparkman* provides the following example distinguishing an act in excess of jurisdiction from an act in clear absence of all jurisdiction:

“[I]f a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.”

Id. at 357 n.7 (citing *Bradley v. Fisher* 80 U.S. 335, 352 (1872)).

374. *Forrester v. White*, 484 U.S. 219, 225 (1988).

375. *Id.* at 226-27.

376. *Id.* at 225.

377. *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

378. *Figueroa v. Blackburn*, 208 F.3d 435, 443-45 (3d Cir. 2000).

379. *Marangos v. Swett*, No. 3:07-cv-5937-FLW, 2008 WL 4508753, *8 (D. N.J. Sept. 29, 2008) (finding that judicial immunity applies even when the judicial act is motivated by “bias, bad faith, or malice”).

380. *See Mireles v. Waco*, 502 U.S. 9, 10 (1991).

381. *Marangos*, 2008 WL 4508753, *8.

382. *Figueroa*, 208 F.3d at 443-45.

383. *See, e.g.*, *Estate of Sherman v. Almeida*, 747 A.2d 470, 475 (R.I. 2000) (refusing to carve out an exception to the judicial immunity doctrine for bribery or other forms of judicial corruption).

384. 502 U.S. 9 (1991).

courtroom participant.

Howard Waco, an assistant public defender sued Raymond Mireles, a California state judge.³⁸⁵ Waco's complaint alleged that when he failed to appear for a case on the judge's morning calendar, the judge unceremoniously ordered police officers "to forcibly and with excessive force seize and bring [Waco] into his courtroom."³⁸⁶ As a natural consequence of the judge's power and prestige:

[t]he officers took the order literally and "by means of unreasonable force and violence seize[d] plaintiff and remove[d] him backwards" from another courtroom where he was waiting to appear, cursed him, and called him "vulgar and offensive names," then "without necessity slammed" him through the doors and swinging gates into Judge Mireles' courtroom.³⁸⁷

The Court found that Judge Mireles's action to secure Waco's attendance in court was clearly taken in the judge's judicial capacity.³⁸⁸ The Court further determined that even if the judge authorized and ratified the use of excessive force, that act, while in excess of the judge's authority, was not taken in the absence of the court's jurisdiction.³⁸⁹ As a result, judicial immunity barred the suit.³⁹⁰ Judicial immunity from civil suits for money damages serves a laudatory purpose but also heightens a judge's sense of invulnerability and entitlement.

c. Special Status as a Lawyer

Judges who are lawyers start their professional careers with a special status mindset that is only magnified when they put on the robe.³⁹¹ Lawyers receive special training in law schools, take a unique oath, and belong to a "special professional order."³⁹² "From their earliest origins the law has accorded to these 'officers of the court' certain special and exclusive privileges, which set them apart from the mass of the people, as

385. *Id.* at 10.

386. *Id.*

387. *Id.*

388. *Id.* at 12-13.

389. *Id.*

390. *Id.* at 13.

391. See Jeffrey O'Connell & Thomas E. O'Connell, Book Review, *Stewards of Democracy: Law as a Public Profession* by Paul D. Carrington, 16 J.L. & POL. 479, 494 (2000) (describing judges as having been "nurtured in an ambience of special status and preferment from their earliest days in law school").

392. Michael Ariens, *Know the Law: A History of Legal Specialization*, 45 S.C. L. REV. 1003, 1031 (1994).

if they truly were, in a strict sense, public officials.”³⁹³

Apparently, willing to sacrifice humility for accuracy, lawyers consider themselves conservators of democracy,³⁹⁴ bearers of the public trust,³⁹⁵ and guardians of justice.³⁹⁶ They do not hesitate to remind the public of their special status:

We are special. We are in the Constitution. We are officers of the court. We are fiduciaries whose charge is to preserve the rule of law. We have kept the playing fields level and made sure that people were honest in the market place for over 200 years. We, lawyers and judges, have provided the glue that has held the fabric of this country together, and have contributed in great measure to the success of an economic system and a democratic form of government that is the envy of the world. We have literally been and are the guardians of this Republic.³⁹⁷

This self-proclaimed exalted position in society leads lawyers to exhibit their own sense of entitlement.³⁹⁸ Some from the special lawyer class are drawn to the judiciary to increase their power and prestige, which also increases their sense of entitlement.³⁹⁹

d. Reinforcing a Judge's Sense of Entitlement

Unfortunately, a judge's sense of entitlement is continually reinforced. Reinforcement comes in innocent ways such as a lawyer laughing at a judge's jokes, or automatically agreeing with observations made by a judge, or addressing a judge as “Judge” or “Your Honor” during extrajudicial encounters. Judicial codes of conduct also unwittingly foster a judge's feeling of self-importance on and off the bench. Judicial codes recognize a judge's “special expertise,”⁴⁰⁰ and that their special status

393. *Id.* at 1013 n.46 (quoting ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 3 (1921)).

