C. The *DeLano*-Judge Sotomayor case as the basis of a journalistic story national in scope and impact but rendered manageable as an investigative project by key focusing notions

1. Neither Congress nor the Executive just as neither law professors and schools nor the media investigate the Federal Judiciary

174. The axiom of power states that he who has power will use it and also abuse it unless others enforce upon him limits on his use and penalties for his abuse of it; but they will not dare do so if they fear either retaliation or self-incrimination due to complicity or connivance through which they have advanced their self-interest by resorting to agreement with the abuser, knowing indifference, willful blindness, or improper conduct.

175. The evidence shows that neither the Executive Branch nor Congress dare exert constitutional checks and balances on the Judiciary.(jur:22¶31) They have failed to both investigate complaints[167] about wrongdoing judges and exercise oversight of all judges to ensure their fair and impartial application of the law to others as well as themselves and their abidance by the high standards of honesty and integrity applicable to them[123a], in particular, and to all public officers, in general. Politicians have been the enablers of wrongdoing federal judges by implicitly or explicitly coordinating their own wrongdoing with theirs under the unprincipled, self-interested, and corruptive policy of live and let live.

176. Law professors too have abstained from exposing judicial wrongdoing. To meet the 'publish or die' requirement of their schools they could have directed their scholarship toward the inside of the legal profession and even their own particular experience. Indeed, many clerked for judges. But that is the problem, for while clerking they either aided the judges in their wrongdoing or kept quiet so as not to risk a glowing recommendation from the judge that would open the doors to a subsequent plush job and sign-up bonus.[168] Their exposing them now could lead to self-incrimination.

177. In addition, most law professors were and to some extent continue to be practicing lawyers. Attorneys are insiders of the legal and bankruptcy systems.[169] As such, they have the opportunity

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[167] Cf. **a)** http://Judicial-Discipline-Reform.org/docs/DrRCordero_**FBI_USAtt**_may-dec4.pdf;
b) http://Judicial-Discipline-Reform.org/DoJ-FBI/9-3-30DrRCordero-**DoJ**.pdf;
c) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**Sen&HR_Jud_Com**_11jun4.pdf;
d) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**SenJudCom**_3july9.pdf;
e) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**Senate**_3aug9.pdf
f) http://Judicial-Discipline-Reform.org/HR/11-4-25DrRCordero-**HR_ComJud**.pdf;
g) http://Judicial-Discipline-Reform.org/HR/11-4-7DrRCordero-**HR_COGR**.pdf

[168] fn.30d >yre:43

[169] In addition to judges and bankruptcy trustees, id. §704, the insiders of the legal and bankruptcy systems include "attorneys, accountants, appraisers, auctioneers, or other professional persons", such as bankers, testamentary executors and administrators, guardians of the elderly, the incompetent, and infants, mortgage holders, and others that work closely with and for them; collectively they are generally referred to as bankruptcy professionals. Together with clerks of judges and clerks of court as well as lawyers who represent debtors or creditors and lawyers in general they are referred to herein as insiders of the legal and

to engage in wrongdoing as well as the most enticing motive to do so: riskless enormous benefits. The benefits may be material, for federal judges rule on $100s of billions every year[31]; or they may be social, that is, avoidance of being shunned as treacherous pariahs for abiding by their duty to file complaints against wrongdoing colleagues or judges[170], and gain of the valuable interpersonal relations of camaraderie, complicit confidentiality, and reciprocal support from grateful colleagues whose wrongdoing they have covered up as accomplices before or after the fact(jur:88§a), been knowingly indifferent to(jur:90§b), willfully blind to(jur:91§c), or handled with impropriety(jur:92§d). If they keep quiet as insiders do, they too, as law professors and lawyers, can receive the benefit of the extension to them[171] by unaccountable judges of their impunity(jur:21§1). If they are not yet tenured professors or are seeking a deanship, they can even ask for a formal or informal word to be put in on their behalf by judges, whose unaccountable power has many ways of expressing gratitude and resentment, which explains why judges are sought after as members of academic boards.

178. Hence, law schools will not encourage research on wrongdoing judges either and may even prohibit it. They may fear judges closing ranks to boycott their moot court and fund raising activities, refuse clerkships to their students and service on their boards, and retaliate against them in court.

179. By protecting federal judges from exposure, also law professors and schools have enabled them to continue coordinating their wrongdoing among themselves and with other insiders of the legal and bankruptcy systems[169] ever more closely and routinely. As a result, they have failed to safeguard a legal system that cannot serve the people if those who administer it abuse their power unaccountably, holding themselves above the law as they pursue the motive of money and other unlawful, unethical or improper benefits while denying everybody else under them the fair and impartial application of the law. They have contributed to making it possible for judges to turn wrongdoing into the Federal Judiciary's institutionalized modus operandi.

180. Yet, law professors and schools stand as educators of a people that committed themselves to "justice for all" through the rule of law. Had they remained true to their calling, they would have been the foremost advocates of judicial accountability and discipline reform. If only they had proceeded in accordance with the wisdom of Dr. Martin Luther King's principle: "Injustice [not just] anywhere [but from the Supreme Court down] is a threat to justice everywhere [in the Judiciary and all its courts]".

