software for identifying the presence or absence of variables in the written or verbal items of a database in order to perform literary and linguistic forensic analysis(jur:140§b)); public advocacy of judicial reform(jur:155§e);

h. collaborate with the students and their professors that at journalism schools, in particular, or universities, in general, run radio and TV stations; are learning to use the facilities and apply the techniques for making photo and video commercials and documentaries (dcc:13§C); are learning to develop public relations campaigns(dcc:14§D); and can integrate all the crafts of journalism and communications to produce a multimedia presentation of a message188[a];

i. full-time summer job.

5. Creation of an institute of judicial unaccountability reporting and reform advocacy

275. The business and academic venture[254] includes the creation of a for-profit institute of judicial unaccountability reporting and reform advocacy[253].

a. Purpose

276. The purpose of the institute is to act as:

a. an investigative journalist that detects, investigates, and exposes concrete cases of judges' unaccountability and their participation in, or toleration of, the consequent riskless wrongdoing engaged in individually or in coordination among themselves and with third parties, such as law and court clerks, lawyers, bankruptcy professionals[169], litigants, politicians, and other enablers and beneficiaries of judicial wrongdoing;

b. clearinghouse of complaints about judges' wrongdoing by any person who wants to exercise his or her constitutional right to "**freedom of speech[,] of the press[, and] the right of the people peaceably to assemble, and to petition the Government for a redress of grievances**"[268] by sending to the clearinghouse a copy of the complaint that the person filed with the competent federal or state authority or sending the complaint original only to the clearinghouse for analysis, information about judicial wrongdoing, and comparison with other complaints that may allow the detection of patterns, trends, and coordination, and possible publication and investigation by the institute;

c. prototype of a citizen board of judicial accountability and discipline(jur:160§8) that through its official investigation of both complaints against judges received from the public and information about judges' wrongdoing obtained through its exercise of its subpoena, search and seizure, and contempt power as well as the exposure of its findings of judges' wrongdoing, impropriety, appearance of impropriety, or criminal activity can justify its call for their resignation or official investigation by the U.S. Department of Justice and the FBI, and Congress, or their state counterparts, all of which can also exercise their power of criminal prosecution; and

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[268] First Amendment to the U.S. Constitution; http://Judicial-Discipline-Reform.org/docs/US_Constitution.pdf

d. public advocate, lobbyist, consultant, and litigator for both effective legislation on judicial accountability and discipline reform, and the establishment of a citizen board of judicial accountability and discipline and of an inspector general for the Federal Judiciary as key instruments for enforcing such legislation and implementing the reform.

b. As researcher

277. As researcher[269] the institute of judicial unaccountability reporting and reform advocacy will conduct advanced statistical analysis and work in information technology.

1) Analysis of the official judicial statistics

278. The official statistics of the Administrative Office of the U.S. Courts[10] constitute the main data source of the analysis of the means, motive, and opportunity of federal judges' unaccountability and consequent coordinated riskless wrongdoing.(jur:21§A) Those statistics lie at the basis of the tables(jur:10,11) showing the chief circuit judges' systematic dismissal without investigation of 99.82% of misconduct complaints against their peers and the out of hand denial, even reaching 100% during a 13-year period, by the respective judicial council of the petitions for review of dismissed complaints.(jur:24§b) The tables already prepared concern only either the aggregate statistics for the 13 circuits or the individual statistics for the 2nd Circuit.

a. The institute can update those tables and perform the corresponding statistical analysis and tabulation for each of the other 12 circuits.

b. It can also research the records to establish which judges were holding the chief circuit judgeships or membership in the judicial councils and therefore participated in such unlawful and self-interested abrogation in effect of the Act of Congress[18a] conferring upon people the right to complain about judges.

c. Those judges' participation can be confronted with their statements about their "fidelity to the law"[132f] and their impartiality(jur:68¶143).

d. Similarly, judges' record of voting to deny ever more systematically petitions for panel rehearing and hearing en banc can also be researched in every circuit to establish the extent to which judges indulge in such "abuse of discretion"[74] and reciprocal cover up on the ground of the explicit or implicit agreement "if you don't rehear or review the decisions of the appellate panels on which I sat, I won't rehear or review those of the panels that you sat on, and never mind the appellants whining that the decisions were wrong or wrongful".(jur:45§2)

e. The suspicious stability year after year of the number of such complaints filed with judges-judging-judges has been compared with the remarkable trend of increasing number of cases filed at all levels of the federal courts hierarchy(jur:12-14) as the population increases and America becomes an ever more litigious society. This comparison can be updated and refined by comparing the increasing number of whistleblowers complaining against their employers as well as the increase in the number of wrongdoing public officers in the other

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269 Cf. http://Judicial-Discipline-Reform.org/DeLano_course/17Law/DrRCordero_proposal_synopsis.pdf

two branches of government, who are persons and members of the same society as judges are where lawful and ethical principles give way ever more blatantly to greed and expediency, as most recently shown by wide spread institutionalized fraud in the subprime mortgage debacle involving both lenders and borrowers.

279. Similar and other types of statistical work can be performed using current statistical methods while the advanced Information Technology software product proposed below is being researched and developed.

2) Research and development in Information Technology

280. The purpose of the institute's IT work will be to research and develop a software product capable of auditing the writings of or about subjects of the legal system and profiling them thereon. To that end, it will develop metrics of personal and official behavior and algorithms to identify instances, patterns[249], and trends of behavior that have predictive function for the outcome of a case to be filed or already at bar; and that reveal the subjects' underlying motive, means, and opportunity to engage in such behavior(cf. jur:21§A). Thereby the product will provide objective, factual information that can help private users to reliably develop their legal strategy and public users to obtain probable cause to open and conduct official investigations involving the subjects.

281. The metrics of behavior will measure the subjects' suitability to play their role in the legal system. Suitability will be a function of the subjects' fairness, impartiality, competence, and integrity, or the lack thereof due to evidence or appearance of wrong or wrongful behavior, which may be motivated by a wrongful attitude, that is, bias, prejudice, actual or potential conflict of interests, or personal agenda. In short, this software product will enable users to evaluate a subject's past and probable future behavior and proceed accordingly.

3) Judges to be the first subjects to be audited and profiled

282. The product will concentrate initially on auditing the writings and profiling the subjects that play the single most outcome-determinative role in the legal system and as to whom the available written materials are most abundant and reliable as matter of public record that also has precedential value, namely, judges. There is no implicit prejudgment in stating that a judge will be audited for wrongdoing. It is obvious that if the judge is discharging her judicial duty to administer justice according to law and is an otherwise law-abiding and ethical person, then there is no problem. But it is not reasonable to assume that judges, who are entrusted with an enormous amount of power over people's property, liberty, and lives, remain immune to the inherently corruptive effect of such power[28]. This is particularly so with regard to judges, who wield power to decide who gets or loses the most insidious corruptor: *money!*(jur:27§2) This is even more so because judges, as individuals and especially reciprocally as members of a class of similarly situated people, have the means to self-exempt from accountability and discipline to ensure the risklessness of their wrongdoing(jur:21§1).

283. Under those circumstances, the temptation to engage in wrongdoing and the pressure from other class members to tolerate the wrongdoing of any and all members of the class can be irresistible. This is the result of their wrongdoing having only an upside: It can be substantially beneficial in

professional(jur:25§c; 60§f), social(jur:62§g), and material(jur:27§2; 32§§2) terms yet carries no adverse professional, social, or material consequences. One statistic proves this: In the 223 years since the creation of the Federal Judiciary in 1789, the number of federal judges impeached and removed is 8!(jur:21§a) Nevertheless, of course, for those outside the judicial class and its enabling outsiders[169], judges' wrongdoing has a substantial downside, whether it be concrete adverse consequences on their property, liberty, and lives, or on the integrity of the judiciary and the rest of government by the rule of law.

284. Therefore, the only reasonable assumption that is supported by an understanding of the forces at play among a tight-knit class of people such as judges –cf. the police, political party leaders, sport teams– and that is not undermined by the naïve or partisan attribution to them of incorruptibility before or after becoming judge, is that wrongdoing by judges is, not waiting to happen, but rather waiting to happen again and to be exposed.

285. Moreover, for each judge there are numerous data sources that can be audited for analyzable data(jur:150¶337). That is so about the judge assigned to the case at bar as well as one likely to be assigned to it in a court where there are more than one judge or there is a schedule of panels of appellate judges to whom all cases are assigned that are filed during certain dates. Hence, the information obtained through auditing can allow legal strategizing and produce broadly based, reliable probable cause to initiate an official investigation, not to mention unofficial, journalistic ones. Eventually, the product can be applied to other legal system subjects with fewer data sources to mine for data, such as attorneys(jur:46¶46); clerks(73¶¶153-155; 106§c); bankruptcy professionals[169]; those who recommend, nominate, and confirm judges(77§§5,6); types of cases, etc.

4) The nature of judicial wrongdoing

286. The term 'wrongdoing' is ample, comprising both judicial performance, i.e., a judge's behavior in his capacity as such, and personal conduct, i.e., the rest of the judge's behavior in any other capacity. Judicial performance may be either wrong, thus possibly pointing to the judge's incompetence, or wrongful because it is driven by an ill motive, such as bias or prejudice concerning a person, a cause, or a type of case; self-interest in a conflict of interests; or a personal agenda pursued with disregard for the law, a sense of proportion, or the bounds of discretion. A judge's personal behavior can be as criminally or civilly unlawful or unethical as that of any non-judge. Judicial performance and personal conduct have some overlapping.

   a. Judicial performance centers on a judge's fairness, impartiality, and competence in the conduct of judicial proceedings and decision-making; e.g., whether he has been fair by not imposing sentences or allowing damages that are disproportionately harsh or mild compared with the defendant's culpable act and the punishment meted out to, or the compensation demanded from, similarly situated defendants in previous cases; impartial by not depriving a party of its right to discovery so as to protect the opposing party from incriminating material being discovered; and competent by not ignoring that a controlling case has been overturned by a recent case or overruled by legislation or not failing to integrate such new piece of information into his handling of the case at bar.

   b. Personal conduct centers on the judge's integrity in her private and official capacity. It concerns personal conduct such as her concealing assets and evading taxes; breaching a contract, e.g., by failure to pay rent or to buy or sell stock as agreed to; or using her

connections to secure admission to a college for a child despite the latter's disqualifying low grades or admission test score; and tolerating or even covering up other people's similar criminal, civilly unlawful, or unethical conduct.

c. i. Overlapping judicial performance and personal conduct occurs, for example, when a judge dismisses a complaint against another judge to cover up the latter's wrongdoing; takes advantage of confidential information learned in chambers or submitted under seal to purchase or sell property in a time-sensitive fashion or on more favorable terms; asks for or accepts a bribe to throw a case one way or another; or resorts to a defense lawyer that has appeared before her to have the lawyer set up offshore bank accounts to conceal the judge's illegal assets or engage in money laundering.

ii. There is also overlapping in the wrongful pursuit with judicial power of a personal agenda, as when a judge goes on a mission against police searchless warrants, although the Fourth Amendment only requires that searches not be unreasonable, not that they be executed only upon a search warrant; or a mission against computer hackers, such as those that hacked his private website and embarrassed him by exposing his collection of erotic pictures, whereupon he treats hackers as if they were terrorists, systematically denying them bail for posing a continued hacking threat to society and authorizing the tapping of their phone conversations, even with their lawyers, under color of measure to prevent the use of a phone for hacking.

287. Wrongdoing also includes failure to "avoid even the appearance of impropriety"[123a]. That concept has two points of emphasis: "Impropriety" bears on the nature of the behavior, which may fall anywhere along the spectrum ranging from clearly criminal to unbecoming of a person holding judicial office, such as becoming drunk and boisterous at a party. "Appearance" bears on the very low 'burden of proof' that must be carried by any person, for example, a journalist or a hotel concierge, for their allegations to create such an unfavorable or suspicious impression of the judge as to make her hold on office untenable and require her resignation(jur:92§d), such as discreetly rewarding her law school student who in her opinion is the best of the month with an all-paid weekend trip to the Cayman Islands bearing a gift for a friend of the judge who picks it up at the hotel front desk; or eating diner alone with a married law clerk in a restaurant's private room.