394. Renee Newman Knake, *Lawyer Speech in the Regulatory State*, 84 FORDHAM L. REV. 2099, 2114 (2016).

395. Jo Ann Merica, *Welcome to the Profession*, 62 TEX. B.J., Jan. 1999, at 41, 41.

396. *Lawyers/Community Leaders*, TEX. B.J., Apr. 2005, at 364, 364.

397. Jack F. Dunbar, *Multidisciplinary Practice Translated Means “Let's Kill All the Lawyers,”* 79 MICH. BAR J., Jan. 2000, at 64, 66.

398. See Richard L. Abel, *Comparative Studies of Lawyer Deviance and Discipline*, 15 LEGAL ETHICS 187, 189 (2012) (“Many lawyers seemed to have a sense of entitlement to what they pocketed, justifying it by reference to the effort they invested, the expertise they had painfully acquired, or the rewards reaped by other (less deserving) lawyers.”).

399. Linz Audain, *The Economics of Law-Related Labor: Judicial Careers, Judicial Selection, and an Agency Cost Model of the Judicial Function*, 42 AM. U. L. REV. 115, 120 (1992).

400. MODEL CODE OF JUDICIAL CONDUCT R. 3.2 cmt. 1 (Am. Bar. Ass'n 2007).

requires judges to subject themselves to professional and personal restrictions that would be “burdensome” if applied to normal people.⁴⁰¹ Under rules of judicial conduct “[i]t is well accepted that a judge is a judge twenty-four hours a day, seven days a week, whether the judge is wearing a judicial robe or not in any activity.”⁴⁰² A former federal judge described the judiciary’s exalted position in society:

Judges are regarded by the public as the custodians of a special body of knowledge. Like Egyptian priests who held within their bosoms the secret of the Nile, so the judges, it is believed, possess knowledge and modes of reasoning unavailable to the laity. For that reason they are treated with a very special deference and, sometimes, with reverence. This peculiar and special relationship between the public and the judge is an important ingredient of his capacity to render the service expected of him by the public.⁴⁰³

The judiciary’s high opinion of itself, enhanced by the deference and flattery of lawyers, and the special status conferred by judicial conduct codes, all reinforce a sense of judicial entitlement. But the most important factor in solidifying an unjustified sense of entitlement is allowing a judge’s misuse of judicial prestige to go unchallenged. For example, it took nine years before the pattern of misuse of prestige by former Illinois Supreme Court Justice James D. Heiple came to light.

On January 27, 1996, at approximately 1:30 a.m., a police officer attempted to stop Justice Heiple for traveling thirteen miles per hour over the speed limit.⁴⁰⁴ Although the officer activated his emergency lights and siren, and there were no vehicles between the officer’s squad car and Justice Heiple’s vehicle, Justice Heiple continued for three blocks before pulling to the side of the road. After stopping on the shoulder, Justice Heiple ignored the officer’s order to remain at the scene and drove three blocks to his residence.⁴⁰⁵ The officer followed and upon arriving at the Justice’s home asked him to remain near his car. Again, ignoring the officer’s instruction, Justice Heiple began walking toward his front door.⁴⁰⁶ When asked to stop, Justice Heiple responded, “[o]h shut up. Do you know who you are talking to?”⁴⁰⁷ While the officers placed him in

401. *See id.* at R. 1.2 cmt. 2.

402. Fla. Judicial Ethics Advisory Comm. Op. 2007-07 (2007).

403. Simon H. Rifkind, *A Judge’s Nonjudicial Behavior*, 38 N.Y. ST. B.J. 22, 22-23 (1966).

404. *In re Heiple*, Order (Ill. Cts. Comm’n Apr. 30, 1997).