181. The media too, as a matter of fact, have failed to expose judicial wrongdoing, particularly of federal judges.(jur:4¶9) The media have abdicated their professional duty to keep the people informed so that they may be in a position to assert their right to hold "government of the people, by the people, for the people"[172] accountable to them and thereby defend the very nature and

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bankruptcy systems.(cf. jur:9)

[170] **a)** E.g., New York State Unified Court System, Part 1200 -Rules of Professional Conduct, Rule 8.1(a) on Reporting Professional Misconduct; 22 NYCRR Part 1200; http://www.courts.state.ny.us/rules/jointappellate/index.shtml; with enhanced bookmarks to facilitate navigation at http://Judicial-Discipline-Reform.org/docs/NYS_Rules_Prof_Conduct.pdf; **b)** 18 U.S.C. §3057(a) on Requesting Bankruptcy Investigations; http://Judicial-Discipline-Reform.org/docs/18usc3057.pdf

[171] http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-Disciplinary_Com.pdf

[172] Abraham Lincoln's Address on the Battlefield at Gettysburg, Pennsylvania, 19nov1883;

practice of a democratic republic. Instead, they have sought in self-interest to remain in good terms with life-tenured federal judges and avoided antagonizing them with investigations that could give rise to their retaliatory reaction. Nevertheless, the media know from experience that those same judges are the most vulnerable public officers to the most easily demonstrable journalistic charge, "the appearance of impropriety", let alone wrongdoing. (jur:92§d) Why did *The New York Times*, *The Washington Post*, and Politico drop without any explanation their investigation into the concealment of assets that they themselves suspected[107a] Then-Judge Sotomayor of having engaged in?[173] Was pressure exerted on them? Was there a quid pro quo?

2. A novel strategy: to investigate a story that can provoke in the national public action-stirring outrage at judicial wrongdoing and thus set in motion reformative change in the Federal Judiciary

182. Those duty-bound to hold public servants, including judges, accountable have failed to do so. Now the task defaults to those for whose benefit that duty is supposed to be performed. In a democratic society governed by the rule of law, they have the right to hold all public servants accountable: the people. Foremost among them are the entities that have made it their mission to advocate in the public interest 'equal justice under law for all'. They must expose those who frustrate that mission, namely, federal judges that by exempting themselves from any discipline, and being exempted by politicians from compliance with the legal and ethical requirements of their office and being spared by the media from exposure of their failure to comply, have become Judges Unequally Above the Law who dispense what is under them to all: justice trampled underfoot.

183. For that exposure to take place, public interest entities need the investigative skills of principled, competent, and ambitious journalists. Since the latter may not be acting as representatives of a media organization, they need to enhance their resources with the meticulous work of, and multimedia technology available to, journalism students. The latter are held to rigorous compliance with the highest standards of professional quality and integrity by graduate schools of journalism, which center their pedagogical method on learning by doing and apply it by either assigning journalistic projects to their students or approving those proposed to them.

184. These public interest entities, journalists, and journalism students can advance toward their professional and academic goals and rewards(jur:5¶¶13-14) by jointly pursuing a novel strategy in a new field of activity: PIONEERING JUDICIAL UNACCOUNTABILITY REPORTING IN THE PUBLIC INTEREST. This involves the programmatic investigation of all judges individually and of their respective judiciary as an institution. The purpose is to determine whether they have pursued a

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http://Judicial-Discipline-Reform.org/docs/ALincoln_Gettysburg_Address.pdf

[173] Cf. **a)** http://Judicial-Discipline-Reform.org/docs/DrRCordero-**NYTPubASulzberger**_jun-jul9.pdf
b) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**WP_DGraham**_16jun9.pdf
c) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**Politico**_12jun9.pdf;
d) cf. fn.144d;
e) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**NewsHour_Jim_Lehrer**.pdf
f) http://Judicial-Discipline-Reform.org/docs/DrRCordero-**Sen&HR_Jud_Com**_11jun4.pdf
>p72

wrongful motive, such as money in controversy or offered to buy a decision or influence one, or any other wrongful material, professional, or social benefit; and whether to advance such pursuit they have taken advantage of the opportunity of cases before them to abuse their means of unaccountable judicial power to make wrongful decisions in the interest of themselves and of insiders of their judiciary, such as those of the legal and bankruptcy systems. Judicial unaccountability reporting can render a valuable public service. It can provide the public with information about its judicial public servants that it needs to protect its own fundamental interest in "Equal Justice Under Law". The latter must be administered by servants that are honest and perform their job according to their foundational instruction: to ensure due process of law so that judicial decisions follow from the application of the rule of law.

185. Information showing how that interest in "Equal Justice Under Law" has been injured by wrong-doing judges can provoke action-stirring outrage. Generally, this is the type of outrage that causes the man in the street, voters too, to take action by demanding that politicians address a problem of vital public concern under pain of being voted out of office or not being voted in. In this context, such outrage can cause the public to demand that politicians officially investigate the federal and state judiciaries and legislate effective judicial accountability and discipline reform. That demand is likely to be successful. The latest opinion poll confirms the trend toward an ever-diminishing public approval rating of the Supreme Court. The growing unfavorable attitude toward it predisposes the public to believe unfavorable news about the justices, such as their condonation of, even their participation in, wrongdoing.

> Just 44 percent of Americans approve of the job the Supreme Court is doing and three-quarters say the justices' decisions are sometimes influenced by their personal or political views, according to a poll conducted by *The New York Times* and CBS News. Those findings are a fresh indication that the court's standing with the public has slipped significantly in the past quarter-century, according to surveys conducted by several polling organizations. Approval was as high as 66 percent in the late 1980s, and by 2000 approached 50 percent. Adam Liptak and Allison Kopicki, *The New York Times*; 7jun12; http://Judicial-Discipline-Reform.org/docs/Legal_news.pdf >Ln:4.