5) Main uses and users

288. The **main uses** of the initial software product that concentrates on judges will be:

a. to discharge an official duty both to hold judges accountable by monitoring their judicial performance and relevant personal conduct and to act on complaints about judicial misconduct by determining whether there is probable cause –not liable to attack as partisan animus– to believe that a judge has engaged in wrongdoing and should be investigate and, if warranted, disciplined or prosecuted; and

b. to detect any instance, pattern, or trend of behavior on the part of the judge or judges in the case to be filed or already at bar, which may or may not be wrong or wrongful but which may reveal the judge or judges' way of thinking and handling similar cases in the past, and devise legal strategy accordingly, for example, by deciding either to go ahead and litigate before them or petition on an objective, factual basis that the judges recuse themselves without incurring the risk of having the petition denied as a frivolous tactical move that can

provoke retaliation from the petitioned judges and their peers, or appeal their petition denial in order to have the judge or judges disqualified for cause.

289. The **main users** of the product will fall into two categories:

a. public

1) law enforcement agencies that must determine whether there is probable cause to believe that a judge has engaged in any wrongdoing, including failure to "avoid even the appearance of impropriety"(jur:134¶287), for which he or she should be investigated and held accountable; and

2) judicial performance commissions and citizen boards of judicial accountability and discipline(jur:160§8) empowered to:

a) monitor judges' performance on a regular basis; and

b) receive complaints against any judge from a judge or any other person and process them; and

b. private

1) attorneys, their clients, and pro ses who must devise their legal strategy for proceeding in their own cases; and

2) entities, such as the proposed institute for judicial accountability and reform advocacy, that

a) on commission from a third party audit for a fee a trial or appellate judge; or

b) audit judges, publish the results on the entities' websites, and make them accessible either on subscription or for free in the public interest and to attract webvisitors[cf. 213a].

290. All the main users must decide whether to spend months or years and thousands, tens of thousands, even hundreds of thousands or millions of dollars[83] in litigation. This can be emotionally-draining, for the stakes can include being sentenced to death, going to prison for the rest of one's life or for many years, plea bargaining, or being acquitted; being held liable for a high money judgment and even devastating punitive damages; establishing an adverse controlling precedent or a public perception contrary to a party's interest; or settling to dispose of the case with certainty as opposed to having it dismissed or reversed. At present, law enforcement officers, judicial performance commissioners, and attorneys base their decision on how to proceed on either their personal and thus limited and subjectively evaluated experience of practicing before a judge augmented by hearsay about such experience of others or base their decision only such hearsay alone if the decision-makers have never practiced before that judge. The decision may also be made by a client or a pro se relying on nothing more substantive than his passion-driven wishful thinking or fear-induced gut feeling. The toss of a coin may also be the decision-maker.

291. An advanced IT-based software product that evaluates a judge's past behavior by auditing vast amounts of data from a wide variety of sources constantly added to can provide users with a more reliable foundation for predicting how the judge is likely to handle the case to be filed or already at bar and whether users should petition the judge to recuse himself; appeal a denial in order to have him disqualified; settle or plea bargain.

292. For instance, using this product, a private user could find out that the judge assigned to his case ruled in 87.2% of her cases in favor of women suing their employers for promotion discrimination as opposed to the initially assigned judge, whom the user caused to recuse himself because the product audited judicial and extra-judicial writings of both the judge and other people and found expressions of ideas –not decisions– that gave the "appearance"[123a] of bias against women that work rather than stay home doing what they are supposed to do as wives. In reliance on that information, the user could decide to try his case more confidently rather than settle.

293. Likewise, the product can enable public users to discover the suspicious coincidence that a judge has been assigned purportedly by the luck of the draw conducted by the clerk of court whom he appointed(jur:30§1) to six involuntary bankruptcy petitions that any of three financial institutions, which financed the library annex of the law school of whose advisory board the judge was a member at the time of the annex construction, filed against debtors who were owners of land in the northern region of the judge's judicial district and who protested to the judge to no avail his approval of the sale by the same bankruptcy trustees of their land at below market price at private auctions to thinly capitalized international companies formed only weeks after the filing of the petitions and which have had no more activity after they sold the land to one of the members of a consortium that recently announced plans to build a freight train-airplane-truck intermodal transportation hub and merchandise distribution center in the district's northern region.(cf. jur:32§§2)3); 46§3) Based on this probable cause to believe that the judge has in effect engaged in a conspiracy to expropriate land for private use without due compensation, the public user can decide to open an investigation of the judge and others involved in this series of suspicious transactions.

6) Auditing a judge's writings

294. The auditing feature of the software product will audit a judge's judicial decisions in the case intrinsic data sources as well as his non-judicial writings constituting his case extrinsic data sources.(jur:150¶337) Its purpose will be to detect how a specific feature of a variable feature of cases, that is, the value of a variable –e.g., a parties' wealth, level of education, subject matter–, relates to the outcome of the judge's cases and whether that variable is controlled by a judge's behavior, which may or may not be wrong or wrongful, but which may result from a wrongful attitude, such as bias, prejudice, conflict of interests, and personal agenda. The product will calculate the statistical probability that such variable value will determine the judge's decision in a case that is or may come before that judge. Based on that information, a private user will be able to devise its legal strategy and a public user will be able to determine whether there is probable cause to investigate a judge for wrongdoing.

a) Statistical analysis for auditing a judge's decisions

295. The auditing feature of the software program only audits a judge's decisions and does so only through statistical analysis. This auditing is mostly in the nature of an accounting: A layout similar to a balance sheet is used, with the column on the left for plaintiffs and prosecutors and the column on the right for defendants. Under each column is set forth the same list of heading-like variables, each of which is subdivided into values. For instance, the variable 'party gender'

is subdivided into the two values of male and female; and the variable 'party representation' is subdivided into counseled and pro se; while the variables 'religion', 'race', 'ethnicity', 'company size', or 'subject matter' may each have three or more values. Next to each value is the *frequency number*, that is, the total number of cases before the audited judge where the party was, let's say, Catholic, Protestant, Jewish, Moslem, or None, followed by the *winning frequency* or number of cases where the parties with that value won; and the *frequency percentage*, or winning frequency expressed as a percentage of the frequency number. Other mathematical and statistical relations can be calculated in order to perform a more sophisticated analysis, but the ones named above suffice for the illustrative purpose here.

296. Let's consider the variable of political party affiliation and let's assign to it only two values, that is, affiliation to party A or to party Z. If either variable value has no bearing whatsoever on case outcome, then an A affiliated party opposing a Z affiliated party has the same 50%, toss of a coin chance of winning as of losing. That variable is outcome-irrelevant; it is a dependent variable because its influence on case outcome, if any, depends on the value of other variables. The opposite speaks for itself: If in 100% of cases the A party won when opposing a Z party, then the A value of the party affiliation variable is outcome-determinative. That variable is independent because its influence on the outcome of cases is not dependent on the value of any other single variable or set of variables. That variable is controlled by a judge's bias, prejudice, conflict of interests, or personal agenda, for there is no rational explanation in a system of justice governed by the rule of law that accounts for A parties winning 100% of cases when opposing Z parties, even where any two A parties have diametrically opposite values for all other variables, that is, they are completely different in every other respect, nevertheless they win merely because each is an A party opposing a Z party.

297. In this illustration, the political affiliation variable allows for proof of a judge's bias or prejudice: When opposing parties were both A parties or Z parties, there was no single variable that accounted for a party winning or losing 100% of cases. However, parties that were war veterans opposing non-veterans won 7 out of 10 cases; parties suing for, let's say, breach of contract won in 8 out of 10 cases; and parties defending against a charge of domestic abuse won in 9 out of 10 cases. Each of these three variables is dependent variables because none of each could determine the outcome of 100% of cases. Nonetheless, in combination they could become independent variables, and thus outcome-determinative: In litigation before the judge being audited where both parties were either A or Z parties, if a party was a war veteran and was suing for breach of contract, it won in 100% of cases.

298. The above makes the usefulness of the software product for auditing a judge's decisions patently obvious: An A party opposing a Z party could be all but certain of prevailing. Consequently, it would have no interest in either having the judge recuse himself or in settling with the opposing Z party on terms any lesser than the full relief requested. The same would hold true for a war veteran suing a non-veteran for breach of contract. The opposite would be the case for a Z party and for a non-veteran being sued for breach of contract: They would have every interest in petitioning the judge to recuse himself and doing so by invoking the evidence of his bias; otherwise, they would want to settle even by agreeing to the relief requested and thereby avoiding the expense of a judicial proceeding with a predetermined outcome adverse to them.

299. In the same vein but to varying degrees, a war veteran who learned that he had a 70% probability of winning over a non-veteran; a party suing for breach of contract with an 80% probability of winning; and a party defending against a domestic abuse charge with a 90% winning probability would find such information significant in devising their respective litigation strategy. By the

same token, a retired policeman suing an employed civilian; a party suing on reasonable reliance on an implied promise or estoppel by laches; and a party defending against a charge of assaulting another company executive officer could devise their litigation strategy by applying by analogy those statistics in the absence of statistics bearing on the specific variable values of their respective cases.

300. Likewise, law enforcement authorities, judicial performance commissions, and the proposed citizen boards of judicial accountability and discipline will use this product to determine whether there is probable cause to investigate a judge that has a record of ensuring a win for 100% of A parties opposing Z parties. Their attention will also be drawn to a judge whose record shows a pattern of partiality toward certain types of parties and subject matters.

(1) Enhancing the usefulness of statistics on a judge through comparison with judicial baselines

301. The *statistics* on *auditing a judge's decisions* take on much more significance when they are compared with their equivalent for all judges of her court, district, circuit, and judiciary. Each such level in the hierarchy of aggregates of judges can have its own *winning frequency average* and *frequency percentage* for each variable value. These comparative statistics represent baselines. The more a judge's winning frequency and, particularly, her frequency percentage for a given value deviate from the corresponding baseline, the more they point to the judge's anomalous behavior, which may signal wrongdoing.

302. To determine whether an audited judge's anomalous behavior results from wrongdoing the statistics on her can be vetted through a series of reasonable factual considerations; e.g., her unusually high number of winning defendants of Chinese descent is due to the fact that her judicial district includes China Town; the unusually high percentage of white collar convictions in cases before her is the result of the election of a district attorney who ran on a platform of holding accountable financial institution officers who organized or tolerated abusive subprime mortgage lending and, in addition, a pool of jurors particularly outraged by a notorious case of egregious abuse involving the husband of the state senate majority leader; her unusually high percentage of doctors held liable for high medical malpractice judgments is related to her having lost her kid brother when the apartment building that he was visiting collapsed due to a negligent engineering design.

303. Other patterns and trends may underlie a judge's decisions and come to light by auditing those decisions. The resulting statistics are revealing in themselves and even more so when compared with those on each level in the hierarchy of aggregates of judges, such as:

   a. the winning or losing of parties and:

      1) their wealth as well as the deciding judge's or panel judges';

      2) their pro se or counseled status, and if the latter, whether representation was provided by a solo practitioner or a small or medium firm or rather a large law firm capable or with a history of appealing unfavorable decisions and bringing their appeals to the attention of the media;

      3) their race; sexual or political orientations; religion; area of residence; employment status, type, and level; ethnicity; nationality; celebrity status and connection to

important people; etc.;

4) similarities between the investment portfolios of the judges of a court that cannot be explained by separate but coincidental investment decisions, and that point to either a group of people trading on inside information or acting as an investment syndicate and may having as their priority, not the administration of justice according to the rule of law, but rather the preservation of their portfolio value and enhancement of their return on investment[30];

b. granting or denying of bail, its amount, and imposition of other conditions restricting movement to a house, a geographic area, the wearing of an electronic bracelet[270], their consideration of the sentencing guidelines when imposing terms of imprisonment and other criminal punishment; etc.