405. *Id.*

406. *Id.*

407. *Id.*

handcuffs, he repeated, “[d]o you know who I am?”⁴⁰⁸ During its investigation into Justice Heiple’s arrest, the Illinois Judicial Inquiry Board discovered three previous traffic stops in which the Justice successfully interposed his judicial status to avoid traffic citations.⁴⁰⁹

About three weeks before the January 27, 1996 arrest, Justice Heiple was stopped for speeding.⁴¹⁰ As the officer approached Justice Heiple’s automobile, Justice Heiple displayed his Illinois Supreme Court identification card instead of his driver’s license.⁴¹¹ For that reason, the officer did not issue Justice Heiple a traffic ticket.⁴¹² Similarly, in November 1995, Justice Heiple displayed his official identification card when asked by a police officer for his driver’s license.⁴¹³ By invoking his judicial status, Justice Heiple again avoided a ticket for traveling twenty-eight miles per hour in excess of the speed limit.⁴¹⁴ Three years earlier, Justice Heiple again displayed his judicial identification when stopped for speeding.⁴¹⁵ During that stop, he also advised the law enforcement officer that as a former traffic court judge, he was well aware of the traffic laws.⁴¹⁶ Although, on that occasion, Justice Heiple could not produce current proof of vehicle insurance, he was not issued any citations.⁴¹⁷

Using the prestige of judicial office at least three times to avoid the consequences of his misconduct served to fortify Justice Heiple’s misplaced sense of entitlement. In his mind, he received from the first three police officers only what he was entitled to because of his special status as a member of the state’s highest court. Police officers might have a right to subject commoners to the laws of the state, but not those of special, superior status such as judges. This is not to fault the three officers who gave Justice Heiple a pass. But Justice Heiple’s disturbing actions during his fourth traffic stop on January 27, 1996, can be best understood as a sense of entitlement to special treatment that he expected, and usually received, from persons of “inferior” status.⁴¹⁸

408. *Id.*

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. Many judges misuse their official power and prestige for years before being called to account. *See, e.g., In re Schilling, Determination* (N.Y. Comm’n on Judicial Conduct May 8, 2012) (noting that Judge Schilling bragged about the withdrawal of a ticket he received in 2005).

e. A Sense of Entitlement Accounts for the Misuse of Judicial Power and Prestige

There is little doubt that most judges who dispense or request favors for themselves or others do so because they believe that their judicial status entitles them to special treatment.⁴¹⁹ Usually, the connection is established by the judge's own words.⁴²⁰ Thus, when Justice Heiple asked the officer effectuating a traffic stop, "[d]o you know who I am?" he was not expecting the officer to respond, "yes, I know, you are a lawyer" or, "you reside in the city" or "you belong to the Rotary Club." Justice Heiple held only one position or status that entitled him to exemption from the law—judge.⁴²¹

Similarly, after Judge Carl J. Landicino handed a police officer his judicial identification card and informed the officer that he was driving back from a judicial conference, the judge inquired, "is this how you treat a Supreme Court Judge?"⁴²² Judge Landicino did not ask, "is this how you treat a citizen," or "family man," or "community volunteer," because those statuses entitle a person only to fair treatment, not special treatment. When Judge Roy M. Dumar appeared in small claims court to prosecute a case against a snowmobile dealer, he introduced himself to the court not as plaintiff Dumar, but Judge Dumar, because judges, not plaintiffs, deserve a leg up on non-judges.⁴²³ When Judge David M. Wiater telephoned a defendant to reprimand him for leaving an unpleasant message for the court clerk, the judge emphasized that the defendant was talking to a New York judge and not a next-door neighbor.⁴²⁴ Some judges are a little more emphatic when asserting their positions of authority and entitlement. For example, to avoid paying an entry fee to a park a judge

419. See Elisa E. Ugarte, *Response to Stupid Judge Tricks*, 41 S. TEX. L. REV. 1407, 1409 (2000) (agreeing that judges exhibit a sense of entitlement in many acts of misconduct).

420. The evidence sometimes comes from the judge's own hand rather than the judge's mouth. Offering a traffic enforcement officer, a judicial badge or identification card in addition to, or instead of, a driver's license is a convenient way to claim judicial privilege. See, e.g., *In re Werner*, Determination (N.Y. Comm'n on Judicial Conduct Oct. 1, 2002).

421. *In re Heiple*, Order (Ill. Cts. Comm'n Apr. 30, 1997); see also *In re Knott*, Formal Written Complaint (N.Y. Comm'n on Judicial Conduct Sept. 14, 2012) (charging that the judge asked the police officer "Do you know who I am," after being served with a ticket for leaving the scene of an accident); *In re Sharp* (Tex. Comm'n on Judicial Performance Mar. 13, 2013) (finding that in an effort to secure the release of an acquaintance's daughter, the judge asked juvenile detention officials, "[D]o you know who you are talking too, you better release her tonight!").

