

ETHICS ACCOUNTABILITY: THE NEXT ERA FOR LAWYERS AND JUDGES

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INTRODUCTION

Five decades ago, United States Supreme Court Chief Justice Earl Warren delivered remarks that sound like they were written in the early 2020s:

[O]ur profession has recently suffered greatly because a score of lawyers has been convicted or indicted for felonious conduct in the performance of their official duties in the highest reaches of our national government. . . . Their alleged criminal offenses pertain to serious violations of our system of justice and to the performance of basic functions of government. The inner sanctum of the White House has been tarnished, and the end of the debacle is not yet in sight.¹

Warren, of course, was describing the aftermath of the Watergate scandal where government lawyers were suspended, disbarred, and even sentenced with prison time for their misconduct.² But similar sentiments have been expressed about the lawyers who attempted to overturn the valid election results in the 2020 presidential election, several of whom have been indicted and sanctioned—including loss of their license to practice law—though none have been imprisoned, at least not yet.³ Lawyers filed more than sixty lawsuits, and all but one was tossed out by the courts over lack of any fact-based evidence.⁴

¹ Earl Warren, *A Response to Recent Proposals to Dilute the Jurisdiction of the Supreme Court*, 20 LOY. L. REV. 221, 221 (1974).

² See, e.g., Morris Kaplan, *Mitchell Disbarred as Lawyer in State*, N.Y. TIMES (July 4, 1975), <https://www.nytimes.com/1975/07/04/archives/mitchell-disbarred-as-lawyer-in-state-mitchell-is-disbarred-in.html> [<https://web.archive.org/web/20241128225358/https://www.nytimes.com/1975/07/04/archives/mitchell-disbarred-as-lawyer-in-state-mitchell-is-disbarred-in.html>]; Lawrence Meyer, *John N. Mitchell, Principal in Watergate, Dies at 75*, WASH. POST (Nov. 10, 1988), <https://www.washingtonpost.com/wp-srv/national/longterm/watergate/stories/mitchobit.htm> [<https://web.archive.org/web/20221016110027/https://www.washingtonpost.com/wp-srv/national/longterm/watergate/stories/mitchobit.htm>] (“Mitchell, however, was indicted, stood trial and was convicted along with three other defendants in the Watergate cover-up trial. Eventually, he served 19 months in a federal penal institution . . .”).

³ See *infra* Part I.

⁴ See William Cummings, Joey Garrison & Jim Sargent, *By the Numbers: President Donald Trump’s Failed Efforts to Overturn the Election*, USA TODAY (Jan. 6, 2021, 10:50 AM), <https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001> [<https://perma.cc/SP63-SMVY>] (“Out of the 62 lawsuits filed challenging the presidential election, 61 have failed . . .”); *Fact Check: Courts Have Dismissed Multiple Lawsuits of Alleged Electoral Fraud Presented by Trump Campaign*, REUTERS (Feb. 15, 2021, 10:41 AM), <https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1> [<https://web.archive.org/web/20250126050239/https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by-trump-campaign-idUSKBN2AF1G1>] (“Independent experts,

Other aspects of Chief Justice Warren's speech echo modern concerns about legal ethics. The purpose of his talk ostensibly was to commemorate what he called "a happy occasion"—the dedication of the Branch Knox Miller Memorial Law Building at Loyola Law School in New Orleans on April 27, 1974. He certainly picked a somber topic for the celebratory moment, choosing to push back against proposals from Congress and the American Bar Association ("ABA") to restrict the jurisdiction of the Supreme Court.⁵ At the time, Warren had been retired from the bench for several years,⁶ which is perhaps why he felt free to speak so bluntly about the state of the legal profession.

