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ARTICLE

**ABUSE OF POWER & JUDICIAL
MISCONDUCT: A REFLECTION ON
CONTEMPORARY ETHICAL ISSUES
FACING JUDGES**

HON. CARL E. STEWART*

I have always considered the judiciary to be the least understood of our three branches of government. This is due in part to the historical detachment of judges from the everyday citizen and to the isolated processes of judicial decision-making. During my seven years as a state trial judge, I found that many citizens' perceptions of the judiciary were shaped by portrayals of judges in the popular media or in literature. Efforts on the part of citizens to avoid jury service and witness subpoenas often revealed to me some of the misconceptions they held about the legal system in general, and judges in particular. These notions often changed after the completion of their service in the courtroom. Over time, through conversations with former jurors, bailiffs, court reporters, and other courthouse staff, I came to understand just how powerful the actual performance of the judge in the courtroom is toward affecting the confidence and perception of the lawyers and the general public.

In recent years, however, I have become increasingly concerned that public complaints about the judiciary, particularly those stemming from acts of judicial misconduct, may unduly erode public confidence in the judicial branch. One thoughtful observer has noted the following complaints about the judiciary:

- that the courts are congested, inefficient, and not "user friendly";
- that the judges are usually lenient, sometimes indolent, and occasionally even corrupt;
- that the judiciary is not sufficiently diverse or representative;

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- that the decisional and disciplinary processes are too secretive.¹

Such complaints, particularly those suggesting misconduct or undue delay, seem to cast a shadow over the judicial branch. I must be careful not to overstate the problem because I adamantly believe that the overwhelming majority of judges adhere to the highest standards of ethical conduct, and that judicial misconduct cases do not constitute a systemic crisis for the judiciary. That said, while the *number* of judicial misconduct cases may be relatively small and isolated, the *magnitude* of those cases may have far-reaching repercussions for members of the judicial branch. Such judicial misconduct calls into question a judge's impartiality, dependability, or capacity to conduct official business. Moreover, such conduct reflects unfavorably on the judiciary as a whole.

Today, I have come to discuss some of these issues with you and to highlight the correlative message that both the legal profession's ethical norms and the University of St. Thomas School of Law's vision statement for integrating the "deepest ethical principles into [your] professional character and identity"² has for all members of the bar, including those who preside on the bench. First, I will discuss the procedures for regulating judicial misconduct under state judicial conduct rules and the related federal Complaints Against Judges and Judicial Discipline Act of 2002.³ Second, I will focus on selected judicial ethical issues that have taken place in jurisdictions throughout the United States. Third, I will discuss how judges' decision-making abilities may be adversely impacted by these issues and how such conduct may erode the public trust and confidence in the judiciary. I conclude that judicial misconduct cases reflect poorly on the judiciary as a whole, adversely affecting public perception and judicial decision-making. These cases should serve to refocus attention on ethical norms.

I. PROCEDURE FOR PROCESSING JUDICIAL COMPLAINTS

The impact of a judicial decision on the liberty and property of ordinary citizens can be profound. Such extraordinary power is tolerable in a democracy solely because judges speak only at the behest of reason and the law. As emphasized by Alexander Hamilton over two centuries ago, we "have neither force nor will, but merely judgment."⁴ As acutely noted in a judicial misconduct case by the Supreme Court of Massachusetts, "[P]recisely because the public cannot witness, but instead must trust, what happens when a judge retires to the privacy of his chambers, the judiciary

1. Bruce M. Selya, *The Confidence Game: Public Perceptions of the Judiciary*, 30 New Eng. L. Rev. 909 (1996).

2. University of St. Thomas School of Law, *Make a Living, Make a Difference*, http://www.stthomas.edu/lawschool/mad/mad_mis.cfm (accessed Feb. 3, 2004).

3. 28 U.S.C.A. §§ 351-64 (West 2003).

4. *The Federalist No. 78*, at 78 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

must behave with circumspection when in the public eye.”⁵ Therefore, such an arrangement requires more than judges having a subjective belief that our decisions are *in fact* rendered fairly and impartially or that we believe this of our colleagues. Our power requires an objective analysis; a reasonable person should find that our decisions *appear* to be fair and impartial as well. Courts have noted that, “An impartial manner, courtesy, dignity, and diligence are the outward manifestations of the fairness and impartiality we ask our fellow citizens, often in the most trying of circumstances, to believe we in fact possess.”⁶ In a similar light, such high standards of conduct radiate or reflect the underlying themes inherent in three commonly violated judicial canons. Most of the state judicial canons of judicial conduct have the exact same language. In their abbreviated form, the first three canons are: (1) A judge shall uphold the integrity and independence of the judiciary; (2) A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities; and (3) A judge shall perform the duties of judicial office impartially and diligently.