(2) The archetype of judicial performance and the judge's decision auditing model

304. The auditing of individual judges' decisions and the calculation of baselines on aggregates of judges can provide a data rich, fact-based understanding of the qualitative and quantitative metrics of judges' performance realistic enough to enable the development of an *archetype of judicial performance* with disciplinary and prescriptive function.

305. The auditing statistics and the objective, factual considerations applied to test a judge's anomalous deviations from the baselines can provide the basis for developing *a judge's decision auditing model*. Its ever-greater sophistication can be the result of an ever more complex algorithm that takes into account general judiciary variable values adjusted by extra-judicial or judge-specific considerations. An algorithm can identify the one variable value or set of variable values that is most highly correlated to the respective case outcome.

306. The model's usefulness will be established to the extent to which it will produce *full range predictive statistical probabilities* that are reliable, to wit, that the model can predict with a degree of probability ever closer to 100% not only the final win or loss outcome of any given case before the audited judge for any given party, but also the content and outcome of the many intervening rulings on motions and objections and such predictions are correct in 100% of cases or a percentage ever closer thereto. The capacity to predict such range of probabilities will require, of course, that in addition to auditing the writings of a judge, the writings of or about other subjects of a case, such as attorneys, jurors, and circumstantial considerations, be audited and that all of them be profiled.

307. Such a vastly complex statistical model, whose most important variables are eminently psychological and sociological, is theoretically possible without the need to assume that human beings are predetermined to behave in a certain way. Rather, it suffices to assume that every individual is motivated by a hierarchy of harmonious and conflicting interests, that he or she pursues such interests in a sufficiently rational way to manifest them in patterns and trends of behavior characterized by constant elements, and that the interaction of a group of individuals is a system of interests susceptible to dynamic analysis of harmonious and conflicting interests.[187] That analysis can be infinitely refined incrementally by the dynamic reconfiguration of the

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[270] http://Judicial-Discipline-Reform.org/docs/Legal_news.pdf >Ln:147, 152

system as not only existing interests exit it, new ones enter it, and those in it are modified by the constant flow of knowledge, but also as the relative position of the interests on that hierarchy and the strength of their hold on that position are constantly recalibrated more accurately through an ever more perceptive analysis of the patterns and trends through which they manifest themselves. This means that the system of interests of an individual and of a group is neither closed nor stable. Even theoretically no analysis will ever be able to predict the system's behavior with 100% accuracy. It also means that a dynamic analysis takes into account changes even as it is ever more perceptive of the patterns and trends that give constancy to the system. By taking into account the frequent changes in the system, the analysis can predict ever more accurately the system's behavior. The set of rules that allows such analysis to be performed constitutes a model.

308. Computer models of hurricane behavior are used today to warn millions of people that they are in harm's way and advise them on how to protect themselves. Those models have become more reliable than watching birds fly away from a cloudy sky. Medical expert systems are being developed to make patient diagnoses more accurate than those made by doctors with different degrees of training, amount of information, and mental acuity due to sleep deprivation, emotional problems, sympathy for the patient, etc. The principles and techniques underlying those models and systems as well as others will be applied in an innovative way to the field of law by this software product as part of the pioneering work of the institute of judicial unaccountability reporting and reform advocacy and its development of this auditing and profiling software product.

b) Linguistic and literary forensic auditing

309. This feature of the software product focuses its auditing on the idiosyncratic use of language by an author –who in the early stages of product development and use will be the judge(jur:132§3) in the case to be filed or already at bar; eventually other subjects of the legal system will also be audited–. It searches for patterns of speech to construct text, done by linguistic auditing, or for the message in the text and its meaning, done by literary auditing. The forensic versions of these two types of language-centered auditing aim to determine authorship of judicial decisions and reveal traits of the author's character as well as formal elements and substantive components of his writing.

310. A better understanding can thus be gained of the audited judge's way of reasoning, beliefs, expedient statements (those that he makes for reasons other than because he believes in them) and attitudes, all of which may have influenced or even determined the outcome of previous cases and may likewise affect the current case. Such understanding can enable private parties to devise legal strategy accordingly. It may bear on whether to file a case in a court where it may come before the audited judge or whether to pursue his recusal or disqualification. But the strategy may also deal with how to argue a case to that judge as a result of having gained a better understanding of him. Likewise, a better understanding of the judge gained through this auditing can enable public parties to determine whether there is probable cause to investigate the judge for wrongdoing and, if warranted, hold him accountable and liable to discipline or impeachment.

311. The **data sources** of linguistic and literary forensic auditing are broader than those used to audit a judge's decisions(jur:150¶337). They include:

    a. the audited judge's judicial and non-judicial writings, such as articles in law journals and newspapers of more or less reputation; books; etc.; and

b. available writings of other people, such as:

1) his clerks' letters, memos, and articles;

2) motions and briefs of lawyers that have appeared before the judge or his peers;

3) law research and writing papers, student notes for law journals, moot court briefs, and articles by other people submitted at law schools to law school journals, moot court competitions, and other publishers where the judge and his peers teach or to which they are connected as moot court judges or law article reviewers or submitters.

312. The search function of a computer can only perform the very limited aspect of linguistic auditing of finding the recurrence of previously identified words and phrases. Boolean terms and connectors can only serve to find some variations of the search term and its relation to another or to the context. A natural language search engine operates by searching for text that contains terms already contained in the search query or variations thereof and ordering the resulting text by highest frequency. Neither of these search methods is capable of performing the type of analysis that linguistic auditing is intended to do: analyze the structure of language used in a piece of text and detect its fine peculiarities so distinctly as to be able to identify who is or is not its author. The above statements apply even more squarely to performing literary auditing, for it analyzes text to reveal its author's character and intention as well as his message and its meaning. These two types of auditing call for the innovative application of the discriminating capacity, which mimics critical judgment, of artificial intelligence.

(1) Linguistic auditing

313. Linguistic auditing is the more mechanical analysis of these two types of language-based auditing. It deals with an author's idiosyncratic use of language. The auditing begins with her choice of words, which reflects the level, extent, and geography of her vocabulary, and her spelling of those words, which concerns their morphology; moves on to her use of those words as the grammatical units of language –articles, nouns, pronouns, adjectives, prepositions, verbs, adverbs, conjunctions, and interjections–; to arrive at her linkage of those words through syntax, that is, the lineal, one-after-the-other order, affected by punctuation, in which she places her words to construct sentences that contain the logical components of linguistic communication: a subject, a predicate, and their complements. The author's choice of words and the syntactical structure in which she puts them together are supposed to be understood, that is, to convey a message in a given language, English in our case, as opposed to being nothing but an incomprehensible string of words although each separately may have some meaning.

314. Linguistic auditing limits its analysis to the choice of words and their structure, and does not reach the message or its meaning. But that is enough to be richly informative. This is so because those words and their structure have so many features that their particular combination can be special enough, if not unique, to allow the author to be identified: A piece of writing whose author is not known can be compared to exemplars, that is, other writings whose authors are known, and the similarities between the former and at least one of the latter can identify the author of both. However, such identification may not be possible because the author has not written any other piece or none of his other pieces is in the pool available for comparison. Even so, the linguistic auditing of an unidentifiable author can still be richly informative. It can

indicate whether the author is a native speaker of the language of the writing, his level of education and social status, age, attention to detail, where he has lived, his intended audience, etc.

(2) Linguistic forensic auditing

315. Linguistic forensic auditing allows the determination whether a judicial decision purportedly written by a judge was actually written by someone else. This can reveal the judge's dereliction of duty by making an unlawful delegation of judicial power in order not to make the effort to deal with certain types of parties, such as pro ses, or subject matters, such as those found distasteful or too complex, or to free up her time for other activities, such as court administrative tasks or self-promoting writing and public speaking.

316. To that end, linguistic forensic auditing can compare the judges' writings and those of others in order to establish or provide foundation for the queries:

    a. whether the judge or a clerk, who may have just graduated from law school, a law student clerking for a summer or only part-time during the academic year wrote the text in question;

    b. whether the nature and amount of judicial authority delegated to a clerk allowed him through his research, legal thinking, and writing to:

        1) decide a thorny or novel legal issue;

        2) create or depart from precedent;

        3) deprive parties of their property and liberty and harm substantially or even dramatically their lives by impairing their medical, parental, privacy, stockholder, voting, and similar rights and thereby injure their means, manner, and opportunity to do business or gain their livelihoods; and through the precedential effect of decisions, also affect similarly non-parties, even the rest of the people;

    c. whether a contributing or the determining factor in delegating the writing of a decision was the preceding marking of it "not for publication" or "not precedential"(jur:43§1) or whether being so marked was the consequence of the decision's substandard quality resulting from having been written by someone else less competent than the judge[131];

    d. what the judge was doing to earn his well above the average salary of Americans[212] when he was having someone else write the decision.

(3) Literary forensic auditing

317. Literary auditing performs the more subtle analysis of one piece of writing and most effectively of many pieces, such as transcripts, opinions, and articles, of the same author. It deals with their semantic aspect, that is, the explicit message that the author conveys to his interlocutor or reader and the implicit message that he sends intentionally or unwittingly in his subtext and that reveals his reasoning, interests, and attitudes, including wrongful ones, such as bias, prejudice, conflict of interests, and personal agenda. Thus, literary auditing allows the understanding of the author's character as well as his message.

(a) Revealing the author's character

318. Literary forensic auditing can reveal a judge's (and eventually other legal system subjects'):

a. preference for deductive or inductive reasoning;

b. deference to, or defiance of, precedent and personal reputation of legal authority;

c. understanding of scientific, mathematical, and statistical evidence and embrace of it, which may come to light in a judge's reference to it in the jury instructions or reluctance to make the effort to understand it and deal with it;

d. reliance on personal opinion and conclusory statements or logical arguments, which may point to a dogmatic or professorial attitude;

e. richly or scantly detailed presentation of evidence and theories of the case;

f. propensity or reluctance to accord credibility to testimonial, physical, and circumstantial evidence and its effect on a judge's decisions on admissibility;

g. laziness or hard-working ethos and lack or abundance of self-confidence that determine her propensity to:

1) remain in the safety zone of precedent;

2) depart or overturn precedent;

3) accept or reject new legal theories and the request to create new rights;

4) uphold or strike down the constitutionality of a law;

5) accept a proposed brief with an innovative argument that she may incorporate in her opinion or law journal article to make it appear as her own and be given credit for it as if it were such or ignore it in reliance on her own intellectual capacity and out of pride in her own intellectual accomplishments;

h. leniency or harshness in her decisions.

(b) Detecting the author's implicit message

319. Reading a piece of writing for its explicit message requires choosing a meaning among various possible meanings of each word in the context of the various meanings of each of the other words in a string of words forming a unit of thought, such as a sentence or a paragraph. Through this mental exercise, it is possible to determine the composite, explicit message of all the words together. That is a difficult task for a human mind, let alone for a software product. For such a product to replicate this exercise, it must be capable of 'understanding' the same explicit message that would be understood by the average speaker of that language who is a member of the author's intended audience. That presupposes reason and the exercise of critical judgment. It calls for the software to run on artificial intelligence. But even if the product can recognize the writing's explicit message, that remarkable accomplishment alone is not enough to qualify as literary auditing, never mind its forensic version.

320. The valuable contribution of literary auditing lies in using that explicit message that is literally – or visibly, as it were– conveyed by a string of words forming text –thus, a comprehensible piece of writing– as a stepping stone to the implicit message carried by its subtext. That requires an

even more sophisticated reading. It must analyze the explicit message of a string of words or compare that of two or more strings in order to detect what is not explicitly in any one string, but rather only implicitly. That implicit message may consist in the author's true, consistent revelation of his character or meaning that runs in the subtext of his explicit message or his development, refinement, and modification of that meaning, as well as his misconceptions, ambiguities, inconsistencies, contradictions, misrepresentations, and lies. Therein lies the value of literary auditing: in detecting an author's implicit message in one or more of his writings that he may not even be aware of, would not want to convey if he were aware of it, or that he is very much aware of but sends out in the expectation that the same writing will not reach his different audiences so that he can convey to each audience different, even inconsistent and contradictory messages.