422. *In re Landicino*, Determination (N.Y. Comm'n on Judicial Conduct Dec. 28, 2015). The "supreme court" in New York is a state-wide trial level court. Jay C. Carlisle & Matthew J. Shock, *The Constitutional Convention and Court Merger in New York State*, 38 PACE L. REV. 69, 77 (2017).

423. See *In re Dumar*, Determination (N.Y. Comm'n on Judicial Conduct Apr. 18, 2004).

424. *In re Wiater*, Determination (N.Y. Comm'n on Judicial Conduct June 29, 2006) (finding that the judge advised the defendant, "[y]ou're talking to a New York State Judge . . . not somebody next door").

offered, “I’m the fucking judge here in this village.”⁴²⁵ With similar emphasis, another judge reminded police that, “[m]y name is not Mr. Quinn; it’s Judge Quinn and don’t forget it.”⁴²⁶ And while some judges do not wear their official positions on their sleeves, their thought process in invoking judicial prestige in private matters is the same. The circumstances surrounding the misuse of power and prestige by judges confirm the over-developed sense of psychological entitlement that causes judges to exploit their powerful and prestigious position for private gain.

V. CURTAILING THE ABUSE OF JUDICIAL POWER AND PRESTIGE

Identifying a problem is always easier than solving the problem. That certainly is the case with the abuse of the judicial office. But as with most shortcomings in the behavior of judges, the solution begins with education.

A. *Judicial Education*

Every state educates its judges in matters of judicial ethics.⁴²⁷ So far, however, educational efforts have failed to convince a significant number of judges to limit the use of judicial power and prestige to their official duties.⁴²⁸ That may be because education programs concerning the exploitation of the judicial office are poorly conceived. It also may be that judicial educators consider the prohibition against things like ticket-fixing as too obvious to warrant mention. Or it may be that educators fear insulting judges by implying that judges need education on the subject. But as demonstrated by the steady stream of judges disciplined for misusing judicial power and prestige, a tough love approach is necessary to combat the problem.⁴²⁹

Educational sessions on the misuse of the judicial office should begin with an examination of relevant judicial code provisions and a discussion

425. *In re Pennington*, Determination (N.Y. Comm’n on Judicial Conduct Nov. 3, 2003).

426. *In re Quinn*, Determination (N.Y. Comm’n on Judicial Conduct May 1, 1981).

427. *See, e.g.*, FLA. R. JUD. ADMIN. 2.320(b)(2) (2010) (requiring that judges attend four hours of ethics training every three years); KAN. SUP. CT. R. 501 (2013) (requiring two hours of judicial ethics training each year); OHIO GOV. JUD. R. IV § 3(C) (2015) (requiring at least two hours of instruction relating to judicial ethics and professionalism every two years); N.D. SUP. CT. ADMIN. R. 4(a) (2011) (requiring three hours of judicial ethics training every three years); R.I. RULE 3.2(b) (“The on-going study of judicial ethics shall be required of all judges.”); *see also The State of the Society and Our Thanks to Dave Richert*, 94 JUDICATURE 257, 257 (2011) (reporting that Cynthia Gray, Director of the American Judicature Society Center for Judicial Ethics, conducted training sessions for judges in ten states in 2010).

428. *See supra* Parts III.A. & III.B.

429. *See infra* Part V.B. (suggesting suspension or removal from office for judges who misuse their power or prestige to interfere with adjudicatory or investigatory proceedings).

of the reasons that a “two-tier” court system is inimical to the rule of law. For states adopting the 2007 ABA Model Code of Judicial Conduct, the paramount provision is Rule 1.3, which provides, “[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”⁴³⁰ Comment 1 to Rule 1.3 applies the rule to a judge’s attempt to use the prestige of office to avoid a traffic ticket.⁴³¹ Comment 1 also provides an opportunity to inform judges attending the training session that interjecting the judicial office into a traffic stop, even absent a judge’s specific request for special treatment, violates Rule 1.3.⁴³² The ethics instructor should explain that no exception to the abuse of prestige prohibition permits judges to interfere in a family member or friend’s legal problems.⁴³³ An examination of the facts surrounding the discipline of judges for misusing their power or prestige could illustrate the application of the relevant conduct code provisions. Ideally, the session would close with a presentation by a judge who had been disciplined for abusing judicial prestige. This first-person account would serve to enlighten the program participants about the circumstances of the judge’s offense, the judge’s thought process (or lack thereof) when committing the violation, the financial and emotional costs on the judge and the judge’s family, and a blow-by-blow account of the disciplinary process.