Before discussing the substantive impact of judicial misconduct, a basic understanding of the process for regulating judicial misconduct may be warranted. This section describes the distinctive procedures for processing complaints against judges on both the state and federal levels. Beginning first with state judicial misconduct, and using the Judiciary Commission of Louisiana as a model, I will describe the powers, confidentiality, membership, and rules on how the state supreme courts deal with issues of ethical misconduct. Next, I will describe the federal corollary procedures for judicial misconduct pursuant to 28 U.S.C. § 351.

A. State Judicial Conduct Procedures

On the state level, regulation of judicial misconduct occurs via the highest state court. Under the state system, the highest state court has the ultimate power to regulate judicial misconduct. In Louisiana, for example, following a recommendation from the Judiciary Commission⁷ the state supreme court may “censure, [suspend] with or without salary, remov[e] from office, or involuntary[ily]” retire a judge⁸ for “willful misconduct relating to his [or her] official duties, willful and persistent failure to perform his [or

5. *In re Brown*, 691 N.E.2d 573, 576 (Mass. 1998).

6. *Id.*

7. La. Sup. Ct. R. 23, § 10 (2003) (“If the commission finds good cause, it shall recommend to the supreme court the discipline of a judge. The affirmative vote of a majority of the commission is required for a recommendation of discipline of a judge or for dismissal of the proceedings.”).

8. La. Sup. Ct. R. 23, § 2(e) (2003) (“‘Discipline’ means censure, suspension with or without salary, removal from office, or involuntary retirement; with respect to a mayor who performs judicial functions, ‘discipline’ means censure or suspension with salary from the performance of judicial functions.”).

her] duties, or persistent and public conduct prejudicial to the administration . . . that brings the judicial office into disrepute.”⁹

In Louisiana, the Judiciary Commission initially conducts a preliminary investigation of whether a complaint of judicial misconduct merits a disciplinary hearing. The membership of the Judiciary Commission consists of nine members who serve four-year terms: three judges selected by the state Supreme Court,¹⁰ three attorneys,¹¹ and three citizens.¹² The members of these Commissions are governed by high ethical standards of confidentiality for all matters before them. Such matters remain confidential “unless and until the Commission files a recommendation for discipline or retirement” with the highest state court.¹³

B. Federal Rules §§ 351-364

Unlike the state system where the power to regulate judicial conduct is at the behest of the highest state court, in the federal system the power lies in circuit judicial councils. Upon a finding of misconduct, the judicial council has the power to (a) temporarily order no further cases be assigned to a judge, (b) censure or reprimand a judge privately, or (c) censure or reprimand a judge publicly.¹⁴ Judicial councils and special committees have the power of subpoena when conducting investigations.¹⁵ However, under no circumstances may a federal judicial council order removal from office of an Article III judge.¹⁶

The federal procedures for regulating misconduct are also unique in other ways. Pursuant to the federal Complaint Against Judges and Judicial Discipline Act,¹⁷ a written complaint may be filed with the clerk of the court of appeals by any person alleging that a judge has engaged in “conduct prejudicial to the effective and expeditious administration” of court business.¹⁸ Upon filing, the chief judge of the court of appeals conducts a review of the complaint without making findings of fact about matters “reasonably in dispute.”¹⁹ Following review, the chief judge, by written order may either dismiss the complaint, conclude the proceedings, or appoint spe-

9. La. Sup. Ct. R. 23, § 3(a) (2003).

10. La. Const. art. V, § 25(A)(1) (In Louisiana, the three judges consist of one state court of appeals judge and two state district judges.).

11. *Id.* at § 25(A)(2) (In Louisiana, the three attorneys consist of two attorneys admitted to practice in the state for a minimum of ten years and one attorney admitted to practice in the state for at least three years, but not more than ten years.).

12. *Id.* § 25(A)(3) (In Louisiana, the three citizens are comprised of non-lawyers selected by the Louisiana District Judges’ Association.).

13. La. Sup. Ct. R. 23, § 27(d) (2003).

14. 28 U.S.C.A. § 354(2)(A) (West 2003).

15. 28 U.S.C.A. § 356(a) (West 2003).

16. 28 U.S.C.A. § 354(3)(A) (West 2003).

17. 28 U.S.C.A. § 351-364 (West 2003).

18. 28 U.S.C.A. § 351(a) (West 2003).