321. It should be apparent that the user of the forensic version of literary auditing, whether she be a lawyer, not to mention a skillful one, or a person similarly situated, can make a powerful argument based on her detection of the implicit message of an author, whether such author is the judge in the case to be filed or already at bar, opposing counsel, the writer of a contract, a letter, a complaint, or any other document that may be introduced into evidence or otherwise used in the case, or of course, those who wrote laws, regulations, or opinions that may come into play or are already referred to in the case. What is more, well before the literary forensic auditing user makes any argument in writing or orally, she can put what she has learned through it to work very advantageously: She can use it to devise legal strategy or as a source of probable cause to open an official investigation of either the author, his peers, or other people.

322. However, literary auditing comes at a high cost. For one thing, it relies heavily on comparative analysis. Consequently, it should review the largest amount possible of the author's writings in order to increase the probability of stumbling upon unknown passages that when compared with known passages will reveal in greatest detail, and thus, with greatest reliability, his character and implicit message. Such comparative analysis is most effectively performed by one mind, that is, one person. It is inefficient, if not impossible, for a team of persons to exchange constantly between them everything in an author's writings that each has read in a joint effort to paint with many hands the picture of his character or for each team member to recognize that a passage that standing alone does not reveal any implicit message should nevertheless be brought to the attention of the team so that it can puzzle that passage and all other passages together into the author's implicit message.

323. Moreover, literary *forensic* auditing must be performed by people that have at the very least enough legal training or experience to recognize the potential in an implicit message: The message may reveal what the author must have known at the time of writing; provide a foothold for a persuasive argument based on what appears to be a point of honor or pride for the author; allow drawing up an alternative theory of the case; hint at a new line of questioning; expose a psychological pressure point, an evidentiary trump card, or a financial vulnerability of the author or another person; open the door to pin down the author to his consistent message or impeach his credibility with inconsistent messages; etc. If the user lacks the capacity or the contextual knowledge and imagination to use the implicit message creatively, detecting such message will serve no purpose. Making comparative analysis between string of words, passages, and pieces of writings possible and cost-effective in search of the author's character and valuable implicit messages is what justifies the development and use of a software product that runs on artificial intelligence and is able to perform literary forensic auditing. It can give the user an outcome-determinative competitive advantage grounded in the axiom "Knowledge is Power".

7) Judge profiling software

324. Profiling is what the FBI and other intelligence-gathering entities do to detect past and potential criminal and terrorist behavior of any American citizen and any other person. It is what jury consultants do: In light of their client's case and the legal interests of the parties, they draw up questionnaires for veniremembers, taking into account their past and present socio-economic, educational, family, and employment circumstances; case-related experience and criminal record; and even their race, ethnicity, gender, and sexual orientation as well as information obtained by conducting their own investigations. Based on the veniremembers' answers, the consultants establish the profile of those that their clients should accept or challenge, and if the latter, whether for cause or as a peremptory strike. After the jury has been seated, the consultants advise their client on how to tailor its presentation of the case to the jury given its individual and collective psychological make-up; the probability based thereon that it will return a verdict one way or another; and whether to go to verdict, settle, or plea bargain.

325. This means that profiling is not a per se pejorative term reserved for the use by police of suspect categories to decide whom to stop, frisk, and arrest. Rather, profiling is a technique for behavioral analysis. Its purpose is to identify the fundamental and constant character traits of an individual in the context of his circumstances in order to draw up a picture of him that has a behavioral predictive function, that is, how his character and circumstances forecast his future behavior. Profiling:

    a. gathers extensive data of various types on the universal set of the population under study and individual members of it;

    b. analyzes that data scientifically to detect patterns of general and individual behavior; and

    c. calculates the statistical probability that certain character traits and circumstances influenced or determined a person's behavior in the past as well as the probability that they will do likewise when dealing with situations similar to those in the past or with new ones.

326. As such, profiling is a scientific technique accepted by the relevant expert community, including lawyers. Consequently, the institute researchers will apply these accepted profiling principles and techniques, mutatis mutandis, to provide a scientifically objective basis for calculating the statistical probability that the character and circumstances of a trial or appellate judge(jur:132§3) will influence or determine his handling in a certain way of a case to be filed or already at bar given the case's features. A software product that can output such behavior-analyzing profile with predictive function will be indisputably valuable. Today, parties estimate the likely impact of a judge on a case by venturing an educated guess or relying on a layperson's impression. The product will enable private users to make the qualitative quantum leap of devising legal strategy on the solid platform of extensive data on a judge's past written and verbal conduct scientifically analyzed by computer models to calculate the statistical probability of the judge behaving in a certain way. It will also enable public users to rely on statistical probability to determine the strength of their probable cause to open an official investigation for wrongdoing(jur:133§4). Users' reliance on the product will depend on its empirically demonstrated degree of accuracy, that is, how accurately its profile and behavioral probability forecast future behavior and the facts that a subsequent investigation would find.

327. Profiling a judge may also include the following types of research:

    a. legal analysis to determine whether the judge's decisions, non-judicial writings, and activities abide by, or disregard, the law, whether due to his wrong or incompetent

understanding of it or to his wrongful attitudes –bias, prejudice, conflict of interests, personal agenda–; for this type of critical analysis to be performed by computers so that its result is objective enough to win the approval of a majority of reasonable and fair-minded critics there will have to be developed a highly advanced software program that relies on artificial intelligence; meantime, that legal analysis will be performed by researchers;

b. interviews with people for inside information about judges, clerks, their relation to insiders, etc., initially concerning the Federal Judiciary and progressively state judiciaries too(jur:106§c);

c. opinion polls and surveys;

d. use of facial recognition software to match photos in yearbooks, newspapers, the Internet, in court publications, taken at interviews and other meetings, etc., to establish the identity of people that may have legally changed their names or assumed new names to hide their identity, which may reveal the members in the judge's social circles and help draw up the sociogram showing the flow of influence[271];

e. computer and field search for evidentiary documents concerning wrongdoing, including:

   1) unreported trips[272] or attendance to seminars;

   2) non-disclosed receipt of gifts;[275]

   3) refusal to recuse so as to prevent discovery of wrongdoing or advance an improper interest;[271b]

   4) hidden assets and money laundering(jur:65§§1-3);

   5) other forms of illegal activity that support civil or criminal charges(jur:71§4);

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[271] **a)** The spectacular finding of a photo showing a state justice socializing at a posh seashore resort in southern France with a party who had contributed over $3 million to his judicial race and who subsequently won a case before him where scores of millions of dollars were at stake led to litigation all the way to the Supreme Court and to vacating the decision in favor of that party; *Caperton v. Massey*, slip opinion, 556 U. S. __(2009), http://Judicial-Discipline-Reform.org/docs/Caperton_v_Massey.pdf.

b) The Supreme Court has indicated that recusal does not require proof of actual bias, but rather a showing of circumstances "in which experience teaches that the **probability** of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable." (emphasis added) *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

c) In *Caperton* it "stressed that it was not required to decide whether in fact [the judge] was influenced [by one of the litigants]. The proper constitutional inquiry is whether sitting on the case then before [him] would offer **a possible temptation** to the average judge to lead him not to hold the balance nice, clear and true…[where] the probability of actual bias rises to an unconstitutional level [recusal is required]." (internal quotations omitted; *Caperton*, pages 8-9, 16) "Circumstances and relationships must be considered." (id., 10); **d)** See also fn.272

[272] Chief Judge Hogan, chair of the Executive Committee of the Judicial Conference of the U.S., admits that some judges fail to report trips and to recuse themselves despite having investments in companies that are involved in cases before them; http://Judicial-Discipline-Reform.org/docs/J_Hogan_JudConf_Exec_Com_aug8.pdf

f. establishment and operation of an 800 hotline number for reporting judicial wrongdoing and receiving other investigative tips.

8) A judge's fairness and impartiality appearance coefficient

328. A judge's fairness and impartiality appearance coefficient will express in a numerical value people's expectation of the capacity of a judge to conduct a fair and impartial judicial proceeding. The coefficient will be a function of the attribution to the judge of bias, prejudice, conflict of interests, and his personal agenda as well as the congruence of the judge's declarations, e.g., his financial disclosure reports and filings with property registries.

329. The data sources of this coefficient will be those used for auditing decisions and profiling. The calculation of the coefficient will be based on a balancing test of the weight to be assigned[273] to the different data sources given the nature of the information obtained from them and its impact on the fact and appearance of a judge's ability to conduct fair and impartial proceedings. For instance, the results of auditing a judge's decisions will be most objective and useful because by their own nature they will be expressed in sums and percentages. By contrast, assigning weights to other people's opinions about a judge will be a more subjective exercise. It will require the detection in the largest possible database of judges' auditing and profiling results of patterns of correlation between objective auditing values and subjective opinions.

330. The coefficient will allow comparison between judges through the development of a rating system based on the realistic determination of a minimum level of acceptable judicial fairness and impartiality as well as ranges of acceptability above the minimum that attract ever greater levels of reward and recognition or below the minimum that warrant advice and training, monitoring, admonition, censure, suspension, and referral to the U.S. House of Representatives (or equivalent state body in the case of state judges) for impeachment and removal.

9) The ratio and coefficients concerning extra-judicial activity and the patterns of time-consuming activities

331. The judicial to extra-judicial activity ratio will compare the amount of time and effort that the audited judge dedicates to his extra-judicial activities relative to the time and effort that he dedicates to his judicial ones. An objective basis for calculating the ratio can be found, on the one hand, in the judge's calendar and docket and, on the other hand, the time of day of the courses that he teaches as an adjunct professor at a law school; the moot court sessions that he judges; the presentations that he makes of his books, reports, etc., together with the travel time to

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[273] A similar statistical exercise is performed by the Administrative Office of the U.S. Courts in determining "weighted filings" "Under this system [of weighted filings], average civil cases or criminal defendants each receive a weight of approximately 1.0; for more time-consuming cases, higher weights are assessed (e.g., a death penalty habeas corpus case is assigned a weight of 12.89); and cases demanding relatively little time from district judges receive lower weights (e.g., a defaulted student loan case is assigned a weight of 0.10)." 2008 Annual Report of the Director of the Administrative Office of the U.S. Courts; http://www.uscourts.gov/Statistics/JudicialBusiness/JudicialBusiness2008.aspx >PDF version and also Judicial Business >pp. 23 and 38; and http://Judicial-Discipline-Reform.org/docs/AO_Dir_Report_08.pdf >23 and 38.

and from the respective places.(jur:54§d) Likewise, the number of a judge's written decisions and their number of words can make it possible to estimate the time it must have taken the judge to write them.[274]

332. By taking into account the extent to which the extra-judicial activities take place during regular business hours it should be possible to calculate a *coefficient of extra-judicial activities impact* measuring the impact of a judge's extra-judicial activities on his judicial ones[273]. The calculation of the coefficient is warranted by the intuitive correlation that arises from the indisputable fact that a worker's effort, attention span, and time are finite resources and cannot be dedicated simultaneously to two or more activities that the worker is required to perform personally rather than by delegation. Therefore, it is to be expected that:

    a. the higher a judge's:

        1) number of articles and books published as a private person;

        2) time and effort dedicated to researching and writing them;

        3) participation in judicial committees and non-judicial committees and activities, such as:

            a) teaching courses;

            b) moot court judging;

            c) public speaking;

            d) attendance at judicial seminars and conferences;

            e) attendance at non-judicial meetings of boards of charities, universities, law schools, and other entities, etc.,

    b. the higher the number of the judge's summary orders and "not for publication" and "not precedential" decisions(jur:43§1); and

    c. the lower the judge's:

        1) *coefficient of administered justice*, which expresses the number and quality of reasoned published decisions satisfying the need for "Justice [that is] manifestly and undoubtedly [to] be seen to be done"[71]; and

        2) *coefficient of judicial service rendered*, which expresses the time dedicated to the judicial activities for which the judge is compensated by the taxpayer with a salary in the top 2% of income earners in our country[212] relative to the baselines, namely,

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274 Lawyers Cooperative Publishing used to estimate that it took the lawyers on the staff of its American Law Reports Federal series (ALR Fed) four hours to research and write a page of their annotations. Law schools normally allow the full time instructors that join their faculty to prepare for and teach during their first academic semester or year only one 3-hour per week course in addition to holding a similar number of office hours to meet with their students and attending faculty meetings. Print media measure the work required of reporters in terms of, let's say, two weekly articles each of X no. of words or Y no. of inches of standard column width. Just as it is possible to calculate "reasonable attorney's fees" and the cost of writing an appellate brief, it is possible to calculate the time that it takes a judge to research and write so many words per decision.

the average time spent on judicial activities by the judges in her court, district, circuit, and judiciary, and the non-judicial officers in their judiciary, and the time spent on official activities by officers in the other branches of government who earn the closest salaries to the judges'.