186. In the same vein, the public disapproves in ever-growing numbers Congress[174] and the President for their incapacity to do their jobs. The failure of the congressional Super Committee to reach a deficit reduction agreement has only depressed even further the low esteem in which Congress and the President are held. The public would indignantly excoriate them if it learned that, in the self-interest of being in the good graces of powerful, life-tenured judges who could frustrate their political agendas and retaliate against them if they ever appeared before the judges in court, Congress and the President also failed in their duty to exercise constitutional checks and balances on the Judiciary to hold its judicial officers accountable, while showing blamable indifference to the harm that the unaccountable officers, the judges, inflicted on people's property, liberty, and lives.

187. The public pressure thus generated will only be increased by political challengers who will seize

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[174] **a)** Congressional approval is up. But barely; Ed O'Keefe; Inside the 112th Congress, *The Washington Post*, 12jun12; http://www.washingtonpost.com/blogs/2chambers/post/congressional-approval-is-up-but-barely/2012/06/11/gJQApSiZVV_blog.html;
b) Gallup's trend line on congressional approval in Why 'Fast and Furious' is a political loser; Chris Cillizza and Aaron Blake; The Fix, *The Washington Post*, 26jun12; http://www.washingtonpost.com/blogs/the-fix/post/why-fast-and-furious-is-a-political-loser/2012/06/25/gJQA80p42V_blog.html?wpisrc=nl_pmfix

the opportunity to attack incumbents for their individual or party responsibility for enabling judges' wrongdoing. Members of Congress and the President, fearing for their political survival, are likely to give in and open judicial wrongdoing investigations. The authorities, such as congressional committees holding public hearings, DoJ-FBI, and their state counterparts, wielding their subpoena, contempt, and penal powers, unavailable to investigative journalists, can make findings yet more outrageous. As a result, the people will be stirred to demand and make it politically impossible for politicians not to undertake, a legislative process that brings about a far-reaching judicial accountability and discipline reform. It must contain a transparent mechanism beyond the reach of conniving politicians and judges to ensure in practice that judges are investigated for wrongdoing, wrongdoers are punished, and further wrongdoing is prevented as much as possible. Such mechanism can be an independent government agency, namely, a citizen board of judicial accountability and discipline.

188. The current campaign for the 2012 presidential election can only heighten the likelihood that outrage at judicial wrongdoing will stir the public into such action. It has started to mobilize the public into passing judgment on politicians to decide whether to vote them in or out of office and how to vote in the primaries and the general election. By the same token, the 2012 campaign has made politicians more sensitive to the demands of the public. Hence, this is a most propitious time for public interest entities, journalists, and journalism students to investigate coordinated judicial wrongdoing and make a public presentation of their findings that can provoke such action-stirring outrage…just as a fleeting occasion is now available to a presidential candidate with the courage to criticize federal judges to bring to national attention the objective evidence of their institutionalized wrongdoing.

3. The *DeLano*-J. Sotomayor case as the basis of a journalistic story revealing individual and coordinated judicial wrongdoing that can provoke action-stirring outrage in the public

189. Imagine the impact on a *national* audience of a journalistic story of concealment of assets to evade taxes, a judge-run bankruptcy fraud scheme, and their cover-up that involves President Barak Obama; his first justiceship nominee, Then-Judge Sonia Sotomayor of the Court of Appeals for the Second Circuit (CA2) and Now-Justice Sotomayor (J. Sotomayor); the Federal Judiciary, which enables its judges' wrongdoing and engages in it itself; and Congress, which has covered for those judges before and after the Senate confirmed their nominations. This story will provoke in the public action-stirring outrage.(jur:83¶184)

190. The journalistic investigation of the *DeLano*-J. Sotomayor story can expose tax evading concealment of personal assets and a bankruptcy fraud scheme involving judges from the bottom of the Federal Judiciary hierarchy all the way to the Supreme Court.[109] It shows how judges disregard the law in substantive, procedural, administrative, and disciplinary matters, whether by doing wrong themselves or by doing nothing to stop their peers' wrongdoing. It illustrates how judges dash the reasonable expectation of parties that they will see justice done according to law[71] by dismissing a case not only with a "perfunctory"[68] summary order, but also by merely citing cases that objectively have nothing to do with the facts or the law of the case at bar[121c]. Thus, that story concerns the vital interest of every person and entity in this country in having, not just a 'day in court', but also a true, meaningful one so that once there they are afforded due process of law.

The satisfaction of that interest presupposes that of its underlying requisite, to wit, having honest[175] judges that perform their duty to apply the law. The judges' character and law abidance determine their decisions, which through their in-case as well as their precedential value affect profoundly every aspect of the lives of the litigants in court and everybody else outside it.

191. The *DeLano*-J. Sotomayor story also reveals how judges engage in wrongdoing individually as well as collectively through the more insidious and pernicious coordination with each other and with insiders of the legal and bankruptcy systems[169], and how they do it so routinely as to have made of wrongdoing their institutionalized modus operandi. It also reveals coordination among judges and politicians to lie to the American people about their official actions so as to advance their personal, partisan, and class interests. To all of those officers applies a principle of torts that springs from common sense: A person is deemed to intend the reasonable consequences of his actions. They all have intentionally harmed the people by enabling judges to wield unaccountable, in effect unreviewable, and thereby riskless, irresistible, and inevitably corruptive power over people's property, liberty, and lives. Their wrongdoing and the harm that they have inflicted will outrage the people. In their defense, the people will take action to demand that the judges be officially investigated and that judicial accountability and discipline reform be undertaken.