19. 28 U.S.C.A. § 352(b) (West 2003).

cial committees to conduct an investigation of the complaint and file a comprehensive written report with the judicial council of the circuit.²⁰ It should also be noted that, on rare occasion, the full range of the federal system has been pressed into action to address judicial misconduct by federal judges.²¹ Even still, the overwhelming majority of cases received by the chief judge are dismissed, and very rarely are cases referred to special committees.²²

II. CONTEMPORARY JUDICIAL ETHICAL ISSUES

While the previous section highlighted and outlined, *inter alia*, the judicial canons of conduct, this section turns to an application of those canons. It is important to understand not only the theoretical justifications or what these norms expressly state, but instead to read the cases and consider the impact such violations have on the everyday functions of the judiciary. Thus, consistent with my prior reflection on the national incidents of judicial misconduct cases, there appears to be at least three trends of judicial misconduct that warrant our attention: inappropriate courtroom demeanor, misuse of the prestige of office, and administrative misconduct and case management.

A. *Inappropriate Courtroom Demeanor*

The first category of judicial misconduct *includes* direct violations of state judicial conduct canons—such as inappropriate and insensitive remarks, sexual innuendos, threats, racial slurs, and even physical violence.

1. *In re Bowers*

On several occasions, Judge Gary A. Bowers, a Louisiana state trial court judge, openly criticized attorneys or nonparties in open court.²³ In the

20. 28 U.S.C.A. § 352(b), 353(c) (West 2003).

21. Affirming an order of the Judicial Council of the Court of Appeals for the Fifth Circuit, the United States Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders concluded that a district court judge had engaged in a continuing pattern of arbitrary and abusive conduct that brought disrepute on, and discord within, the federal judiciary. *In re: Complaints of Judicial Misconduct or Disability (McBryde)*, No. 98-372-001 (Jud. Conf. U.S. Sept. 18, 1998) (available at <http://www.ca5.uscourts.gov/mcbryde/report.htm>). The judicial council found that Judge McBryde's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others has detrimentally affected the effective administration of justice and the business of the courts in the Northern District of Texas." *Id.* Taking the following actions, the committee: (1) publicly reprimanded the judge; (2) ordered that no new cases be assigned to him for one year; and (3) ordered that the judge not participate in pending and new cases in which certain attorneys were involved. *Id.*

22. See *Overview of Complaints Filed in Reporting Years 1999-2003*, U.S. Court of Appeals for the Fifth Circuit (Oct. 1, 1998 to Aug. 31, 2003) (available from U.S. Court of Appeals for the Fifth Circuit, copy on file with *Journal*) (The Fifth Circuit statistics show that 587 judicial misconduct complaints were filed from the period of 1999-2003. Of those complaints, 564 were dismissed by the chief judge and none were referred to special committees. Of the 382 petitions for review of the chief judge's dismissal, the judicial council affirmed all 382.).

23. *In re Bowers*, 721 So. 2d 875 (La. 1998).

case of *Scott v. Scott*, counsel Joey Hendrix, the attorney "for Kathleen Scott Norris, filed an emergency writ application and stay order with the Louisiana Second Circuit Court of Appeal, seeking relief" *inter alia* from Judge Bowers.²⁴ Following the Second Circuit's denial of the writ, and on remand for further proceedings, "Judge Bowers characterized Hendrix's actions as 'eleventh-hour crap' and commented repeatedly that, in his opinion, Hendrix's conduct was 'sanctionable.'" ²⁵ Two days later, after apparently receiving threatening phone calls from Mrs. Norris' new husband, John Norris, Judge Bowers "chose to express his anger to those present" in his courtroom.²⁶ He referred to Mr. Norris as "some little pimp up in Colorado" and a "little two-bit hoodlum."²⁷ The Louisiana Supreme Court censured Judge Bowers and ordered him to pay \$1,400 for expenses incurred as a result of the investigation and prosecution of the case. Judge Bowers later resigned from the bench prior to the expiration of his term of office.

2. *In re Michelson*

Judges have been disciplined for their in-court comments that inferred bias toward socioeconomic status, race, and the sexuality of minors. With regard to socioeconomic status, Judge Robert Michelson, a Wisconsin trial judge, was disciplined when a woman appeared in his courtroom requesting additional time to pay a fine "because she had to care for the two small children of her daughter, who had become ill."²⁸ Upon finding that one child's father could not pay child support and that the other child's father could not be found, Judge Michelson angrily responded that the daughter should not have brought children into the world she could not support and further stated, "I suppose it was too much to ask that your daughter keep her pants on and not behave like a slut."²⁹ Judge Michelson was reprimanded for his statements.

3. *In re Hammill*

Judge R. Joseph Hammill, of the Glynn County Judicial Circuit in the state of Georgia, informed an African-American defendant during sentencing not to worry because "he would not be outdoors doing physical labor like picking cotton."³⁰ For this and other misconduct, Judge Hammill was permanently removed from the bench.³¹

24. *Id.* at 877.