Focusing a segment of a judge’s formal education in the manner suggested carries obvious advantages. First, judges will learn both the rules and the real-life consequences of violating the rules governing the misuse of judicial power and prestige. Second, the abuse of judicial status to obtain a personal benefit will be revealed for what it really is—an invidious form of corruption. Third, the educational program will make judges confront the damage to public confidence in the judicial system caused by favoritism. No longer will the “fixed matter” merely be an inconsequential speeding ticket, a victimless relaxation of the rules of procedure,⁴³⁴ or a matter of professional courtesy.⁴³⁵ Fourth, judges will leave the ethics session determined to avoid the embarrassment of being the next judge assigned to address seminar participants with a personal

430. MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (Am. Bar. Ass’n 2007).

431. *Id.* cmt. 1.

432. See Raymond J. McKoski, *Judicial Discipline and the Appearance of Impropriety: What the Public Sees, Is What the Judge Gets*, 94 MINN. L. REV. 1914, 1970-71 (2010).

433. See *In re* Canary, Determination (N.Y. Comm’n on Judicial Conduct Dec. 26, 2002) (stating that parental instincts do not excuse violations of judicial ethics).

434. See *In re* Dixon, Determination (N.Y. Comm’n on Judicial Conduct May 26, 2016) (Emery, concurring) (describing a judge’s attempt to influence another judge’s decision as “except for our system of law itself” victimless).

435. See *In re* Maney, Determination (N.Y. Comm’n on Judicial Conduct Dec. 20, 2010) (finding that a judge requested special treatment from a police officer as a “professional courtesy”).

story of the exploitation of judicial office. Finally, attendance at a training session like one proposed could serve as a factor in aggravation at a disciplinary hearing for a judge who subsequently uses or attempts to use official prestige to gain a personal advantage.⁴³⁶

The Texas Municipal Courts Education Center has produced a webinar titled, “Ticket-Fixing: Public Safety and Corruption,” which addresses ticket-fixing in the context of a judge’s ethical, moral, professional, and legal responsibilities.⁴³⁷ By using media reports of specific cases in which judges granted favorable case dispositions for friends and relatives, the webinar presents the misuse of judicial prestige as a betrayal of public trust. It also cautions judges to remain alert for the ticket-fixing escapades of other constituents of the criminal justice system such as law enforcement officials, court clerks, and lawyers.⁴³⁸ An expanded version of the Texas program could cover, in addition to ticket-fixing, the other equally serious ways in which judges misuse their offices.

Regrettably, judicial education will not alone solve the problem.⁴³⁹ Sometimes getting the attention of judges is as important as educating judges.

B. Getting Judges’ Attention

The judiciary and judicial disciplinary bodies have failed to convince judges of the seriousness of diverting their official power and prestige to gain a personal advantage for themselves or others.⁴⁴⁰ Disciplinary bodies repeatedly and emphatically denounce a two-tier court system, highlighting ticket-fixing judges as the poster children for corruption.⁴⁴¹

436. See *In re Perrin*, 10 CC 2, Order (Ill. Cts. Comm’n Sept. 9, 2011) (Wolff, dissenting) (suggesting that the fact that a judge had received ethics training concerning improper ex parte communications could enhance the judge’s discipline for subsequent ex parte communications); *In re Martin*, Determination (N.Y. Comm’n on Judicial Conduct Dec. 26, 2001) (noting that the judge had attended judicial education classes and had received judicial ethics advisory opinions that emphasized the impropriety of engaging in ex parte communications and misusing judicial prestige).

437. RYAN KELLUS TURNER, TICKET-FIXING: PUBLIC SAFETY AND CORRUPTION (Tex. Courts Education Ctr. 2010) (slides 13-31) <http://www.tncec.com/public/files/File/Webinars/2009-10/Ticket-fixing.pdf>.

438. *Id.* See also *Orange County Court Clerk Pleads Guilty to Illegally Fixing More Than 1,000 DUI, Traffic Cases*, ORANGE COUNTY (CAL.) REGISTER, Mar. 29, 2017, 2017 WLNR 9900506; Editorial, *The Ticket-Fixing Scandal*, N.Y. TIMES, Oct. 31, 2011, at A26 (reporting the arrest of eleven New York Police Officers charged with fixing tickets).