4. Judicial unaccountability reporting rendered promising and cost-effective by its reasonable goal: to show to the public individual and coordinated wrongdoing of judges rather than prove in court to the judges' peers judicial corruption

192. The *DeLano*-J. Sotomayor story is at its core a bundle of related legal cases litigated all the way from U.S. bankruptcy, district, and circuit courts to the Supreme Court[109b;114c]; taken through all the competent administrative bodies of the Federal Judiciary[124;283a]; and supported by broad and thorough research[ii]. Hence, it rests on solid evidence already available.(jur: 21§§A-0) It can also be further investigated to get to the bottom of it all and, more importantly, to get to the very top: institutionalized coordinated wrongdoing participated in, and tolerated, by the President and the Supreme Court justices. The investigation can be conducted in a cost-effective, narrowly focused fashion(jur:97§1) to be presented as an engaging and compelling journalistic story to the public at large.

193. This proposal aims to have the further investigation of the *DeLano*-J. Sotomayor story and the reporting of its findings conducted as a team effort by: **a)** a politician courageous enough to take on both his or her party and judges on the issue of judicial unaccountability and consequent individual and coordinate wrongdoing; **b)** public interest entities, such as United Republic, Get Money Out!, and Rootstrikers[176]; **c)** investigative organizations, such as Think Progress[177], the

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[175] On public officers' implied promise of honest service, see 18 U.S.C. §§ 1341, 1343, and 1346.

[176] **a)** http://www.unitedrepublic.org/; **b)** http://www.getmoneyout.com/contact; **c)** http://www.rootstrikers.org/; **d)** http://Judicial-Discipline-Reform.org/teams/UR/11-12-15DrRCordero-CEOJSilver.pdf; **e)** http://Judicial-Discipline-Reform.org/teams/GMO/11-12-17DrRCordero-HostDRatigan.pdf

[177] **a)** http://thinkprogress.org/about/; **b)** http://Judicial-Discipline-Reform.org/teams/TP/11-12-5DrRCordero-FShakir.pdf

Center for Public Integrity[178], and ProPublica[179]; and **d)** journalism schools, which as part of their learning-by-doing pedagogy can have their students join those entities' investigation to work under their supervision as an academic project for credit, while the schools and students enhance the entities' manpower and multimedia resources[cf.256e]. Among these schools are the Investigative Reporting Workshop of the School of Communication of American University[180] in Washington, D.C.; and in New York City Columbia University Graduate School of Journalism[181], City University of New York Graduate School of Journalism[182], and New York University Journalism Institute[183]. All of them can work together on the strength of both their professed commitment to the theoretical principle that only an informed citizenry can preserve and play their proper role in a healthy democracy; and their realization of the wisdom in the pragmatic consideration "the enemy of my enemy [including those who conceal information from me] is my friend".

194. Investigating the *DeLano*-J. Sotomayor story is an appropriate goal of any media outlet that advocates "progressive ideas and policies"[177a], as Think Progress does. It is particularly so for those that, like United Republic, are committed to providing information to the citizens in order to empower them[176a]; and that, like Alliance for Justice, are thereby "[d]irecting public attention and our own advocacy resources to important issues that affect American life and justice for all"[184a-b], and have

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178 **a)** http://www.iwatchnews.org/about; **b)** http://Judicial-Discipline-Reform.org/teams/CPI/11-11-14DrRCordero-ExecDirBBuzenberg.pdf

179 **a)** http://www.propublica.org/about/;
b) http://Judicial-Discipline-Reform.org/teams/PP/11-11-7DrRCordero-EdinCPSteiger.pdf

180 **a)** http://www.american.edu/media/news/20100309_AU_Fills_Investigative_Journalism_Gap.cfm; **b)** http://Judicial-Discipline-Reform.org/teams/AU/11-11-1DrRCordero-ProfCLewis.pdf

181 **a)** http://www.journalism.columbia.edu/page/88/88; **b)** http://Judicial-Discipline-Reform.org/teams/GSJ/11-10-3DrRCordero-ProfSCoronel.pdf; **c)** Cf. fn.256e-f

182 **a)** http://www.journalism.cuny.edu/faculty/robbins-tom-investigative-journalist-in-residence-urban-investigative/; **b)** http://Judicial-Discipline-Reform.org/teams/CUNY/11-11-8DrRCordero-ProfTRobbins.pdf

183 **a)** http://journalism.nyu.edu/about-us/; **b)** http://Judicial-Discipline-Reform.org/teams/NYU/11-10-24DrRCordero-DirPKlass.pdf

184 **a)** http://www.afj.org/about-afj/afj-vision-statement.html;

b) Just as the other "progressive" entities, Alliance for Justice must decide whether its "steadfast [commitment to] protecting and expanding pathways to justice for all…" and "the selection of judges who respect…core constitutional values of justice and equality…and the rights of citizens", id., is more important than the Hispanic ethnicity of Then-Judge Sotomayor [cf.69] that it made the central point of its support for her confirmation as a justice. At stake is whether Alliance possesses the integrity to acknowl-edge that on the basis of old and new evidence, such as that presented here, it must hold Now-Justice Sotomayor accountable for her concealment of assets(jur:65§1) and her cover up of the bankruptcy fraud scheme(jur:68§a). The decision is between being a Democratic Political Action Committee disguised as a public interest entity, with as little attachment to ethical values as the Supreme Court Justices Alito, Scalia, and Thomas that it chastised in its documentary "A Question of Integrity" for being Republican fundraisers disguised in robes, and being an honest advocate of "justice for *all*"

recognized the need "to cultivate the next generation of progressive activists"[184c] and "expose students to careers in public interest advocacy"[184d] through a "Student Action Campaign, which provides year-round opportunities for students to engage in advocacy to ensure a fair and independent judiciary."[184e]