The title of his speech, "A Response to Recent Proposals to Dilute the Jurisdiction of the Supreme Court,"⁷ also sounds straight from the 2020 news cycle. Indeed, in 2024 alone, members of Congress filed articles of impeachment against two Supreme Court Justices⁸ and proposed legislation to heighten financial disclosures⁹ as well as reduce the Court's jurisdiction.¹⁰ Former President Joe Biden called for term limits among other reforms after announcing he would not seek a second term himself.¹¹ This latest criticism of the Court stemmed from investigative reporting that revealed undisclosed gifts to Justices from billionaires, among other concerns about bias and improper influences.¹²

Warren endured numerous calls for his own impeachment during his time on the Supreme Court over what some believed was inappropriate judicial activism in the wake of decisions expanding civil

governors and state election officials from both parties say there was no evidence of widespread fraud.").

⁵ Warren, *supra* note 1, at 221, 223–24.

⁶ See Earl Warren, 1953–1969, SUP. CT. HIST. SOC'Y, <https://supremecourthistory.org/chief-justices/earl-warren-1953-1969> [<https://perma.cc/S88J-RVE7>].

⁷ Warren, *supra* note 1, at 221.

⁸ See Maggie Astor, *Ocasio-Cortez Files Impeachment Articles Against Justices Alito and Thomas*, N.Y. TIMES (July 10, 2024), <https://www.nytimes.com/2024/07/10/us/politics/aoc-samuel-alito-clarence-thomas-impeach.html> [<https://web.archive.org/web/20240926054315/https://www.nytimes.com/2024/07/10/us/politics/aoc-samuel-alito-clarence-thomas-impeach.html>].

⁹ See *infra* Section II.D.

¹⁰ See Ian Millhiser, *Chuck Schumer's Ambitious Plan to Take the Supreme Court Down a Peg*, VOX (Aug. 1, 2024, 5:50 PM), <https://www.vox.com/scotus/364438/supreme-court-chuck-schumer-trump-immunity> [<https://perma.cc/4EAH-FZ9N>] ("Now Senate Majority Leader Chuck Schumer (D-NY) plans to introduce . . . [a] bill, known as the 'No Kings Act' . . . [which] relies on a rarely used congressional power to shrink the Court's authority to hear certain appeals.").

¹¹ See Kathryn Watson & Melissa Quinn, *Biden Lays Out Plan for Supreme Court Reforms, Saying "Extreme Opinions" Have Undermined Confidence*, CBS NEWS (July 29, 2024, 8:11 PM), <https://www.cbsnews.com/news/biden-supreme-court-lbj-library-speech> [<https://perma.cc/9GMV-TZG7>].

¹² See *infra* Part I.

rights like *Brown v. Board of Education*.¹³ For example, in the mid-1960s, hundreds of billboards and signs were placed in states like Indiana “declaring, ‘Save Our Republic! Impeach Earl Warren.’”¹⁴ Conservative members of Congress proposed legislation to constrain the Court in the late 1950s, including

bills that would remove major areas of the Court’s jurisdiction, bills designed to overturn particular decisions, bills giving the Senate appellate jurisdiction over the Court’s decisions, bills requiring a unanimous vote of the [J]ustices to strike down a state law, bills abolishing life tenure for the [J]ustices, bills purporting to require that a [J]ustice must have prior judicial experience, and a wonderfully counter-hegemonic measure that would have required lower courts to ignore any Supreme Court decision “which conflicts with the legal principle of adhering to prior decisions and which is clearly based upon considerations other than legal” (read: *Brown v. Board of Education*).¹⁵

The confluence of indicted White House lawyers in the Watergate affair and the calls for diluting the authority of the Supreme Court that led to Warren’s speech in 1974 mirror the modern juxtaposition of indicted lawyers in the 2020 election challenges and the calls for reform to address Supreme Court ethics. In the aftermath of the Warren impeachment campaign and Watergate, measures were put into place to enhance ethics accountability for lawyers and judges.¹⁶ For example, in 1974, as a response to Watergate, the ABA required law schools to provide each graduate instruction in legal ethics.¹⁷ The ABA revised the code of ethics for judges in 1972, adopting the Model Code of Judicial Conduct based upon recommendations from a committee led by

¹³ See generally Brett Bethune, *Influence Without Impeachment: How the Impeach Earl Warren Movement Began, Faltered, but Avoided Irrelevance*, 47 J. SUP. CT. HIST. 142 (2020).