333. It may be difficult for outside researchers to measure the time that a judge dedicates to different activities if the researchers do not have access to the time sheets or similar managerial devices that record time spent by judges on each activity and that are used by courts and the Administrative Office of the U.S. Court to calculate "weighted filings"[273]. Nevertheless, valuable insight into judges' time management can be gained by establishing *patterns of time-consuming activities*, such as:

   a. the signing of summary orders and "not for publication" and "not precedential" opinions (jur:43§1) just before or after a judge:

      1) goes on holiday;

      2) attends a seminar or a judicial conference, particularly if she must prepare to present a paper or a committee report;

      3) needs to grade the exams of the students that she teaches as an adjunct professor;

      4) is engaged in a series of presentations of her newly released book;

      5) is occupied by her own or a friend or family member's:

         a) medical treatment;

         b) divorce or wedding;

         c) death or child birth;

         d) money-making activities, such as a company incorporation or a merger or acquisition, which may be signaled by changes in investment portfolios and other items of personal and family wealth;

   b. handling of recusal motions, particularly those that are granted and thereby lessen the weight of the case load and free up time for other activities;

   c. attendance at seminars, conferences, and political meetings;

   d. participation in fundraising, whether by just 'attending' a political party's fundraising activity[275] or that of a school, charity, etc.

334. As in the case of totals and other statistics calculated in decision auditing(jur:138§(1), the ratio, coefficients, and patterns used here will gain in significance when compared with their equivalents and averages for the judges of a court, district, circuit, or judiciary. The latter can be

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[275] In light of mounting reports of improper conduct by U.S. Supreme Court justices, such as JJ. Scalia, Thomas, and Alito, Congressman Chris Murphy and 42 other members of the US HR called on the House Judiciary Committee to hold hearings on HR 862, the Supreme Court Transparency and Disclosure Act, which aims to subject the justices to the Code of Conduct for U.S. Judges[123a]; to require that justices state their reasons for granting and denying motions that they recuse themselves from hearing certain cases; and to require the Judicial Conference of the U.S. to draw up a procedure for reviewing such denials; http://Judicial-Discipline-Reform.org/docs/HR_SCt_ethics_reform_9sep11.pdf

used as baselines, the deviations from them measured, and the effort to explain them undertaken. This comparative exercise may find that the greater a judge's extra-judicial activities, the greater the deviation of his metrics from the corresponding baselines. It may be possible to express those deviations in a single, composite metric called *a judge's judicial performance coefficient*.

335. For instance, it can be found that a judge that teaches a course at a law school has an 84% probability of deviating from the average performance more than 90% of all other judges. Expressed in simpler illustrative terms, it could be found that 8 out of every 10 of those 'teaching' judges write decisions whose average length is 500 words while the average word count for non-teaching judges is 2000 words; that on average they have only 1 citation to authority as opposed to the average 12 for non-teaching judges; and that they cite no page of any brief or motion in the case while the average for non-teaching judges is 7. These statistics would support the argument that a judge with such time-consuming outside commitment gives short shrift to her writing of opinions, which are more likely to be arbitrary because the judge did not have enough time to pay due regard to the law or enough sense of professional responsibility to bother to read the briefs and motion.

336. A further statistical refinement could establish that the higher the judge's evaluation by her law school students and the higher the reputation of the school, the lower her opinions' count of words and citations. This would indicate that the focus of her attention is her teaching job, where the students' evaluations of her performance may be publicly posted, and it is merely as a secondary job for extra cash that she deals with her judgeship, where she is not evaluated by either litigants or her peers and the quality of her judicial performance has no positive or negative consequence on her tenure or salary. Yet, she, like the other 'teaching' judges, collects the same salary from taxpayers as non-teaching judges do. A similar analysis can be carried out to determine any correlation between judges that are prolific writers of articles in prestigious law journals and of books that receive public acclaim but scribble judicial decisions. After all, there are only so many hours in a day. Something has to give.

10) Product's arc of operation: input data > computerized analysis >output statistics

337. The **data sources** supporting the product will be of several types:

   a. the product for auditing a judge's decisions will be based only on the judge's case-intrinsic sources, that is, her decisions, which include:

      1) holdings and dicta in her published and "not for publication" as well as precedential and "not precedential" opinions(jur:43§1);

      2) concurrent and dissenting opinions;

      3) rulings written and signed by the judge;

      4) transcribed orders issued orally from the bench or elsewhere, such as in chambers, as well as all her comments made in such context;

      5) summary orders;

      6) letters relating to cases before the judge;

      7) per curiam decisions of panels on which the judge sat

8) the judge's voting on petitions for:

a) panel rehearing and hearing en banc(jur:45§2);

b) review of dismissals by the chief circuit judge of misconduct complaints against judges(jur:24§§b,c);

b. the profiling of the judge will be based on the above case-intrinsic sources and also on:

1) the judge's case-extrinsic sources, such as his:

a) books and articles in law journals, magazines, newsletters, and newspapers;

b) appearances and postings on the Internet, including emails, blogs, social media, websites, chat rooms;

c) financial disclosure reports213[a] and documents filed with county clerks' offices and other public registries242 of chattel, real, and time share property as well as land, sea, air vessels and rights, such as leases, patents, and contracts;

d) speeches, panel participation, comments, and statements at his or other judges' induction into the court and other court ceremonies, judicial conferences, hearings before Congress and other official federal or state bodies, seminars, bar association meetings, university or law school activities, charity board sessions, radio and TV appearances;

e) school where the judge held or holds an adjunct professorship;

f) submissions to commissions and committees tasked with recommending, nominating, and confirming candidates for judgeships and with reviewing judicial performance;

g) recommendations, including those in support of a job search, a lawyer's admission to the bar, or to a court pro hac vice;

h) letters unrelated to his cases, whether or not they are on his official letterhead;

i) previous private or public sector positions;

j) honorary titles and memberships;

k) department of vehicles driving licensing registration;

l) membership in clubs, charity boards, and law school committees;

m) photos and movie clips and journalistic footage[276];

n) yearbooks and records of the judge's alma matter law school, college, and high school; etc.;

2) judiciary sources that shed light directly or indirectly on the judge or on the

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276 "Caperton sought rehearing, and the parties moved for disqualification of three of the five justices who decided the appeal. Photos had surfaced of Justice Maynard vacationing with Blankenship in the French Riviera while the case was pending. Justice Maynard granted Caperton's recusal motion." *Caperton v. A. T. Massey Coal Co.*, 129 S. Ct. 2252 (2009), at page 4 of the Opinion of the Court.

background of her activities or particular acts, such as

a) dockets and judges' calendars;

b) memoranda, notes, and letters of the judge's law clerks and clerks of court;

c) court or court administration bodies' statistics, reports, newsletters, biographic notes on judges;

d) statements before Congress and other official bodies;

e) statements by third parties at the judge's induction in the court and similar court ceremonies;

f) a court's or peers' recognition of the judge's performance or public censure;

g) statements by other judges reflecting their opinion of the judge, such as those contained in concurrent and dissenting opinions[68];

h) the types of case-extrinsic sources, such as publications and media, listed at jur:150¶337; etc.;

3) non-judiciary sources[277] that directly or indirectly reflect the opinion on the judge:

a) held by:

(1) lawyers;

(2) journalists;

(3) parties;

(4) academic superiors;

(5) peers;

(6) students where the judge studied or where he has taught;

(7) friends, family, and neighbors;

(8) other members of the public; etc.

b) contained in:

(1) motions and briefs, including amicus curie briefs;

(2) students' and peers' evaluation of the judge's performance as instructor;

(3) laudations accompanying prizes, awards, and other forms of recognition bestowed upon the judge;

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277 "Canon 2: A Judge Should Avoid Impropriety And The Appearance Of Impropriety **In All Activities;** A. *Respect for Law.* A judge should respect and comply with the law and should act **at all times** in a manner that promotes public confidence in the integrity and impartiality of the judiciary"; fn123a. The words with emphasis added underscore the fact that the judges themselves state in their own Code of Conduct for U.S. Judges that it is fair to hold them to high standards even in the extra-judicial sphere of their lives. This justifies including in their profiles non-judiciary sources.

(4) brochures and annual reports of law firms and companies;

(5) biographic notes on the judge found in Martindale-Hubbell and other legal directories;

(6) websites that rate or comment on judges;

(7) the type of case-extrinsic sources, such as publications and media, listed at jur:151¶b.1); etc.

4) public non-judiciary sources that can place the judicial and personal activities of the audited judge and of parties that have appeared or may appear before him in context (jur:108¶244), particularly those sources that can provide financial(jur:27§2) information about them, such as:

a) county clerk's offices and similar property registries[242, 243];

b) rosters of marinas, airports, and landing strips that register docking, maintenance services, and landing rights.

338. **Data entry** will be made by scanning print data sources to digitize and enter them into the computer system that will run the auditing program on them together with the sources already available in digital format. Spoken-to written transcribing software will be used to enter judges' original spoken statements. Optical character recognition (OCR) software will be used to turn text digitized as picture into searchable text. Both OCR and transcribing software will be further developed by institute researchers as need be.

339. **Data mining** text will be performed using, in addition to Boolean terms and connectors and natural language, the auditing program developed by the institute. Face recognition software will be run on pictures and movies to establish who was where, when, and with whom.