195. A courageous politician, public interest entities, journalists, and journalism schools can jointly investigate the *DeLano*-J. Sotomayor story as a political, professional, journalistic, and academic project to perform their mission and duty: to keep the public informed so that it may know about the conduct of public officers, its servants, including judges, and hold them accountable for the public trust vested in them. They can do so effectively within the scope of their respective endeavor because they will not try to demonstrate that the officers engaged in corruption. This is the term usually employed by public interest entities and the media when exposing politicians and by politicians themselves when attacking each other. It is also the term most frequently used by litigants and their groups and supporters who complain against judges. However, corruption is most difficult to prove because it constitutes a crime and, consequently, requires meeting the highest legal standard of proof, that is, 'beyond a reasonable doubt'.

196. Rather, the goal of the investigators will be to apply professional standards of journalism to find facts and circumstances showing that public officers, specially judges, engaged in individual as well as coordinated wrongdoing. The choice of the notion of 'wrongdoing' is of fundamental importance because it is broader, easier to apply; therefore, it lowers the bar to the investigators' successful search for journalistic necessary and sufficient facts and circumstances to develop a story. The investigators will report them together with a reporter, that is, one who commands greater attention of both the rest of the media -particularly outlets with national reach, like the national networks and print/digital newspapers, such as *The New York Times*, *The Washington Post*, and Politico- and a national audience, which is what a politician of national stature can do: communicate more broadly and convincingly. If the journalistic investigators and reporter, collectively referred to hereinafter as the **investigative reporters**, succeed in the arduous and no doubt risky pursuit of finding and exposing the facts and circumstances of judicial unaccountability, they can receive the recognition and gratitude owed to, and attain the historic, iconic status(jur:5¶¶13-0) as, the people's Champions of Justice[164a].

a. Wrongdoing and coordinated wrongdoing: broader notions easier to apply to judges and others

197. Wrongdoing is a broader notion than corruption because it includes also forms of conduct that are civilly liable, unethical, abusive of discretionary judgment, or that entail impropriety. Its field of applicability extends to what judges do in their official capacity, in non-judicial public life as citizens, and even in their private lives. Hence, wrongdoing is an essential notion for cleansing federal and state judiciaries of wrongdoing judges through media and public pressure rather than lawsuits in court, where judges watch out for their own. However, wrongdoing could be thought of as being limited to what an individual does alone.

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and its foundation, fairness and impartiality, one that will not waver from or conceal the truth on political considerations and will hold all judges and politicians to the same high standards of legal and ethical conduct.

c) http://www.afj.org/about-afj/; **d)** http://www.afj.org/resources-and-publications/films-and-programs/; **e)** http: //www.afj.org/about-afj/the-first-monday-campaign.html

198. By contrast, the notion of coordinated wrongdoing is much broader. Besides including the idea of two or more persons working together to do wrong, it embraces also the idea of enabling others to do wrong. Therefore, it is broad enough to include what judges:

a. actively do wrong as:

1) principals with others, that is, personally doing wrong in explicit (handshake) or implicit (wink and a nod) agreement with others or becoming

2) accomplices through enablement

a) before the fact by creating conditions that are or are not wrong in themselves (providing the password to the judges' confidential website section v. intentionally leaving confidential documents on the desktop within view of the 'cleaning' crew) but that facilitate the wrong done by others, or

b) after the fact by covering up their wrongs (dismissing complaints against judges or denying discovery of incriminating documents); and

b. passively enabling the continuation or undetection of wrongdoing by adopting the 'three monkeys' conduct' of seeing nothing, hearing nothing, and saying nothing, either because the judge

1) knows about the wrongdoing of others but is so indifferent to it that she says nothing, e.g., she fails to make a report to the competent authority despite her statutory duty to do so[130] or her institutional duty as a member of the judiciary to safeguard the integrity of the court and of the administration of justice; or she actually

2) ignores it because she has willfully closed her eyes and plugged her ears, for instance, by failing to open an investigation in order not to have her knowledge pressure her into saying something, thus preserving the excuse of 'plausible deniability', that is, 'I just didn't know so I didn't have anything to say or do'.

c. Third-party beneficiaries of the judge's three monkeys' conduct are able to continue doing wrong or keep their wrongdoing undetected, regardless of whether they

1) ignore that the judge engaged in knowing indifference or willful ignorance with respect to the third-parties' wrongdoing or

2) know because they saw the judge look on and walk away (onlooking passerby) or because they realize that if the judge had only looked into the matter with due diligence[94], she would have found out about the third-parties' wrongdoing but she was too negligent or incompetent to do so (skylooking passerby).