¹⁴ *Id.* at 142 (quoting INDIANAPOLIS NEWS, May 10, 1965, at 16).

¹⁵ Philip P. Frickey, Gordon Silverstein, Neal Devins, Nelson W. Polsby & Harry N. Scheiber, *Congress and the Earl Warren Court*, BULL. AM. ACAD. ARTS & SCI., Summer 2004, at 6, 9 (quoting H.R. 692, 85th Cong. (1957)), <https://www.amacad.org/sites/default/files/media/document/2018-12/Congress%20and%20the%20Earl%20Warren%20Court.pdf> [<https://perma.cc/U3U4-UP2S>].

¹⁶ See, e.g., Carolyn A. Dubay, *Public Confidence in the Courts in the Internet Age: The Ethical Landscape for Judges in the Post-Watergate Era*, 40 CAMPBELL L. REV. 531, 533–36 (2018) (“In the twentieth century, the Watergate scandal . . . spurred significant changes in ethics requirements for public officials and professional standards for lawyers. . . . For the judiciary . . . the ethical rules and compliance frameworks that developed in the post-Watergate era are markedly different from the regulatory structure for other public officials. . . . [T]hese core values were shaken by the judiciary’s own ‘Watergate’ moment in a scandal involving Supreme Court Justice Abe Fortas and the significant changes in judicial ethics enforcement that followed.”).

¹⁷ See Kathleen Clark, *Legacy of Watergate for Legal Ethics Instruction*, 51 HASTINGS L.J. 673, 673 (2000).

California Chief Justice Roger Traynor.¹⁸ It focused on creating enforceable rules (rather than aspirational standards) to address judicial misconduct, including disqualification.¹⁹ While a member of the Supreme Court was among the drafters, the Code was not adopted by the Supreme Court.

Despite these efforts, the politicization of lawyers and judicial ethics endures, and the existing codes of conduct have not prevented the sorts of abuses seen during Watergate or addressed the concerns about Supreme Court financial disclosures, recusals, and other conflicts. Public perception of the legal profession and the Supreme Court is at an all-time low.²⁰ A poll from the *Associated Press* in June 2024 found that “[n]early 4 in 10 respondents said they have hardly any confidence in the [C]ourt, and 7 in 10 said they believe the [J]ustices’ decisions are motivated by ideology, not fairness and impartiality.”²¹ The public’s opinion of lawyers’ ethics similarly has fallen according to a *Gallup News* poll, from twenty-two percent rating “the honesty and ethical standards” of lawyers as “very high/high” in 2016, and dropping even further to only sixteen percent in 2023.²² Even worse, much of the public simply does not trust the legal system. For example, more than five months into former President Joe Biden’s term, thirty-two percent of all Americans still believed his electoral victory was due to fraud, as did sixty-three percent of Republicans,²³ even though election challenges were dismissed by judges

¹⁸ See, e.g., Raymond J. McKoski, *Judicial Discipline and the Appearance of Impropriety: What the Public Sees Is What the Judge Gets*, 94 MINN. L. REV. 1914, 1928 (2010).

¹⁹ See *id.* at 1928–29.

²⁰ See Megan Brenan, *Views of Supreme Court Remain Near Record Lows*, GALLUP (Sept. 29, 2023), <https://news.gallup.com/poll/511820/views-supreme-court-remain-near-record-lows.aspx> [<https://perma.cc/8ETN-R89W>] (“As the Supreme Court’s new term approaches, Americans continue to view it negatively in two long-term Gallup trends—job approval and confidence—with the latest readings similar to their historical low points.”).

²¹ Justin Jouvenal, *Supreme Court Ethics Remain at Center Stage After Hard-Right Rulings*, WASH. POST (July 6, 2024), <https://www.washingtonpost.com/politics/2024/07/06/supreme-court-ethics-public-trust> [<https://perma.cc/R3KQ-5J5J>].