25. *Id.*

26. *Id.* at 878.

27. *Id.*

28. *In re Michelson*, 591 N.W.2d 843, 844-45 (Wis. 1999).

29. *Id.* at 845.

30. *In re Hammill*, 566 S.E.2d 310, 314 (Ga. 2002).

31. *Id.* at 312.

4. *In re Gaeta*

Judge Bruce A. Gaeta, a New Jersey state trial judge, was publicly reprimanded for statements he made while sentencing a female teacher for sexual assault upon one of her thirteen-year-old male students.³² Although the defendant had agreed to three years incarceration in a plea agreement, Judge Gaeta sentenced her to probation and during sentencing stated, “[s]o I really don’t see the harm that was done here . . . I don’t see anything here that shows that this young man has been psychologically damaged by her actions. . . . And don’t forget, this was mutual consent.”³³ The New Jersey Advisory Committee on Judicial Conduct found that Judge Gaeta’s remarks denoted more than “an honest mistake”; instead such remarks suggested a bias about the sexuality of minors that “could impugn the impartiality and open-mindedness necessary to make correct and sound determinations in the application of the law.”³⁴ The New Jersey Supreme Court publicly reprimanded Judge Gaeta.³⁵

5. *In re Jones*

Judge Charles R. Jones, an intermediate Louisiana state appellate court judge, was disciplined for fighting with another judge in the judicial conference room.³⁶ Judge Jones referred to one of his colleagues as a “son of a bitch” in front of other judges.³⁷ The verbal disagreement between the two judges ended with the two judges “pushing/shoving” each other.³⁸ The incident attracted local and national attention for several weeks and even served as the brunt of jokes from various comedians.

The Louisiana Supreme Court concluded that “widespread knowledge of the incident could only serve to stigmatize the Fourth Circuit . . . in the minds of the persons waiting to be interviewed [outside the conference room], employees who witnessed the aftermath, as well as citizens who read about it in the newspaper or saw it on the television.”³⁹ The Louisiana Supreme Court suspended Judge Jones without pay for thirty days on the grounds that he failed to restrain his temper in the course of performing his judicial duty.

32. Order, *In re Gaeta*, (N.J. May 8, 2003) (available at <http://www.judiciary.state.nj.us/pressrel/order.pdf>).

33. Presentment of Advisory Comm. on Jud. Conduct at 6, *In re Gaeta*, (No. ACJC 2002-171) (N.J. 2003) (available at <http://www.judiciary.state.nj.us/pressrel/gaeta.pdf>).

34. *Id.* at 10.

35. *Id.* at 15.

36. *In re Jones*, 800 So. 2d 828, 829 (La. 2001).

37. *Id.*

38. *Id.* at 831.

39. *Id.* at 832.

6. *In re Davis*

Judge Rick Davis, a trial judge in Brazos County, Texas, was disciplined for humiliating a young female prosecutor and writing injudicious letters to the district attorney (hereinafter "DA") and the media concerning the prosecutor's "gross misconduct."⁴⁰ The judge declined to revoke a defendant's probation in a matter where the State was represented by the young prosecutor. By declining to revoke probation, the defendant was free to file an income tax return that might produce a refund to be credited against the probationer's child support obligations.⁴¹ At her supervisor's direction, the prosecutor telephoned the assistant attorney general in another matter involving an outstanding arrest warrant of the defendant, to inform him that the defendant's probation had not been revoked. She mentioned that if the warrant was not entered in the system, the defendant would be arrested when he next reported to his probation officer.

When Judge Davis learned of the phone call, he called the prosecutor to the courtroom for a "status hearing."⁴² In open court, with members of the public present, the judge stated to the prosecutor, "I conclude that you have engaged in conduct that is sneaky, surreptitious . . . and was deliberately calculated to undermine this Court's intention . . . you are not welcome in the Court."⁴³ He then forwarded a copy of a letter to the media mentioning the young prosecutor's "gross misconduct." Judge Davis further sent a letter to the DA stating, "I look out over the courtroom and see a prosecutor whom I do not trust, whom I believe is treacherous, whom I believe probably has the compassion of an Auschwitz camp guard."⁴⁴ Judge Davis was publicly reprimanded and ordered to receive eight hours of instruction from a mentor judge.

B. *Misuse of Prestige of Office*

Judges take an oath to "faithfully and impartially discharge the obligations of the judicial office." Unfortunately, based on some of the recent judicial misconduct cases, it is apparent that not all judges consistently abide by their oaths.

1. *In re Hoague*

A few cases have involved the judicial version of "road rage," such as a judge using his power or prestige to take action against another driver

40. *In re Davis*, 82 S.W.3d 140, 142 (Tex. 2002).

41. *Id.* at 143.