439. See *In re Stanford*, Order of Removal (Cal. Comm’n on Judicial Performance Jan. 11, 2012) (emphasizing that the judge diverted friends’ tickets to his courtroom and waived or suspended fines even after attending judicial education programs that included summaries of cases involving ticket fixing).

440. See Cynthia Gray, *Lax Practices*, JUDICIAL ETHICS AND CONDUCT BLOG (June 28, 2016) (“Despite numerous cases sanctioning judges for the practice . . . ticket-fixing remains a persistent, sometimes even systemic problem”), <https://ncsejudicialethicsblog.org/2016/06/>.

441. See *In re Aluzzi*, Determination (N.Y. Comm’n on Judicial Conduct June 26, 2017) (“[T]icket-

Nevertheless, when it comes to disciplining judges, the punishment falls far short of the rhetoric. For example, discipline for ticket-fixing in Mississippi historically included a fine, assessment of costs, and a public reprimand.⁴⁴² Thus, in *Mississippi Commission on Judicial Performance v. Gunn*, the Mississippi Supreme Court took a “firm stance” against ticket-fixing by giving a judge a public reprimand and a \$400 fine.⁴⁴³ The court noted that it “has frequently imposed the penalty of a public reprimand and fine for the offense of ticket fixing.”⁴⁴⁴ The fine and reprimand sanction simply failed to convince Mississippi judges to conform their conduct to ethical requirements.⁴⁴⁵ As a result, the Mississippi Supreme Court adopted a new approach for disciplining judges for ticket-fixing. Under this new approach, the court imposed a public reprimand and costs of the proceeding, as well as required the judge to pay the fines for improperly dismissed tickets.⁴⁴⁶ The court agreed with the position taken by the Mississippi Commission on Judicial Performance that “if judges have to pay the fines for the tickets they improperly dismiss, such sanctions will deter this behavior in the future.”⁴⁴⁷ Under this new disciplinary scheme, Judge Sherlene B. Boykin received a public reprimand, was assessed costs of the proceeding, and was fined \$861.50, the sum the court determined was lost when the judge fixed eleven tickets.⁴⁴⁸

Doomed from the start, the Mississippi Supreme Court’s enhanced sanction did not persuade judges to stop fixing tickets.⁴⁴⁹ Equating the harm of ticket-fixing with lost revenue simply misses the point. The public injury lies not in the government’s loss of funds but in the judge’s decision to abandon judicial neutrality and pervert the justice system to benefit a favored individual. A check from a judge’s bank account cannot reimburse the public for that wrong. Unfortunately, Mississippi’s reliance on public reprimands to address misuse of the judicial office is not unusual. In the absence of extreme aggravating factors, most jurisdictions

fixing results in “two systems of justice, one for the average citizen and another for people with influence.” (quoting *FIXING-TICKETS*, *supra* note 103, at 16)).

442. See *In re Williams*, 880 So. 2d 343, 347 (Miss. 2004) (“Often the sanction for “fixing” tickets is a public reprimand, fine, and assessment of costs.”).

443. *In re Gunn*, 614 So. 2d 387, 389, 391 (Miss. 1993).

444. *Id.* at 390.

445. See, e.g., *In re Hearn*, 515 So. 2d 1225 (Miss. 1987) (imposing a public reprimand and fine against Judge Hearn for fixing 93 tickets from March 1985 until March 1986); *In re Hearn*, 542 So. 2d 901, 902 (Miss. 1989) (removing Judge Hearn for continuing to engage in the practice of ticket-fixing in 97 cases from May 1987 until March 1988).

446. *In re Boykin*, 763 So. 2d 872, 876 (Miss. 2000).

447. *Id.*

448. *Id.* at 874, 876. The court apparently assumed that there would have been a finding of guilty on the tickets improperly dismissed by the judge.

449. See *supra*, notes 247-255 and accompanying text.

reprimand or censure judges for improperly asserting their official positions in private matters.⁴⁵⁰ In many cases, these admonishments are private.⁴⁵¹ Although New York disciplinary opinions repeatedly caution judges that “even a single incident of ticket-fixing is ‘misconduct of such gravity as to warrant removal,’”⁴⁵² in reality, New York judges are seldom removed from office for misusing judicial power or prestige.⁴⁵³

The “bark” of courts and disciplinary commissions is appropriately severe. Their “bite” is nonexistent, or at best, insufficient to focus the attention of judges on the devastating effect of their misconduct on public confidence in the judiciary. Engagement in the judicial disciplinary process is a traumatic experience for most judges. However, ending the process with a paper chastisement minimizes the seriousness of the offense. It is time that the punishment fit the rhetoric and the crime. In most circumstances this means a mandatory suspension for a judge⁴⁵⁴ who misuses official power or prestige to influence or attempt to influence either a legal proceeding or the official conduct of a law enforcement officer or other public official.⁴⁵⁵ The need for suspended judges to

450. *See, e.g., supra*, note 217 (citing disciplinary cases).