199. It follows that the coordination among the wrongdoers can be:

a. explicit, such as through round-table agreement among primary and accessory wrongdoers; or

b. implicit among them but

1) pattern inferable from a series of acts so consistent in timing, participants, amount, result, etc., as to reveal a pattern of intentional conduct that negates the unreasonable explanation of an improbable chain of coincidences;

2) statistically inferable from the randomness of acts with equal chances of resulting in

opposite (head/tail coin tossing) or cross-cancelling (over charge/under charge) results, e.g. all the mistakes of the clerks of court benefit the insiders and harm the outsiders rather than just 50% of mistakes do so and the other 50% the inverse.

200. A judge that knows or through due diligence could have found out that a wrong had been done but chose to do nothing becomes an accessory after the fact. Moreover, by giving implicit or explicit reassurance that he will not denounce wrongdoing to the authorities or expose it to the public, he eliminates the deterrence of adverse consequences to the commission of more wrongdoing, thereby becoming an accessory before the fact.

201. The modes of coordination include, in addition to round table coordination, a hub and spoke system organized by a central wrongdoer that imparts instructions to several others with the result that the wheel of combined effort turns in a given direction divergent from the normal one. For example, a judge may tell individually to each of some clerks of court and law clerks what to do when a person comes to court expressing the intention to file for bankruptcy and they find out that the person is unrepresented, has a home in a certain geographic area, and its estimated value is above a certain figure. The clerks may follow her instructions, regardless of whether they realize who ends up buying the foreclosed home at a private auction for under a certain amount (hub and spoke with rim because the clerks realize the connection between the intervening acts necessary to produce the ultimate result; or hub and spoke without rim when they do not know the ultimate result or do not realize how improbable such result is but for somebody's pulling strings to produce it).

b. Knowing indifference: irresponsibility that gradually degenerates into complicit collegiality

202. Knowing indifference gradually raises the threshold of tolerance of wrongdoing: Another slim 'salami slice' of wrongdoing is easier to swallow than a whole chunk of the salami stick. But slice by slice, a judge can stomach even a nauseating crime. Nibbling on wrongdoing sickens his judgment and compromises his integrity, for it lays him open to reverse blackmail:

> "You knew what I was doing was wrong, but you simply stood aside and let me go ahead to where I am now. You knew the harm that I was causing others, but you wanted to keep my friendship and the friendship of my friends, of all of us judges. You enabled me either for the moral profit of continued camaraderie while letting me get the material profit that I wanted or you did it out of cowardice so that we would not gang up on you as a traitor.
>
> Whatever motive you have had up to now, let this warning motivate you from now on: I know enough about your own wrongdoing. If you even sit back and let others take me under, *I bring you down with me!* So stand up and do whatever it takes to make this complaint go away."

203. Knowing indifference to the wrong or wrongful conduct of others also produces another profit that may be deposited in a bank automatically to grow in value effortlessly as with compound interest: a chip to be traded in for favors. Unexpectedly the need arises or the opportunity presents itself and the search for cash notices the golden gleams of those chips:

> "I let it slide when you received a loan from a plaintiff at an unheard of low rate, got free use of a hall for your daughter's wedding and for a judicial campaign meeting from parties with big cases before you, boasted of having gone on an all-paid judicial seminar cum golf tournament without reporting it, and on and on. *Remember?!* Now it's my turn. I need you to lean on your former classmate on the zoning board to

rezone this lot commercial so that a company in which I am an unnamed investor can develop a shopping mall on it".[185]

204. Knowing indifference is not ignorant of its value; it only bids its time to realize it. In the process, it corrupts the moral fiber of he who extends it as a benefit while opportunistically watching its value grow at a loan shark rate of interest. Simultaneously, it raises the compromising debt owed by its beneficiary, who in most cases is aware that although her benefactor is staring at her wrongdoing with his mouth shut, his hands are open to collect an implicit IOU that at some point will become due and will have to be paid at any cost, for knowing indifference has its counterpart: payable collusive gratitude. Hence, it turns both the benefactor and the beneficiary into complicit colleagues in wrongdoing.

c. Willful ignorance or blindness: reckless issue of a blank permit to do any wrong

205. Willful ignorance refers to the objective state of not knowing about wrongdoing because the judge suspected that if he had looked into the matter in question, he might not have liked what he might have seen so he abstained from looking into it.

206. In willful blindness, the ignorance is subjective in that the judge knew the facts but willfully failed to draw reasonable conclusions that would have led him to at least suspect wrongdoing. Hence, he was blind to the facts willfully. Willful blindness is a broader notion and easier to apply because a person cannot claim to be competent and at the same time pretend that he just did not realize the implications of known facts which would have been realized by, in general, a reasonable person that can put 2 and 2 together and, in particular, a person to whom knowledge of such implications is imputed as a result of his professional training and daily experience of 'doing the math' as part of his work. While the *willfully ignoran*t crosses his arms to cover his ears with his hands and block his view with his forearms to avoid taking into his mind the noise or image of wrongdoing that may be lurking or crawling in front of him, the *willfully blind* is in front of wrongdoing that is staring at her, but she shuts her mind's eyes to avoid staring back at it. When the news anchor announces that a terrorist attack caused a carnage, the *willfully ignorant* changes the TV channel; whereas the *willfully blind* waits until the anchor warns that "the images that you are about to see are graphic" and then she looks up to the right and fantasizes about a lakeside picnic on a sunny day.