42. *Id.*

43. *Id.* at 144.

44. *Id.*

who has previously clashed with the judge while driving on the road.⁴⁵ In one such instance, Judge Michael C. Hoague, a Delaware Municipal Court judge in Delaware, Ohio, observed a vehicle being operated in a reckless and erratic manner.⁴⁶ He used his cell phone to call the Ohio State Highway Patrol to report the incident, but did not file charges. The next day, he ascertained the name of the person to whom the vehicle was registered, and wrote a letter on court stationery to the registered owner stating:

This is to inform you that a complaint has been made with the Ohio State Highway Patrol . . . [Y]ou and a male subject were involved in several near accidents and committed numerous traffic violations This matter is now under investigation. If you wish to avoid possible further legal action being taken against you, you must contact this Court . . . to discuss your involvement in this incident In the event you fail to contact my office . . . I will authorize the filing of any appropriate criminal and/or traffic charges, the seizure and impoundment of your vehicle and the issuance of a warrant for your arrest.⁴⁷

The owner and the driver responded to the letter by appearing in Judge Hoague's courtroom. During the court session, Judge Hoague threatened them with criminal prosecution and stated, "You can say whatever you want, but at this point in time you had probably best shut your mouth until I'm finished talking."⁴⁸ Judge Hoague even attempted to contact the men's employer to complain about their driving habits.⁴⁹ Judge Hoague was disciplined for misuse of judicial office and suspended for six months, with the suspension stayed on the condition that he not violate the Ohio Code of Judicial Conduct again.

2. *In re King*

Louisiana State District Judge C. Hunter King recently admitted to wrongdoing when he forced his employees to work on his 2002 re-election campaign.⁵⁰ Due to the pressures of campaign debt, Judge King threatened to make his staff pay out of their own pockets if they fell short of selling judicial campaign fund-raiser tickets.⁵¹ When a complaint was lodged, he lied about it under oath, claiming that he had not forced his staff to do

45. The geographical diversity of the judicial road rage incidents are illustrated in additional cases reported on the subject. See *In re McMillan*, 797 So. 2d 560, 569-70 (Fla. Aug. 16, 2001); *In re Rones*, <http://www.scjc.state.ny.us/Determination/R/rones.htm> (N.Y. Sept. 30, 1994); State Commn. on Jud. Conduct, *Summaries of Public Sanctions: Pub. Reprimand of Robb* (Tex. Aug. 21, 2000), <http://www.scjc.state.tx.us/sumpub.php> (accessed Feb. 3, 2004).

46. *Off. Disciplinary Counsel*, 725 N.E.2d 1108 (Ohio 2000).

47. *Id.* at 1109.

48. *Id.*

49. *Id.* at 1110.

50. *In re King*, 857 So. 2d 432 (La. 2003).

51. *Id.* at 434-35.

campaign work.⁵² He later recanted his testimony when tape recordings of his 2001 staff meetings emerged on which he can be heard threatening to replace his employees if they did not sell their tickets and ordering them to fund-raise during work hours.⁵³ The Louisiana Supreme Court removed Judge King from the bench.⁵⁴

3. *In re Fuselier*

Judge Perrell Fuselier, of the City Court of Oakdale, Louisiana, was found to have abused his authority when he conducted arraignments in criminal cases without a prosecutor present.⁵⁵ The cases involved the arrest of ten local teenagers for defacing private property with spray paint.⁵⁶ When the teenagers appeared in front of Judge Fuselier, the prosecutor was not available nor were the defendants represented by counsel. Nonetheless, Judge Fuselier arraigned the defendants, accepted guilty pleas from each of them, fined them \$100 plus costs, and sentenced them to perform three days of community service.⁵⁷ The Louisiana Supreme Court suspended Judge Fuselier for 120 days without pay.⁵⁸

4. *In re Best*

Judge James Best, of the Eighteenth District Court for Louisiana, was found to have committed judicial misconduct when he took a poll of the audience as to whether they thought the defendant, who was representing himself, was guilty of battery.⁵⁹ The following colloquy transpired:

Judge Best: All right. If you think I ought to find him not guilty, will you stand up?

Gentlemen [sic] from the audience: What's this?

Judge Best: If you think I ought to find him not guilty for two counts of battery on a woman, stand up, if you think I ought to find him not guilty.

Judge Best: If you think I ought to find him guilty, stand up. (*General laughter from the audience*).

Prosecutor: I think we are all reasonable people, Judge.

Judge Best: All right. Order in the Court. The Court finds you guilty. Two counts of battery on a—on a woman.⁶⁰

52. *Id.* at 438-39.

53. *Id.* at 440.