451. *See, e.g.,* CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE, ANNUAL REPORT 2013, at 20 (2014) (summarizing the private admonishments issued to California judges in 2013); IDAHO JUDICIAL COUNCIL, REPORT TO THE LEGISLATURE, GOVERNOR, AND SUPREME COURT 2015, at 14 (reporting the private reprimand of a judge charged with the misuse of judicial prestige).

452. *In re* Hunt, Determination (N.Y. Comm’n on Judicial Conduct Nov. 9, 2011) (quoting *In re* Reedy, 475 N.E.2d 1262, 1263 (N.Y. Ct. App. 1985)); *see also In re* Aluzzi, Determination (N.Y. Comm’n on Judicial Conduct June 26, 2017) (“We emphasize that ticket-fixing will not be tolerated and that any such conduct will be condemned with strong measures, including, in appropriate circumstances in the future, the sanction of removal.”).

453. *See, e.g., In re* Canary, Determination (N.Y. Comm’n on Judicial Conduct Dec. 26, 2002) (censuring a judge who (1) twice angrily intervened with police in connection with his son’s arrest; (2) asserted his judicial status in attempts to have his son’s charges dismissed; (3) pushed an officer; (4) “officially” requested a favor to keep his son’s arrest out of the newspapers; and (5) told the arresting officer that the judge would throw out any tickets written by the officer’s department); *In re* Landicino, Determination (N.Y. Comm’n on Judicial Conduct Dec 28, 2015) (censuring a judge for D.U.I.; leading the police on a two-mile high-speed pursuit; and “repeatedly asserting his judicial status to receive favorable treatment”). *See also In re* Cook, Determination (N.Y. Comm’n on Judicial Conduct Aug. 31, 2005) (Emery, dissenting) (criticizing the sanction of censure as too lenient); *In re* Aluzzi, Determination (N.Y. Comm’n on Judicial Conduct June 26, 2017) (censuring a judge for attempting to fix tickets).

454. The judicial disciplinary agencies of ten states lack authority to impose a suspension from office as a sanction. *See* NATIONAL CENTER FOR STATE COURTS, AVAILABLE SANCTIONS IN JUDICIAL DISCIPLINE PROCEEDINGS, tbl. III. (updated June 2015) (identifying ten states that do not authorize “suspension without pay” as a disciplinary sanction) http://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/Sanctions_tables_2015.ashx. For example, New York judges cannot be suspended from office because the New York State Constitution only authorizes the state commission on judicial conduct to admonish, censure, or remove an errant judge. N.Y. CONSTITUTION, art. VI, § 22.

455. The misuse of judicial prestige in other than adjudicative or investigatory matters may warrant a lesser sanction than suspension. For example, some jurisdictions consider it a misuse of prestige for a judge to ask a fellow church member to buy a ticket to their congregation’s fund-raising dinner. *See, e.g.,* Ark. Judicial Ethics Advisory Comm. Op. 94-03 (1994). Assuming this type of “solicitation” constitutes

explain to neighbors and family members why they are not going to work; the embarrassing contacts with lawyers, judges, and court officials during the suspension; concern about reelection or reappointment; and a loss of a steady paycheck may more effectively signal to the offending judge, other judges, and court personnel⁴⁵⁶ that placing a thumb on the scales of justice has real consequences.

C. Suspension from Official Duties

Suspending judges for abusing judicial power and prestige to affect adjudicatory and investigatory proceedings serves two principal purposes. First, the suspension signals to both the public and to the judiciary that favoritism will not be tolerated. Second, a period of suspension from office provides an opportunity for the disciplined judge and the judicial system to address the deficiencies in the judge's thinking, personality, or psyche that prevent him from complying with judicial conduct rules. To accomplish this second goal, the period of suspension should include psychological evaluation and testing. If, for instance, a judge's conduct shows signs of a narcissistic personality, the psychologist chosen to conduct the evaluation could administer assessment tools such as the Narcissistic Personality Inventory⁴⁵⁷ and the Hypersensitive Narcissism Scale.⁴⁵⁸ Similarly, the six-item entitlement subscale of the Narcissistic Personality Inventory⁴⁵⁹ and the Psychological Entitlement Scale⁴⁶⁰ would assist in confirming whether a sense of entitlement contributed to a judge's misconduct. The Psychological Entitlement Scale, for example, asks the client to express a numerical degree of agreement or

an abuse of judicial prestige, a suspension from office would constitute overkill for the public or private harm, if any, caused by the "solicitation."