207. Willful ignorance/blindness constitutes a form of wrongdoing even in the absence of probable cause to believe that a crime has been committed. The wrong lies precisely in the willfully ignorant/blind person's decision to look the other way from where such cause might be found and thereby avoid finding it and having to take action to expose and punish the wrongdoer, whom the person actively wants to protect or passively wants to avoid having to accuse. This lower standard is illustrated by the statutory duty imposed on federal judges under 18 U.S.C. §3057(a) to report to the respective U.S. attorney "reasonable grounds for believing [not just] that any violation [of bankruptcy laws] has been committed [but also] that an investigation should be had in connection therewith [to ascertain whether any violation has occurred]"[130a]. A judge who does not call for an investigation when a reasonable person would have enables, for instance, the bankruptcy fraud of concealment of assets to go on undetected.

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[185] fn.128 & http://Judicial-Discipline-Reform.org/Follow_money/JudReform_from_outside.pdf

208. Through willful ignorance/blindness, a judge avoids an investigation that can make her and others learn about, and take action against, the wrongdoer. The latter may be a peer, a clerk, an insider, or a lawyer who may be a voter or donor in a state judicial election. Friendship with a colleague for 1, 5, 10, 15, 20 years is given precedence over duty(jur:62¶133 >quotation from C.J. Kozinski). By so doing, the judge intentionally violates her shared, institutional duty to uphold the integrity of the courts and their administration of justice. That is a defining duty of her office.(cf. jur:57¶119 >Canon 1) Such conduct detracts from public confidence in her as well as other judges' impartiality and commitment to the rule of law. It gives rise to the perception that they cover for each other regardless of the nature and gravity of the wrong that may have been done. It casts doubt on their sense of right and wrong. Whatever the wrong committed by one of their own, they exonerate him from any charge before they even know its nature and his degree of moral responsibility or legal liability. Their attitude is "a judge can do no wrong". So they shut their eyes or turn them away to conjure up the defense of plausible deniability: They did not do anything because they had not seen or heard anything requiring them to take action. Such 'no action due to lack of knowledge' is a pretense. As such, it is dishonest. It is also blamable because it amounts to engaging in a blanket cover up.

209. Willful ignorance/blindness not only covers up wrongdoing that already occurred by ensuring that it goes undetected, but also ensures that more of it *will* occur in future: By removing the fear of detection, it facilitates and encourages the occurrence of more wrongdoing. In reliance on a judge's willful ignorance/blindness in the past, the wrongdoer expects that the judge will also cover her future wrongdoing. Hence, it renders a judge liable as an accessory also before the fact. It empowers the wrongdoer to repeat the same wrong because he has something on the judge, that is, the latter's blameworthy toleration of it. Worse yet, it emboldens the wrongdoer to increase the degree of wrongness of the same wrong and to dare commit wrongs of a different nature, for he has not yet reached the limit of toleration of those who should have called him on his wrong or even exposed him. As the wrongdoer keeps pushing the limit, he further weakens the moral resolve of the tolerators and compromises their individual or institutional responsibility and legal positions. Gradually, the tolerators are the ones who cross the boundary of denunciation and enter into self-incriminating territory, where speaking out against the wrongdoer would bring against themselves substantial adverse consequences and even punishment. Their realization of their own culpability turns their moral weakness into complicit fear. By that time, the wrongdoer realizes that he has managed to push the limit of toleration so far away that in effect it has disappeared. From them on, an ever more powerful wrongdoer strides boldly into new territory as he drags along the morally impotent bodies of the tolerators: They are now where everything goes.

d. Impropriety and its appearance: the widest and tested notion, which already forced and again can force a justice to resign

210. Impropriety enhances substantially the usefulness of the notion of wrongdoing, particularly since there is precedent showing that it actually does. To begin with, it is the most flexible 'I recognize it when I see it' form of wrongdoing. It derives directly from the federal judges' own Code of Conduct, whose Canon 2 requires that "A Judge Should Avoid Impropriety And The Appearance Of Impropriety In All Activities"[123a]. Moreover, while federal judges are de facto unimpeachable (jur:21§a) and thus irremovable, the notion of "impropriety" has been applied with astonishing effect.

211. Indeed, impropriety led U.S. Supreme Court Abe Fortas to resign on May 14, 1969. He had not committed any crime given that the financial transaction that he was involved in was not criminal at all; nor was it clearly proscribed as unethical. Yet it was deemed 'improper' for a justice to engage in. The impropriety was publicly ascertained after it became known that he…

> "had accepted fifteen thousand dollars raised by [former co-partner] Paul Porter from the justice's friends and former clients for teaching a summer course at American University, an arrangement that many considered improper. Republicans and conservative southern Democrats launched a filibuster, and the nomination [to chief justice by President Lyndon Johnson] was withdrawn at Fortas's request. A year later Fortas's financial dealings came under renewed scrutiny when *Life* magazine revealed that he had accepted an honorarium for serving on a charitable foundation headed by a former client [Louis Wolfson]. Fortas resigned from the Court in disgrace.…his old firm refused to take him back…Fortas's relationship with Wolfson seemed suspect, and the American Bar Association declared it contrary to the provision of the canon of judicial ethics that a judge's conduct must be free of the appearance of impropriety."[186]

212. This precedent leaves no doubt that the resignation now of a current justice, and all the more so of more than one and of judges, is a realistic prospect. Public interest entities, journalists, and their supervised journalism students can endeavor to realize it where warranted by the facts and circumstances discovered through their pioneering judicial unaccountability reporting. Justice Fortas's resignation also shows that the notion of impropriety turns judges into the public officers most vulnerable to media and public pressure despite the fact that individually and as a class they wield the power that can most profoundly affect people's property, liberty, and lives. Therefore, the competent and principled application of the impropriety notion by the investigators can make the difference between their merely completing their professional and academic project successfully and shaking the Federal Judiciary to its foundations, making history in the process.