54. *Id.* at 450 (The court explained its removal sanction: "In our view, any discipline less than removal would undermine the entire judicial discipline process and diminish the strict obligation of judges to be truthful in the face of an investigation.").

55. *In re Fuselier*, 837 So. 2d 1257, 1259 (La. 2003).

56. *Id.* at 1266.

57. *Id.*

58. *Id.* at 1278.

59. *In re Best*, 719 So. 2d 432, 433 (La. 1998).

60. *Id.* at 434.

Thereafter, Judge Best rendered a verdict of guilty. The Louisiana Supreme Court publicly censured Judge Best and ordered him to reimburse the Judiciary Commission of Louisiana for costs incurred in the investigation and prosecution of the case.⁶¹

5. *In re Brown*

Judge Helen E. Brown, a trial judge for the Wayne County Circuit Court, was disciplined for deciding where two small children would spend the Christmas holidays, in a child custody case, by flipping a coin.⁶² Rather than issuing a decision regarding the dispute, Judge Brown produced a coin, allowed the defendant to call heads or tails, and flipped the coin.⁶³ "The defendant called heads, which is what appeared on the coin, and Judge Brown . . . ordered the children [to] spend Christmas Eve with the defendant."⁶⁴ Based on the findings of the Judicial Tenure Commission, the Supreme Court of Michigan publicly censured Judge Brown.

6. *In re Moore*

Following extensive court proceedings, United States District Judge Myron Thompson for the Middle District of Alabama ordered the removal of a 5,300-pound monument of the Ten Commandments, which sat in the rotunda of the Alabama Supreme Court building at the direction of Alabama Chief Justice Roy Moore.⁶⁵ Judge Thompson ruled that the monument violated the United States Constitution's ban on government establishment of religion. Despite a concession by the remainder of the Alabama Supreme Court to follow the ruling, Chief Justice Moore defied the ruling and publicly stated that he would not remove the monument. Justice Moore was thereafter fined \$5,000 a day until the monument was removed. Eventually, the monument was removed. Chief Justice Moore was suspended with salary when the Alabama Judicial Inquiry Commission referred an ethics complaint against him to the Alabama Court of the Judiciary.⁶⁶ Following a unanimous decision by the Alabama Court of the Judiciary, Chief Justice Moore was removed from office.

C. *Administrative Misconduct & Case Mismanagement*

The problem of decisional delay—holding cases under advisement for an extended period of time—is an important, yet rarely publicized concern. The following cases involve judges who were either regularly absent during

61. *Id.* at 437.

62. *In re Brown*, 662 N.W.2d 733, 736 (Mich. 2003).

63. *Id.*

64. *Id.*

65. *Glassroth v. Moore*, 229 F. Supp. 2d 1290, 1294, 1318-19 (M.D. Ala. 2002).

66. Associated Press, *Moore Suspended on Ethics Complaint Over Refusal to Move Monument* (Aug. 22, 2003) (available at WL, APWIRE database).

business hours or failed to timely render orders, schedule conferences, or order trial transcripts.

1. *In re Emanuel*

Judge Leon Emanuel, a Louisiana state district judge, was disciplined for failure to promptly dispose of the business of the court. Compared with other judges assigned to the civil bench of his district, Judge Emanuel had the lowest number of cases assigned to his civil section, conducted the least amount of trial days, and conducted the fewest number of jury trials.⁶⁷ Moreover, contrary to local court rules, Judge Emanuel maintained a policy of not setting status conferences with lawyers or issuing scheduling orders for trials.⁶⁸ As a result of Judge Emanuel's practices, the local district court rules were amended, requiring a judge to schedule a conference or issue a scheduling order within 30 days of such request. The Louisiana Supreme Court publicly censured Judge Emanuel.⁶⁹

2. *In re Hunter*

In twenty-nine cases, Judge Sharon K. Hunter, a Louisiana state district judge, failed to produce trial transcripts timely, accurately, and frequently, not at all.⁷⁰

Judge Hunter's failure to complete transcripts resulted in numerous reversals four of which involved convictions for first or second degree murder where life sentences had been imposed. Of these four cases, two have been retried: One case upon retrial resulted in acquittal, because an eyewitness subsequent to the first trial had developed a "very sketchy" memory. The other case on retrial resulted in a manslaughter conviction and a sentence of forty years of hard labor, because two witnesses could not be located and the defendant's own testimony could not be impeached without the transcript.⁷¹

Judge Hunter was removed from judicial office by the Louisiana Supreme Court and ordered to reimburse the Judiciary Commission of Louisiana for the costs incurred in conducting the investigation and prosecution of the case.⁷²

3. *In re Tuck*

Louisiana State District Judge Roy Tuck, Jr. was disciplined for extensive delay in deciding two cases, *Aites* and *Canady*, and not having ever

67. *In re Emanuel*, 755 So. 2d 852 (La. 1999).