340. **Data analysis** will rely on the most part on innovative application of artificial intelligence. Institute researchers will develop and run the algorithms of a computer-based expert system capable of auditing a judge's decisions(jur:136§6); performing linguistic and literary auditing(jur:140§b); drawing up a judge's profile(jur:145§7); and to the extent necessary, calculation the proposed ratio, coefficients, and averages(jur:147§§8)-9))

341. The **output statistics** will consist in a set of metrics with predictive function on a judge's profile and her judicial performance that will allow private users to devise their legal strategy regarding the case to be filed or already at bar; and will enable public users to determine whether there is probable cause to officially investigate a judge for wrongdoing and, if warranted, hold him accountable and liable to discipline.

c. As educator

342. As educator, the institute will offer courses, such as The *DeLano* Case Course(dcc:1), and promote its offering by other educational institutions(dcc:7). It will also journalistically explain[256e] to the public, in general, and common-purpose entities(jur:155¶344a), in particular:

a. the forms that their unaccountability and wrongdoing take and the ways in which they manifest themselves;

b. the means, motive, and opportunity for judges to do wrong;

c. their harmful impact on litigants, the public, and government by the rule of law;

d. the conceptual and practical resources to bring about judicial accountability and discipline reform, such as:

e. democratic and ethical values, policies, and strategies, and

f. their implementing interactive multimedia and live educational, advertising, coalition-building, and lobbying activities and campaigns,

g. methods for evaluating practices, identifying the best, training in their application, and applying them;

h. development and training in the use of software applications; interactive multimedia and social networking tools and techniques; and equipment;

i. organization and teaching of seminars and courses on:

j. basic writing skills;

k. legal research and brief and article writing;

l. complaint storytelling;

m. investigative[278] and 'explainer'[256e] journalism;

n. forensic investigation and deposition taking;

o. book editing, publishing, and marketing;

p. public speaking and advocacy;

q. coalition building;

r. legislative lobbying;

s. documentary production;

t. conference organization and administration;

u. grant writing;

v. organization of meetings and conferences to develop, share, and integrate conceptual and practical resources.

d. As publisher

343. As publisher, the institute would engage in:

a. development and web publishing of an electronically accessible knowledge database of judicial unaccountability and wrongdoing that contains:

b. descriptions of their manifestations;

c. complaints about judicial wrongdoing;

d. cases on point that have been decided or are pending;

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[278] http://Judicial-Discipline-Reform.org/DeLano_course/17Law/DrRCordero_course&project.pdf

e. the record and position of incumbent politicians, candidates for political office, and law enforcement officers on investigating, exposing, and disciplining wrongdoing judges;

f. production and sale of news, newsletters, tipsheets, articles, books, programs, and documentaries(jur:122§§2-3);

g. their publication on its own and third-party websites, newspapers, magazines, TV and radio programs, movie theaters, and other digital and electronic media;

h. research, writing, and publication of the Annual Report on Judicial Unaccountability and Wrongdoing in America: How an outraged people turned into a movement for Equal Justice Under Law(jur:126¶267).

e. As leading advocate

344. As leading advocate of judicial accountability and discipline reform, the institute will endeavor to:

a. unite in a coalition and then develop into a national movement, victims of judicial wrongdoing and common-purpose organizations, that is:

1) entities that complain about judicial wrongdoing;

2) those that act as watchdog of the whole government or only the judiciary;

3) those that can offer legal aid to complaining individuals and entities; and

4) those willing to contribute funding, technological, journalistic, and investigative know-how, logistics, advertising, and means to lobby incumbents and candidates for political office;

5) nascent movements of protest against unequal wealth distribution and abuse by banking, mortgage, and other large institutions;

b. lead:

1) the development with them of conceptual and practical resources(jur:153¶342d);

2) the organization of implementing activities and campaigns, such as advertising, public advocacy, lobbying, and litigation, to achieve the common purpose (jur:130§a); and

3) compile and maintain rosters of:

4) common-purpose organizations;

5) people likely to have experienced or witnessed judicial unaccountability and wrongdoing; and

6) attorneys willing to assist pro bono or for a fee victims of judicial wrongdoing.

f. As for-profit venture

345. As a for-profit venture, the institute will finance its activities or those of others through:

a. sale of its statistical and investigative research, reports, publications, and documentaries;

b. joint ventures and partnerships with media outlets, educational entities, investigative and publishing companies, government agencies, and nonprofit organizations;

c. fees for enrollment in its seminars and courses(dcc:1), and attendance to its conferences;

d. fees for its advocacy, consulting, and litigation services for individual or class clients;

e. subscriptions to its database of judicial unaccountability and wrongdoing;

f. donations received in response to the likes of passive "donate" web button requests on its website and the active request to the public in live programs and one-on-one contacts made during donation drives;

g. support in cash and in kind from its alumni.

g. As seeker and maker of grants

346. The seed money for the venture or complementary source of funds for its general or specific activities can come from common-purpose organizations(jur:155¶344a), as well as entities known to make philanthropic grants to others engaged in investigative journalism and certain public service endeavors -some entities facilitate contacting those that make such grants- such as:

1) Adessium Foundation
2) Annie E. Casey Foundation
3) AT&T Foundation
4) Benton Foundation
5) Bill and Melissa Gates Foundation
6) Carnegie Foundation
7) Council of Foundations
8) David and Lucile Packard Foundation
9) Entertainment Industry for Peace and Justice
10) Eugene and Agnes Meyer Foundation
11) Ford Foundation, providing funds as part of its Public Media Initiative
12) Ford Foundation's Independent Documentary Fund
13) Freedom Forum
14) John D. and Catherine T. MacArthur Foundation (provides fellowships)
15) The John S. and James L. Knight Foundation: based in Miami, funds efforts to enhance journalism and the functioning of American communities
16) Kohlberg Foundation
17) McCormick Tribune Foundation
18) Microsoft Foundation
19) National Endowment for the Arts
20) National Press Foundation
21) New America Foundation, part of a cohort of academics and journalists exploring the future of journalism, and its Media Policy Initiative
22) New America Media
23) Nieman Foundation, Harvard
24) Oak Foundation
25) Omidyar Foundation
26) Open Society Foundations

27) Packard Foundation
28) Park Foundation
29) Pew Charitable Trusts
30) Public Welfare Foundation
31) Richard Driehaus Foundation
32) Robert Wood Johnson Foundation
33) Rockefeller Foundation
34) Sandler Foundation
35) Surdna Foundation
36) Wallace Genetic Foundation
37) Waterloo Foundation

347. The institute will also engage in grantmaking to common-purpose organizations(jur:155¶344a).

348. Before the end of the presentation, the presenters can announce the next event on judicial unaccountability reporting and the formation of the business and academic venture, thus signaling a planned and sustained effort to promote its launch.

6. Establishment of an inspector general for the Federal Judiciary

349. There should be an inspector general of the Federal Judiciary (I.G.J.)[88b] and:

a. should be as independent as the members of the citizen board(jur:160¶a);

b. the board must have the exclusive right to nominate a candidate for I.G.J. to the House Oversight and Government Reform Committee for confirmation by the whole House;

c. charged with the duty to investigate the administration of the Federal Judiciary by its courts; the councils and conferences of the circuits; the Judicial Conference of the U.S.; the Administrative Office of the U.S. Courts; any other similar body or officer appointed by any such body; and their utilization of the funds that they manage from whatever source they may come, whether it be congressional appropriations, court fees, or wrong-doing engaged in by a judge, any other employee of the Judiciary, or any third party;

d. empowered to exercise subpoena power to compel the appearance before it of any member of the Federal Judiciary and any other third party, and the production of documents and other things by any of them; and to enter without notice upon any premise of the Judiciary, any third party under its control or warehousing, archiving or otherwise holding any documents or other things produced or obtained by or entrusted to the Judiciary or by it to any third party; and with notice upon any premise of any other third party for inspection and discovery;

e. empowered to recommend based on information obtained from any source that any judge be criminally or civilly prosecuted by a federal or state law enforcement authority;

f. required to operate openly and transparently as the citizen board, mutatis mutandis, is(jur:161¶c).

7. Legislative proposal to ensure judicial accountability and discipline

350. The investigative reporters can use the public presentation to explain to the media and the public the content and nature of judicial accountability and discipline reform. To that end, they can identify what needs to be eliminated from the system governing the Federal Judiciary and outline what needs to be introduced therein:

a. The law[18a] that established the current system of self-policing in the Federal Judiciary must be repealed, for it is an inherently self-serving buddy system of judges judging judges who are their friends and colleagues. Their bias toward their own dooms undermines the system's trustworthiness and renders it incapable of attaining its objective. It has the pernicious defect of allowing judges, in expectation of reciprocal treatment, to dismiss systematically all complaints against their peers for wrongdoing, even such that has become gross, habitual, and widespread through coordination. Hence, it provides motive for judges to prejudge their peers' wrongdoing as harmless, which gives rise to the pervert assurance of risklessness that renders wrongdoing so irresistible as to make it inevitable.

b. In keeping with Justice Lewis D. Brandeis's dictum "Sunlight is the best disinfectant" [279], the judicial councils and all sessions of the judicial conferences of the circuits as well as the

[279] http://Judicial-Discipline-Reform.org/docs/DrRCordero_proposal_synopsis.pdf

Judicial Conference of the U.S. must be open to the public.[280] Making the Federal Judiciary's internal functioning and its administration of justice open and transparent will substantially reduce the darkness of secrecy under which its judges engage in coordinated wrongdoing and cover-ups. Would anyone consider even for a nanosecond that it would be democratic to allow Congress to hold all its sessions behind closed doors, never to allow the media at cabinet meetings or the Oval Office, and to close down the White House press room because neither the president nor his aides would ever again hold press conferences or meet with journalists? Why is the Federal Judiciary allowed to engage in the equivalent conduct?

c. All procedural and internal operating rules proposed for national application or for local courts must be widely announced; comment must be requested; all comments submitted by judges and the public must be made easily available to the public on all court websites and in the clerk of court offices and other official websites(jur:160§8); and a rule must not be adopted which receives a majority of negative comments from the public.

d. The use of summary orders, which makes possible unaccountable, arbitrary, and lazy disposition of cases even without reading[281] their briefs and motions, must be prohibited. Judges must be required to provide their reasons in writing for their decisions, orders, and rulings, which must be precedential and citable in any other case. This is intended to prevent judges from issuing ad hoc fiats of abusive raw power that put an end to what in effect is a star chamber proceeding.[69]

e. The sealing of court records by judges must be prohibited because justice abhors secrecy and the abuse that it breeds so that it requires that its administration be public. However, all the parties to a case may jointly apply to a judge other than the judge presiding over the case for specific language, numbers, and certain personally and commercially sensitive information to be redacted in accordance with a set of national rules adopted for that purpose. The fundamental principle underlying those rules should be that the judge deciding on the application must take into account not only the interest of the parties, but also any sign of undue pressure by one party on the other to agree to the redaction as well as the right of the public to know all the facts of the case at bar so as to determine whether "Equal Justice Under Law" is being or was administered.

f. All members of the Federal Judiciary, including judges, clerks, other administrative personnel, and all other employees, must be duty-bound to report to both the citizen board of judicial accountability and discipline(jur:160§8) and the Oversight and Government Reform Committee of the U.S. House of Representatives[282] any reasonable belief that:

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[280] **a)** On a failed attempt to do so see bill S.1873, passed on October 30, 1979, and HR 7974, passed on September 15, 1980, entitled The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980; Congressional Record, September 30, 1980; 28086; http://Judicial-Discipline-Reform.org/docs/Jud_Councils_Reform_bill_30sep80.pdf. **b)** The Reform part of the bill included a provision for opening the councils, but was excluded from the version that was adopted; 28 U.S.C. §332(d)(1), fn.148. **c)** The Conduct and Disability part of it as adopted is at fn.18a.

[281] **a)** fn.66b; **b)** fn.123c >CA:1749§2;

[282] **a)** http://oversight.house.gov/; **b)** The members of the Senate Judiciary Committee, in

1) any member of the Judiciary or other third party related to the business of the courts or to any Judiciary member may have violated or may be violating or preparing to violate any constitutional, statutory, or ethical provision or may have engaged or may be engaging or preparing to engage in any impropriety; or

2) an investigation should be undertaken to determine whether such may be the case.[130] (While the devil is in the detail, the intent of the whole is divinely lucid: to replace wrongdoing-fostering, mutual survival-ensuring reciprocal cover-ups with the inside court duty and outside court information to hold judges individually and collectively accountable.)