456. Court personnel other than judges fix tickets. *See, e.g.*, Anh Do & Richard Winton, *O.C.'s Illegally Fixed Court Cases Adding Up to 'Big Time Corruption'*, L.A. TIMES (June 20, 2015) (reporting that a court clerk illegally resolved a thousand traffic cases) <http://www.latimes.com/local/orangecounty/la-me-oc-fixed-tickets-20150620-story.html>.

457. The forty question Narcissistic Personality Inventory is available at <http://personality-testing.info/printable/narcissistic-personality-inventory.pdf>.

458. The Hypersensitive Narcissism Scale is included as an appendix to W. Keith Campbell, et. al., *Psychological Entitlement: Interpersonal Consequences and Validation of a Self-Report Measure*, 83 J. PERSONALITY ASSESSMENT 29, 45 (app. B) (2004) <http://www.psychology.uga.edu/sites/default/files/PESENTITLEMENTPaper.pdf>.

459. *Id.* at 30. When administered alone, the six-question entitlement subscale of the Narcissistic Personality Inventory "frequently display[s] poor internal reliability." Joshua B. Grubbs & Julie J. Exline, *Trait Entitlement: A Cognitive-Personality Source of Vulnerability to Psychological Distress*, 142 PSYCHOLOGICAL BULLETIN 1204, 1206 (2016).

460. Campbell, et. al., *supra* note 458, at 45 (app B.); *see also* Grubbs, *supra* note 459, at 1206 (describing the Psychological Entitlement Scale "as a brief and reliable measure of psychological entitlement" and stating that "[m]any studies have used the PES as a primary measure of entitlement in recent years.").

disagreement with statements such as (1) “I honestly feel I’m just more deserving than others;” (2) “[g]reat things should come to me;” (3) “I demand the best because I’m worth it;” and (4) “[p]eople like me deserve an extra break now and then.”⁴⁶¹ Most likely, testing will disclose that many, if not most, of the judges abusing their office suffer from an unjustified sense of entitlement. The jurisdiction’s disciplinary commission can then order and monitor appropriate “therapeutic interventions designed to address the demanding and deserving attitudes that characterize entitlement.”⁴⁶²

V. CONCLUSION

The need to promote public confidence in the judiciary cannot be overstated. It is the overarching purpose of every code of judicial conduct.⁴⁶³ Therefore, the legal profession, judiciary, and judicial disciplinary bodies are obligated to invest their time and resources wisely to deliver a legal system worthy of the public’s trust. Accordingly, judges and lawyers should champion confidence-building measures that have a realistic chance of acceptance by the political branches of government as well as by the people. It comes as no surprise that the likelihood of the adoption of a confidence enhancing proposal increases dramatically when the proposal carries no partisan baggage, has little financial cost, and implements a universally held principle of law.

Better educating judges on the use of judicial power and prestige, meaningful discipline of judges who exploit their offices, and identifying and treating the psychological entitlement that many times triggers judicial abuses exemplify the type of confidence-building improvements that should top the profession’s agenda. All too often, lawyers and judges focus their efforts to improve public confidence on proposals laden with partisan overtones—proposals which the legal profession has no authority to implement. The profession’s unabated and fruitless effort to convince the public to reform judicial selection methods⁴⁶⁴ is a primary example of a highly controversial, and in many ways, partisan proposal intended to increase public trust in the judiciary. Instead, lawyers and judges need to

461. *Id.*

462. Grubbs, *supra* note 459, at 1219.

463. See MODEL CODE OF JUDICIAL CONDUCT Preamble (Am. Bar. Ass’n 2007) (“Inherent in all the Rules contained in this Code, are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.”).

464. See Alicia Bannon, *Rethinking Judicial Selection in State Courts*, BRENNAN CENTER FOR JUSTICE, 17 (2016) (“[N]o state has moved from contested elections to a merit selection system in more than 30 years.”).

concentrate on solving an abhorrent, universally recognized problem totally within their power to eradicate—the misuse of judicial power and prestige to further the personal interests of the judge and others anointed by the judge as deserving partial treatment. This article provides a framework to begin that effort.