68. *Id.* at 864.

69. *Id.* at 872-73.

70. *In re Hunter*, 823 So. 2d 325, 327 (La. 2002).

71. *Id.* at 331.

72. *Id.* at 326-27.

reported either case as being under advisement.⁷³ The *Aites* case involved a 1984 motorcycle collision that had been tried in February of 1989.⁷⁴ The plaintiff in *Aites*, a quadriplegic, died in September 1994 with the case still undecided. The *Aites* case had been pending for three years when Judge Tuck received a warning letter from the Judiciary Commission regarding the delay in the *Canady* case which involved a work-related heart attack in a workers' compensation case. Following a complaint in January 1995 from Aites's mother about the six-year delay in her son's case and a similar complaint from attorneys about delay in the *Canady* case, Judge Tuck decided both cases.⁷⁵ Citing the prior warning, failure to report both cases as pending, and the extensive delay in both cases, the Louisiana Supreme Court censured Judge Tuck.

4. *In re Lallo*

Judge John F. Lallo, an associate judge of the Administrative Adjudication Court in Rhode Island ("AAC"), was disciplined for, *inter alia*, "chronic[] absen[ces] during the judicial day while engaging in conduct demeaning to his judicial office."⁷⁶ On 66 occasions, Judge Lallo abandoned his judicial post to gamble at the Foxwoods Resort Casino. Although Judge Lallo always finished his formal caseload, as a result of his routine departures, he was not present at the courthouse to perform many of his official administrative duties.⁷⁷ The Rhode Island Supreme Court removed Judge Lallo as a judicial officer and imposed monetary sanctions of \$19,675.00.⁷⁸

III. IMPACT ON JUDICIAL DECISION-MAKING

As the previous section's review of cases illustrates, judicial misconduct occurs in various forms within our judicial community. Yet, the more challenging question is not whether judicial misconduct exists, but what are the implications of its existence on judicial decision-making? As aforementioned, judicial misconduct affects judicial decision-making in three ways: (a) by casting an adverse public perception on the ability and fitness of the individual judge involved, and the judiciary collectively, to adjudicate matters in a fair and equitable manner; (b) by eroding the confidence of judicial colleagues because of increased workload created by the dereliction of judicial duties, unwarranted media attention and circumspection of all judges; and (c) by adding an additional element of scrutiny to the appellate review process. In this section, I will expand on these thoughts.

73. *In re Tuck*, 683 So. 2d 1214, 1219 (La. 1996).

74. *Id.* at 1216.

75. *Id.*

76. *In re Lallo*, 768 A.2d 921, 922 (R.I. 2001).

77. *Id.* at 923.

78. *Id.* at 928; *In re Lallo*, 796 A.2d 467 (R.I. 2002).

A. *Adverse Impact on Public Trust & Confidence*

The first concern may aptly fit under the rubric of public perception. Again, I must pause to emphasize that my comments should not be construed as suggesting that judicial misconduct cases represent a crisis within the judiciary. Instead, I am merely suggesting that the *perception* that surrounds each incident may negatively impact the effectiveness of judges. As acutely noted by Judge Bruce M. Selya, of the United States Court of Appeals for the First Circuit, "perception is itself a form of reality, and to the extent that each of these criticisms in some way affects the public's conception of the judiciary, and in turn the stability of our institutions, they warrant our serious consideration."⁷⁹ In other words, judges embody the high ideals and aspirations of the legal profession, and thus judges have a corollary duty to maintain the highest standards of ethical behavior in the performance of their official duties.

A hallmark of the judiciary has been its historical posture of neutrality and impartiality toward litigants and the disputes they bring to the courts for resolution. Ascendance to the bench therefore represents more than a mere cloak of power; it also suggests a symbolic and practical detachment of the judge from his or her prior role as a partisan advocate. Once the oath of office has been taken, a judge represents something larger than himself or herself; a judge symbolically represents the very objectivity necessary for our democratic system of governance to function properly. On a more practical ground, every time a layman serves as a juror or a party to a case, the trial itself—and thereby the demeanor of the judge and manner in which he or she runs the courtroom—may represent the only direct contact that individual has with the rule of law. As stated by one scholar, "[l]itigants typically evaluate the fairness of judicial proceedings at least as much on the basis of their tone and the respect the judge affords the parties as by the actual outcome of the proceeding."⁸⁰ Thus, even isolated acts of judicial misconduct may both tarnish the high idealism our self-regulating profession aspires toward and may cause citizens to lose respect for the rule of law.