8. Creation of citizen boards of judicial accountability and discipline

351. A citizen board of judicial accountability and discipline must be created through legislation to act as a jury of judges' layperson "peers" with the investigative and reporting duty and subpoena power of a grand jury and the fact-finding duty and sentencing power of a petit jury.

a. Qualifications for membership

352. To ensure its independence and avoid conflict of interests, its members must not be or have been members of any federal or state judiciary or otherwise related to it; not be appointed by any judge or justice; not be practicing lawyers or members of a law firm, law school or law enforcement agency or justice department; not be affiliated to any political party; not be appointed to any position in, or be hired by, any judiciary within nine years of termination of employment on the board.

b. Nominating entity

353. Board members may be recommended by public interest entities, for nomination by the House of Representatives Oversight and Government Reform Committee and confirmation by the whole House.[282]

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particular, and those of the Senate, in general, who voted for or against the confirmation of a presidential nominee for a judgeship are unlikely to review with sufficient impartiality any materials that subsequently may be submitted to them and lead to disciplinary action, let alone the impeachment and removal, of the nominee-turned-judge, lest they impugn their own good judgment for confirming, or strive to justify their opposition by finding at fault, him or her. Hence, the discipline of federal judges should be a constitutional 'check and balance' exercise performed by the U.S. House of Representatives, but not by its Committee on the Judiciary for similar reasons of partiality due to previous dealings with the Judiciary and its judges. Consequently, judicial discipline should be entrusted to another House committee, such as its Oversight and Government Reform Committee.

c. Open and transparent operation

354. The board must operate openly and transparently, and to that end, it must:

a. hold all its meetings in public both at physical venues reasonably calculated to be most easily accessible to the media and the largest number of people concerned by the matter at hand and by streaming the meeting life on the Internet;

b. provide in writing reasons for each of its decisions, which to be effective must be entered in the public record on its website and at its main and subsidiary offices where it conducts business;

c. publish a report of its activities at least every six months and make it available to the public by posting it on its website, emailing it to all courts and all subscribers, and making it available at its offices;

d. include in the report:

1) a statement of facts about its activities;

2) statistical tables showing the number of complaints received distributed into categories, and the time taken for, and nature of, their disposition;

3) an analysis of patterns and trends of the types and conduct of complainants and the complained-about; and

4) recommendations for statutory or regulatory action appropriate to ensure that:

a) judges, justices, and other officers of the Federal Judiciary, as public servants, meet their duty to observe conduct that is open, transparent, and in compliance with applicable legal and ethical requirements; afford all litigants due process of law; and adopt all necessary measures to make process accessible to most people, expeditious, and at the least cost possible;

b) the public gain a realistic perception that the Judiciary and its officers meet their duty and that justice is not only done, but is seen to be done;

e. make the report available on its website and offices for two weeks to allow time to be read;

f. present the report in the third week at a public conference, held each time in a different place of the country reasonably chosen to attract the largest number of people, where the presenters answer questions from the on-site and online public;

g. attach to the report the documents that support its findings, analysis, and recommendations as well as those that contradict, diverge from, or cast doubt on them;

h. publish on its website and make available at its offices all complaints and their accompanying documents, and documents obtained in the course of investigations and do so to the same extent to which civil and criminal complaints are publicly filed, without redacting them, except that some redactions may be made if in compliance with published redaction guidelines that aim to:

1) protect complainants from retaliation and potential witnesses from intimidation;

2) prevent identity theft;

3) ensure that complainants are not discouraged from filing in good faith responsible complaints and other documents and instead are encouraged to file them in the

future;

4) prevent the impairment of investigations yet to be started or that are ongoing;

i. give notice of proposed redaction guidelines and opportunity to submit comment thereon, and make public on its website and at its offices such notice, the proposed and adopted guidelines, and the comments;

j. hold at least once a month a press conference open to on-site and online public where the several members of the board simultaneously in different parts of the country reasonably chosen to give the opportunity to different types of communities to ask questions of the presenters and be informed by them of the board's mission and activities.

d. Board powers

355. The citizen board must be empowered to:

a. receive for the public record complaints against justices, judges[283], magistrates, law clerks, clerks of court[284], court reporters[285], circuit executives[286], and administrative employees, and investigate them

b. proceed also on the basis of information received other than through a complaint;[287a]

c. exercise full subpoena power for the appearance before it of any member of the Federal Judiciary and any other third party, and the production of documents and other things by any of them;[288a-b]

d. hold hearings, which must be open to on-site and online public after adequate public notice on its website and at its offices, and take sworn testimony;

e. develop a constantly updatable code of conduct for members of the judiciary by codifying the controlling principles of its decisions as prescriptive rules that clearly establish standards of conduct generally applicable to all judges, thus providing judges and the public with reliable guidance on what constitutes and does not constitute complainable conduct, which can prevent a repeat of such conduct and assist in determining whether a given conduct gives rise to a complaint; before incorporation in the code, these rules must

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283 **a)** http://judicial-discipline-reform.org/docs/DrCordero_to_Jud_Conference_18nov4.pdf and fn. 124, 152; **b)** http://Judicial-Discipline-Reform.org/docs/DrCordero-4recuse_CJWalker_04.pdf

284 Cf. **a)** http://Judicial-Discipline-Reform.org/docs/complaint_to_Admin_Office_28jul4.pdf; **b)** http://Judicial-Discipline-Reform.org/docs/DrCordero-CA2_clerks_wrongdoing_15may4.pdf

285 http://Judicial-Discipline-Reform.org/docs/DrCordero_to_JConf_CtReporter_28jul5.pdf;

286 http://Judicial-Discipline-Reform.org/docs/DrRCordero-2CirExecKGMilton_mar4.pdf

287 Cf. **a)** fn.18a >§§351(a) and 354(b)(2); **b)** fn.192

288 **a)** fn:18a >§356; **b)** fn.280b >§331 4th ¶, and §332(d)(1); **c)** cf. http://Judicial-Discipline-Reform.org/docs/28usc291-297_assign_judges.pdf. A state citizen board could be empowered to transfer a judge to another type of court, e.g., from surrogate to traffic court, or to limit the types of cases assigned to the judge, e.g., no longer family or divorce cases.

be published for on-site and online public comment and all comments, whether by members of the Judiciary or anybody else, must be made public on its website and at its offices;

f. receive originals of comments from both members of the public and of the Judiciary and copies from the Judiciary on any rule, appointment, or other matter on which the Judiciary has requested comments and make them available to the public on its website and at its offices.

g. impose disciplinary measures on judges, such as the designation and assignment to another court[288c]; the limitation to hearing only certain types of cases, e.g., no longer criminal or bankruptcy cases; the non-assignment of new cases until pending cases have been disposed of through reasoned opinions within a certain time;

h. order the payment of compensatory, consequential, and punitive damages by judges and/or the Judiciary for the loss or injury caused or allowed to be caused to victims of judicial wrongdoing;[289]

i. recommend on the basis of information that it has obtained from any source that any judge or justice, as the public servants that they are, be criminally or civilly prosecuted by a federal or state law enforcement authority; be disbarred by the competent state authority and/or impeached and removed by Congress.

e. Review of board decisions

356. Board decisions can be appealed only to a panel of the House Oversight and Government Reform Committee, whose decision may be appealed to the Committee.

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[289] Just as House Representatives can be fined for misconduct, so should judges be. They too should be liable to pay 'restitution' and other forms of compensation to those that they harm or from whom they have taken wrongfully. Cf. "The House may also punish a Member by censure, reprimand, condemnation, reduction of seniority, **fine, or other sanction determined to be appropriate**.…Some standards of conduct derive from criminal law. Violations of these standards may lead to a fine or imprisonment, or both. In some instances, such as conversion of government funds or property to one's own use or false claims concerning expenses or allowances, the Department of Justice may seek **restitution**." (emphasis added) House Ethics Manual, p.3; http://ethics.house.gov/; See also Rules of the House Ethics Committee, Rule 24 Sanction Hearing and Consideration of Sanctions or Other Recommendations; http://ethics.house.gov/about/committee-rules. These and other documents of the House Ethics Committee are collected at http://Judicial-Discipline-Reform.org/docs/HR_Ethics_Manual_Rules_Code.pdf

9. The precedent for considering realistic that those who expose judges' wrongdoing and call for their accountability and the reform of their judiciary may develop into a broadly based civic movement that demands Equal Justice Under Law

357. Common purpose entities(jur:155¶344a) and many public interest entities, judicial unaccountability journalists, journalism schools and their students and alumni, judicial accountability and discipline reform advocates, and judicial wrongdoing victims share many views and objectives. If they work together, they can bring to an audience's attention(dcc:11) facts that can outrage it and stir it into constructive action. Concretely, they can do so by reporting the already available evidence(jur:21§A) that judicial unaccountability has led judges to engage in riskless wrongdoing for their benefit and to the public's detriment. They can also provoke outrage by reporting the findings of their further investigation(jur:102§4) of such wrongdoing(jur:5§3), in general, and of the *DeLano*-J. Sotomayor story(jur:65§0), in particular. They can extend their reporting's reach and efficacy through the proposed business and academic venture(jur:97§1) together with the venture's investors and philanthropic sponsors.

358. Moreover, a courageous politician that commands broad media and public attention and is determined to challenge publicly life-tenured federal judges can accelerate that reporting's diffusion throughout the national public and lend credibility to it that intensifies the outrage that it provokes. Such outrage can stir the public to more widespread and sustained action against coordinated judicial wrongdoing. An outraged national public can effectively overwhelm the authorities' interest in maintaining the status quo to protect their coordination with other insiders and avoid the risk of self-incrimination, forcing them to give in to the demand that they hold wrongdoing judges and their enabling Judiciary accountable and undertake judicial accountability and discipline reform. Therefore, it is realistic to conceive that an outraged national public so stirred to action can gradually develop into a broadly based civic movement that militates for Equal Justice Under Law.

a. The Tea Party

359. A recent precedent for the development of a similar civic movement is the Tea Party. While Dr. Cordero is an Independent and does not necessarily agree with Tea Party tenets, he points to that Party as current evidence of what people can achieve when they are provoked into action by deep resentment about a perceived injustice: People who deemed that they were '**t**axed **e**nough **a**lready', bandied together to protest. Their protest resonated with ever more people as it reverberated across the country. In a remarkably short time, less than four years, they became a nationwide civic movement and even elected representatives to Congress.

360. In 2011, they strong-armed the debt ceiling debate to be resolved on their terms. They even compelled Republican Speaker John Boehner, a 21-year congressional veteran, to back down from even his overture to raising some taxes albeit modestly. Yet more revealing and precedential, their expected voting power caused all nine Republican presidential candidates to raise their hand at one of their debates in the summer to promise that they would not raise taxes regardless of how much the budget was cut. The Tea Party has become kingmaker, at least among Republicans. The next presidential elections will show whether that is the case among voters of all stripes nationwide.

b. Occupy Wall Street

361. In the same vein, the Occupy Wall Street protesters have been able to extend their following from New York City to the rest of our country with surprising speed, not to mention the demonstrations that have taken place simultaneously and under their name in several European countries and other parts of the world. To be sure, those protesters did not have to convince other people of the soundness of a new idea. Deep-seated frustration due to perceived economic injustice and experienced economic distress was already being felt by a great many people. But the protesters have caused such frustration to emerge and manifest itself in public, attracted by the identifiable and practical means of action that they have organized. Thereby the Occupy Wall Street protesters have turned a widely shared personal sentiment of impotent discontent into concrete collective action of self-assertive protest. The individual "why this's happnin' to me?", has become *"WE WON'T TAKE IT ANYMORE!"*

c. Bank Transfer Day

362. A third occurrence illustrates this phenomenon of protest by a few that provides the aperture for the eruption of bottled-up debilitating personal resentment into invigorating group action for redress of grievances: One person, Kristen Christian, feeling abused yet again by the biggest American banks, this time because of their announcement of their plan to impose a $5 monthly fee for the use of debit cards, called on Facebook for similarly situated cardholders to close their accounts with those banks on a given day and transfer their funds to credit unions and other small financial institutions that do not charge that type of fee.[290] Her *"enough is enough!"* cry and call for specific, feasible action went viral on that social network and other sectors of cyberspace. It attained the necessary 'critical hit number' to be heard by the established media, particularly the national TV networks, which amplified substantially the vibrancy of her cry and the reach of her call nationwide. The mounting negative publicity and additional criticism of that and similar practices widely portrayed as abusive, even predatory, scared and shamed one big bank after another into cancelling the announced fee exacting plan. As reported by the TV networks, more than 700,000 bank accounts were transferred as called-for on Saturday, November 5, 2011.