e. The value of third-parties who are insiders of the Judiciary in exposing the coordinated wrongdoing of the core insiders, the judges

213. Coordination among wrongdoers results from an explicit or implicit meeting of the minds of people that intend to accomplish or permit what they know is illegal or unethical. It reveals premeditation. It acts as a multiplier of the usefulness and effectiveness of wrongdoing: Even some individual wrongdoing cannot be engaged in without the reliance by the wrongdoer in fact on those who know what he is about to do and those who may find out not exposing him, whereby they become accomplices before and after the fact, respectively. They share an interest in a cover-up, on which they can rely to do further wrongs. Worse yet, coordination enables them to commit wrongs that none could do alone.[84]

214. Unaccountable judges are, of course, the core parties to the Federal Judiciary's individual and coordinated riskless wrongdoing. They are the quintessential insiders of the Judiciary. One single judge could bring down a whole court without the need to provide proof beyond a reasonable doubt of her peers' wrongdoing. All she had to do was to show that they had failed "to avoid

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[186] The Oxford Companion to the Supreme Court of the United States, 2nd edition, Kemit L. Hall, Editor in Chief; Oxford University Press (2005), pp. 356-357.

even the appearance of impropriety"(jur:92§d). Her status as judge and her access as such to insider information would lend credibility to her denunciation or exposition of their wrongdoing.

215. But judges are not alone. They are supported by a panoply of third party insiders. Some are near-core insiders. Among them are those that recommend, nominate, and confirm candidates for justiceships. They have the most to lose if the judges' wrongdoing is exposed. They are also the ones who have gained the most from those whom they helped to the bench and the ones who in future can elevate judges to a higher court or the chief justiceship of the Supreme Court.(jur:77§§5,6)

216. There are also peripheral third party insiders. They are an essential component of the wrongdoing. In many instances, they are the executioners of the judges' instructions to do wrong. Without them, the wrongdoing could not be effected. Some are employees of the Judiciary, such as law and administrative clerks(jur:106§c) and court reporters[263]. Others are not employees. While they also execute wrongdoing, they are more important as feeders of wrongdoing, that is, they bring in opportunities to do wrong from which they and the judges benefit. They include lawyers, prosecutors, bankruptcy professionals[169], and litigants, particularly wealthy or powerful ones.

217. Third-party insiders can play a key role in exposing coordinated judicial wrongdoing.(jur:88§§a-d) They have intimate knowledge of the wrongdoing because they participated in it; otherwise, they knew about it but looked the other way, thereby tolerating it and becoming accessories after the fact as well as encouraging further wrongdoing by reassuring wrongdoers that no harm would come to them through denunciation or exposure if they committed further wrongdoing, whereby they became accessories before the fact. No doubt, they have something or even a lot to lose as principals of, or accessories to, the judges' wrongdoing. However, there is something that they do not have, namely, loyalty to the judges to the same extent that other judges do. They have neither the protection of life-appointment or removal from office only through the cumbersome and in effect useless process of impeachment nor the credibility attached to the prestige of a federal justiceship nor the connection to people in high places that can help them escape investigation, prosecution, and even conviction. Since their risk of suffering criminal penalties is much higher, so is their interest in cooperating either with law enforcement authorities by providing information or testimony in exchange for leniency obtained in plea bargain…if ever federal judges were at risk of being investigated.

218. Moreover, third party insiders may also feed to non-official investigators, such as journalists, information even on a confidential basis about the nature, degree, and full extent of the wrongdoing. They may be disgusted with the wrongdoing that goes on in the Judiciary and want to expose it. Also, they may want to provide enough information while they are still inside so that the full story of wrongdoing can be pieced together and reveal that their role was merely as the teeth that did the grinding work on cogs rotated by the judges as shafts and near-core insiders as levers in the Judiciary's coordinated wrongdoing machinery.

219. Peripheral third-parties[164] are the weak links. They can neither harm or benefit judges nor be harmed or benefitted by them as other judiciary insiders can, e.g., politicians and big donors. So they do not owe the judges the same loyalty that judges owe each other. They know, of course, their own wrongdoing. In addition, they, as insiders, are likely to know other insiders from whom they sought advice upon realizing that a judge was doing wrong or whose participation they needed when a judge asked them to do something wrong. In addition, insiders may boast to each other about the judges' wrongs that they know of or participated in.(jur:105§3) They are easier to

turn into accusers of judges in exchange for some immunity on 'a small fish giving up a big fish' deal. Moreover, the context in which they can be turned need not be an openly declared investigation of judges' wrongdoing, which would give judges the opportunity to call in their IOUs or threaten near-core insiders with cross-incrimination in order to have them prevent or terminate such investigation.

220. For instance, a judiciary committee may hold hearings on the need to include court proceedings among the public body meetings that may be audio recorded. The committee may subpoena court reporters to testify under oath about changes that they were required by judges to make to their transcripts. How many court reporters would risk the penalties of perjury to cover for wrongdoing judges? If need be, they can be given immunity to remove their 5th Amendment right against self-incrimination. Their refusal to testify or do so truthfully could lead to their being held in contempt and even imprisoned. Their testimony could provide both leads to other insiders that have incriminating information. The progressive revelation of judicial wrongdoing could provide the necessary justification for a proposal for legislation on judicial transparency, accountability, and discipline.