Moreover, the costs of judicial inefficiency may contribute to an adverse effect on public perception of the judiciary. Appointment or election to the bench necessarily requires judges to be equipped with a requisite amount of skill, intellect, decency, and energy needed to decisively resolve administrative and legal issues presented before the court. A proportionally small, but potentially potent, number of ethical breaches and acts of judicial misconduct suggest some troublesome divestiture from these judicial norms. Judges are foremost elected or appointed to *decide* cases. Yet, the

79. Selya, *supra* n. 1, at 910.

80. Sambhav N. Sankar, *Disciplining the Professional Judge*, 88 Cal. L. Rev. 1233, 1241-42 (2000).

paralysis of indecision may only exacerbate the parties' underlying problem because litigants' time and expenses are multiplied by delay.

B. *Adverse Impact on Colleagues' Decision-Making*

The second concern fostered by judicial misconduct may be the impact such conduct has on the judge's colleagues. A judge's colleagues are understandably embarrassed by the judicial misconduct of a peer. Moreover, they may wonder whether one judge's actions will unduly subject them to public criticism as well. The spirit of collegiality amongst judges remains one of the most important, yet underappreciated, variables of decision-making. At the appellate level, judges routinely work together on three-judge panels in deciding a case. At the trial court level, collective decision-making may occur more indirectly *vis-à-vis* the distribution of the caseload or through the handling of myriad issues that affect the court as a whole. The adverse effect on collegiality may result in a dilution of the *esprit de corps* necessary for judges who must work directly with each other in the decision-making process. For example, judicial misconduct may create an environment of unhealthy skepticism among judges about the soundness of a judge's routine work product. Moreover, such skepticism may undermine the mutual trust and respect that benefits judges to harmoniously serve as "sounding boards" for each other during the decision-making process. On a multiple judge trial court, any disciplinary action which results in increasing the workload of other members of the court could create ill feeling as well as delay disposing of pending cases. Either way, the nature of the decision-making process suffers—and thus, the cases of the parties before the court may also suffer.

Additionally, the decline in collegiality caused by judicial misconduct may be exacerbated by the reduced impact of informal judicial self-regulation. Informal judicial discipline has been highly successful in rooting out misconduct. The root reason for this high success rate may depend upon the collegiality and professional nature of the informal peer process. In an environment where judges no longer have an amiable relationship, the communication channels may be ineffective, thereby weakening informal channels of self-regulation.

C. *Appellate Review*

The third concern relates to the appellate process. Appellate review permits courts to correct errors and address some forms of misconduct. This idea has been written about by Professor Stephen B. Burbank who, in characterizing appellate review, noted that "judicial disobedience . . . entails a willingness to pay the price of reversal."⁸¹ The core of this idea is that as

81. Stephen B. Burbank, *The Courtroom as Classroom: Independence, Imagination and Ideology in the Work of Jack Weinstein*, 97 Colum. L. Rev. 1971, 1987 (1997).

a method of promoting accountability, the system of appellate review permits courts to correct errors and address some forms of misconduct.

The scope of judicial scrutiny that occurs on appeal has also been noted by Senior Judge Frank M. Coffin, United States Court of Appeals for the First Circuit:

As for the judiciary, trial judges, though they may seem to be the sovereign of their courtrooms, are subject to review of their every final decision by three or more of their appellate colleagues. Their conduct beyond the purely judicial is also subject to scrutiny by the judicial council of their state or circuit.

...
Judicial review can correct the most egregious errors and judicial self-government can exercise flagrant misconduct, but there will remain some bench bullying in the courtroom, inefficient case management, and unpardonable delay.⁸²

It is fair to say that the normal appellate review process will continue to address many problems that are raised in the trial court particularly those that directly affect the outcome of the litigation. Nonetheless, it is clear that separate from this process lie independent procedures designed to specifically address a wide variety of complaints regarding judicial misconduct.

IV. CONCLUSION

The dedication of the University of St. Thomas School of Law's new facility this weekend has emphasized its goal of producing lawyers who are intellectually talented and deeply conscientious about maintaining high ethical standards during their legal careers serving the public. Hopefully, many of them will accept the high calling to serve as judges throughout our nation.

The law school dedication and the many themes explored by the panels remind us that judges embody the high ideas and aspirations of the legal profession. My survey of some ethical issues and acts of judicial misconduct underscores the fact that the daily act of judging is a complex exercise. Because of the unique way we perform our public function, we must be vigilant against engaging in any actions which deter from the historical posture of neutrality and impartiality toward litigants and the disputes they bring to the courts for resolution. I remain confident that in meeting the litigation challenges of the future, the vast majority of judges will continue to honor their oaths of office in an excellent way.

82. Frank M. Coffin, *On Appeal: Courts, Lawyering, and Judging* 243-44 (W. W. Norton & Co. 1994).