363. Ms. Christian's call for a "Bank Transfer Day" shows that even the smallest unit, one person, can open a vent for people's pent up anger. Moreover, that person can channel their anger constructively into a willingness to get involved in a common course of action to defend their interests. It also shows the power to influence and bring about collective action of the new means of mass communication, that is, social networking on Facebook, Twitter, and YouTube, and blogging by citizen journalists and comment-makers. These means are helping protesters to share their experiences, opinions, and demands broadly, tap grievances widely held, and stir people into doing something concrete[291] about them. By using those means, the people can prevail even

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[290] Kristen Christian, Who Created 'Bank Transfer Day,' the November 5 Bank Boycott, Tells Us Why, Jen Doll, Running Scared, The Village Voice Blogs; 7oct11; http://Judicial-Discipline-Reform.org/docs/Bank_Transfer_Day_Kristen_Christian.pdf

[291] "Far too often people struggling for democratic rights and justice are not aware of the full range of methods of nonviolent action. Wise strategy, attention to the dynamics of nonviolent struggle, and careful selection of methods can increase a group's chances of success. Inspired by Mahatma Gandhi, American Professor Gene Sharp researched and catalogued these 198 methods and provided a rich selection of historical

upon those who have abused them by wielding power deemed up to now to be unassailable and crushing. The Arab Spring in Tunisia, Egypt, and Libya and the 99% protesters here in the U.S. are there to prove it indisputably.

d. From pioneers of judicial unaccountability reporting to a judicial reform institute to a civic movement

364. These current events provide precedent for the reasonable expectation of positive developments brought about by those who report on judicial wrongdoing and call for the wrongdoers to be held accountable and disciplined. To that end, they must progressively convince the public and their representatives of the need to adopt new legislation not just to write on paper a more explicit requirement that judges "avoid even the appearance of impropriety"[123a], but also to ensure in practice that judges are held accountable for doing so and disciplined when found to have failed. Given what judges are, not a special class of persons above the law, but rather public servants, they must be held accountable for rendering the service for which they were hired under the applicable terms and conditions: to determine in court controversies through the fair and impartial application of substantive law in proceedings that conform with due process of law equally for everybody [292], whether rich or poor[90]; and to behave in and out of court lawfully and ethically so as to honor the public trust placed in them.

365. Everything begins with the pioneers of JUDICIAL UNACCOUNTABILITY REPORTING. They can report the available evidence of judicial unaccountability(jur:21§A) and coordinated wrongdoing in the *DeLano*-J. Sotomayor story(jur:65§0), augmented by the findings of any investigation that they may undertake(jur:97§1). That will be their initial cry of denunciation(jur:98§2). It will also be a rallying cry in support of a new form of reporting on judges and their judiciaries. Their reporting will first concentrate on the federal judges and the Federal Judiciary because they set the law of the national land; hence, they attract national attention and serve as the model for the state judges and judiciaries.

366. Consequently, the pioneers of judicial unaccountability reporting will begin by systematically investigating the means, motive, and opportunity that enable federal judges to be unaccountable and, as a result, risklessly engage in wrongdoing. To enhance their credibility, they will be methodologically rigorous and use advanced research technology (jur:131§b). They will analyze official statistics and reports of the Federal Judiciary, its judges' disclosures[ii], and empirical evidence, whether contained in case documents or provided by litigants(jur:111§1)), complainants(jur:111§3)) and judicial personnel(jur:106§c). Their reporting will show how judges disregard the law, procedure, and ethical conduct in such routine fashion and with such coordination among themselves and between themselves and bankruptcy and legal systems insiders[169] as to have turned their judgeship into a safe haven for wrongdoing and their wrongdoing into the Federal Judiciary's institutionalized modus operandi.

367. The pioneers' reporting can become the rallying point for the rest of the media and the public.

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examples in his seminal work, The Politics of Nonviolent Action (3 Vols.) Boston: Porter Sargent, 1973." http://Judicial-Discipline-Reform.org/docs/Prof_Gene_Sharp_Politics_Nonviolent_Action.pdf

[292] "[A] fair trial in a fair tribunal is a basic requirement of due process"; *In re Murchison*, 349 U. S. 133, 136 (1955); http://Judicial-Discipline-Reform.org/docs/Murchison_349us133(1955).pdf

Naturally, their reporting(jur:98§2) will first resonate with people who have been harmed by wrongdoing judges. But those people's rally will increase in number as the pioneers' reporting prompts ever more laypeople[1], citizen journalists[190], and members of the media(jur:100§3) to conduct their own investigation and reporting and ever more people become outraged by the revelations of judges' unaccountability and their consequent wrongdoing.

368. The pioneering reporters' cry may first be heard at a well-advertised multimedia public presentation(jur:97§1). But it could also begin as whispers made in digital newspapers and social networks. Those whose ears they catch can repeat them on social media[190] until they go viral. That way they can evolve from whispers into a deafening roar that awakens[293] the established media to hear the harmony between the reporting's social and political resonance and a nascent market's sounds of profit. Such development provides the economic justification for those media to assign their vast investigative journalism resources to the risky task of shedding light on the dark side of purportedly "honorable" but definitely powerful judges and justices. Among their resources are reporters with back channel access to Judiciary insiders and their protectors and detractors in the other two branches(jur:77§§5-6) who are willing to provide reliable information on condition of anonymity[294]; as well as reputable editorialists, columnists, anchors, and pundits

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293 **a)** There are precedents for this series of events: Oprah Winfrey picked up for her book club James Frey's autobiography *A Million Little Pieces* and thereby launched it to the top of the bestseller lists. This caught the attention of TheSmokingGun.com blog, which exposed it as embellished pseudo-nonfiction. Thereafter the major TV stations picked up the story and interviewed The Smoking Gun Editor Bustone. Investigative journalists of *The New York Times* and the *Star Tribune* followed suit with exposés that revealed the book as a fabrication around a few little pieces of truth. http://Judicial-Discipline-Reform.org/Follow_money/Million_Little_Pieces_lies.pdf

b) In the same vein, the ever more popular, compassion-inducing drama of Lonely Girl played on the Internet and developed quite a following of fans, including so many geeks, who found irresistibly attractive a beautiful girl with a sensitive soul and the techno-savvy necessary to allegedly put her story on her own webpage. The Internet buzz caught the attention of *The New York Times*, which revealed the whole thing as the hoax of some website promoters and an aspiring talented actress that was anything but lonely; http://Judicial-Discipline-Reform.org/Follow_money/bloggers_Lonely_Girl.pdf. See also fn.190.

294 An example of this is CBS Legal Commentator Jan Crawford Greenburg's report based on her confidential Supreme Court sources that Chief Justice Roberts had initially sided with Conservative Justices Alito, Scalia, and Thomas as well as Justice Stevens, all of whom wanted to hold the Affordable Health Care Act (Obamacare) unconstitutional, but then much to their chagrin switched side and joined Liberal Justices Breyer, Ginsburg, Sotomayor, and Kagan to uphold the constitutionality of its central feature –the mandate for all persons to buy health insurance– not under the Commerce Clause, but rather under Congress's power of taxation. She reported that the former four made a sustained effort to persuade the Chief Justice, who is deemed a conservative, to come back to their fold and were deeply disappointed when he refused. Her report was widely regarded as a scoop given that the Court is highly secretive(jur:27§e) and hardly ever do reports on the process of the justices' voting on any particular decision, let alone dissension among them, leak out. Most digital newspapers, not to mention citizen journalists, do not have anything remotely similar to the sources that both Rep. Greenburg and CBS have been able to cultivate over

with opinion-shaping influence and the means of measuring public reaction through both spontaneous feedback and professional polls. All of them can force politicians and law enforcement authorities, maybe even top judges or justices or their circuit councils[96] and the Judicial Conference[91a], to heed their call to step up and respond to their embarrassing reporting.[295]

369. The pioneers' reporting will lead to a growing recognition of the need for, and advocacy of, judicial accountability reform through new legislation containing innovative mechanisms for preventing judicial wrongdoing, overseeing judges' conduct, and enforcing their accountability

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time and on reliance of their proven professionalism; and if they had claimed that they did and had broken the story few people would have believed them. The established media, such as the national networks, still do count when it comes to making a story sound credible and gain broad public attention.

[295] The precedent for this lies in the present and yet it has already attained historic significance. CBS Reporter Sharyl Attkisson first broke the story of the botched Fast and Furious operation of the Department of Justice's Alcohol, Tobacco, and Firearms Bureau. It allowed thousands of all kinds of heavy guns, including Kalachnikovs and other assault rifles, to be acquired or fall into the hands of viciously violent Mexican gangs of drug smugglers and 'let guns walk' across the U.S.-Mexico border in the belief that the guns could be traced all the way to the top druglords. The finding that some of those guns were used to kill an American ATF agent caused outrage in the media and Congress. Other media investigated the story too.

The outrage led the House Committee on Government Oversight and Reform to open an investigation. Its request for information was met with the disclosure of thousands of documents, but many were so heavily redacted that some of their pages were nothing but a blotch of black ink. Hearings of ATF agents and DoJ officials, including Attorney General Eric Holder himself, gave rise to tergiversations, conflicting testimony, retractions, and corrections that prompted allegations that they had lied in an effort to cover up their responsibility for a reckless, ill-conceived, and worse implemented operation. The Committee's request for more documents was not only refused by AG Holder, but also prompted one of the rare invocations of executive privilege by President Obama to justify the document production refusal. This only strengthened the suspicion that a cover-up was indeed afoot and motivated by the realization that the documents would reveal information too damaging for the President's reelection campaign.

In response, the Committee and subsequently the whole House held AG Holder in contempt of Congress in spite of the fact that the Democrats staged a massive walkout when the contempt resolution came to the floor for a vote to protest it as predicated on an unreasonable demand for further documents and to support their fellow Democrat, AG Holder. It was the first time in the history of Congress that one of its chambers held a sitting member of the president's cabinet in contempt. The story has now become an issue in the presidential campaign that has provided ammunition to those that want to discredit the President and tie him up in a defensive effort.

This story makes it reasonable to expect that the media would not only outrage elected officials, but also the public with the *DeLano*–J. Sotomayor story(jur:65§0) involving concealment of assets by a justice as part of federal judges' coordinated wrongdoing, her cover up of a judge-run bankruptcy fraud scheme, and the President's and senators' lying to the American public to cover up her tax cheating and get her confirmed to the Supreme Court.

by disciplining wrongdoers. It will also develop support for such advocacy to be pursued through the proposed multidisciplinary academic and business venture(jur:119§0). In turn, the venture can lead to the establishment of an institute of judicial unaccountability reporting and reform advocacy(jur:130§5). Among the items that it will advocate is the creation of citizen boards of judicial accountability and discipline(jur:160§8). The boards will be a concrete manifestation of a reform based on adequate mechanisms established through appropriate legislation. To be such, the mechanisms and legislation must recognize and be founded on two axiomatic principle: The first one is that nobody can be judge in his own cause, for his self-preservation instinct will render him biased toward himself and prevent him from judging fairly and impartially. Hence, judges cannot be entrusted with judging their peers(jur:24§§b-c), who may be their friends or their colleagues holding their IOUs or having enough damaging information about the judges to compromise their judging for their own sake. The second principle is that in government, not of men, but of laws, nobody is above the law(jur:26§d) and all public servants are accountable to *We the People*.

370. This highlights the crucial importance of the people rallying behind the pioneers of judicial unaccountability reporting. Popular outrage at judges' wrongdoing is indispensable.(jur:83§§2-3) The people will amplify the pioneers' cry of denunciation by coming together and voicing their outrage as well as ideas for judicial reform.(jur:122§§2-3) They need not speak with one voice for one message to get through loud and clear: That it is outrageous for judges, who are public servants hired to render the service of applying the law fairly and impartially to determine controversies, to wrongfully abuse their position of trust for their own benefit. They beat the law out of due process and give the people what is left as its residue: the hardship and expense of motion through a rigged process: *the chaff of justice!* Formidable resistance can be expected from those judges to ensuring in practice that they apply the law to the performance of their office and to being held accountable for doing so and disciplined or removed for failing to. Overcoming it will likely require that *We the People* come together as a civic movement. They must demand with unyielding persistence what is their right in 'government of, by, and for the people'[172]: to hold judges, their public servants, accountable to them. When the complaining among victims of judges' wrongdoing grows louder until it becomes the rallying cry of an outraged people, the latter will begin the transformation of the rally into the necessary civic movement that not just cries, but rather demands Equal Justice Under Law.