²² Megan Brenan & Jeffrey M. Jones, *Ethics Ratings of Nearly All Professions Down in U.S.*, GALLUP (Jan. 22, 2024), <https://news.gallup.com/poll/608903/ethics-ratings-nearly-professions-down.aspx> [<https://perma.cc/Z23F-PM22>].

²³ See MONMOUTH UNIV., NATIONAL: PUBLIC SUPPORTS BOTH EARLY VOTING AND REQUIRING PHOTO ID TO VOTE (2021), https://www.monmouth.edu/polling-institute/documents/monmouthpoll_us_062121.pdf [<https://perma.cc/VVG3-GWP6>].

appointed by both Democrat and Republican presidents,²⁴ and Republican-led investigations found no evidence of voter fraud.²⁵

Public dissatisfaction with lawyers and the judiciary, of course, is nothing new. If there is any wisdom to be drawn from the history lesson offered from the Warren speech, it is that calls for reform to lawyer and judicial ethics should transcend partisanship and politics. Former Duke Law School Dean David Levi, in a conversation with three United States Court of Appeals judges, Raymond Lohier, Jr. (Second Circuit), Jeffrey Sutton (Sixth Circuit), and Diane Wood (Seventh Circuit), observed: “From my point of view, the Court’s been under fairly continuous attack from conservatives at least since the 1970s, and it’s now under fairly continuous attack from progressives as well.”²⁶ Appointed by presidents from both parties, all of the judges agreed. As legal ethicist Geoff Hazard wrote in his seminal article, *The Future of Legal Ethics*, published by the *Yale Law Journal* nearly thirty-five years ago, “[d]issatisfaction with lawyers is a chronic grievance, and inspires periodic calls for reform.”²⁷ But he believed, however, that

contemporary problems of the American legal profession seem to run deeper than in the past. . . . There is much greater public consciousness of lawyers’ work, which is now the subject of regular coverage in newspapers, magazines, and television serials. Yet the public, and perhaps the profession itself, seem increasingly convinced that lawyers are simply a plague on society.²⁸

Hazard’s characterization of the public’s perception of the profession is even more true in 2025. He concluded: “Lawyers should have ‘better’ ethics.”²⁹ Judges should too. Legal ethics—what we call the rules of professional conduct for lawyers and judges—are essential to promoting and protecting public confidence in the rule of law and faith in government institutions like the courts. And yet, even with more rules

²⁴ See Rosalind S. Helderman & Elise Viebeck, “*The Last Wall*”: How Dozens of Judges Across the Political Spectrum Rejected Trump’s Efforts to Overturn the Election, WASH. POST (Dec. 12, 2020), https://www.washingtonpost.com/politics/judges-trump-election-lawsuits/2020/12/12/e3a57224-3a72-11eb-98c4-25dc9f4987e8_story.html [<https://perma.cc/47R2-QZLB>].

²⁵ See, e.g., Allan Smith, *Michigan Republicans Eviscerate Trump Voter Fraud Claims in Scathing Report*, NBC NEWS (June 23, 2021, 12:41 PM), <https://www.nbcnews.com/politics/elections/michigan-republicans-eviscerate-trump-voter-fraud-claims-scathing-report-n1272116> [<https://perma.cc/AS3V-DYSC>].

²⁶ Raymond J. Lohier Jr., Jeffrey S. Sutton, Diane P. Wood & David F. Levi, *Losing Faith: Why Public Distrust in the Judiciary Matters—and What Judges Can Do About It*, 106 JUDICATURE 70, 71 (2022).

²⁷ Geoffrey C. Hazard, Jr., *The Future of Legal Ethics*, 100 YALE L.J. 1239, 1239 (1991) (footnote omitted).

²⁸ *Id.* at 1239–40 (footnote omitted).

²⁹ *Id.* at 1240.

promulgated and enforcement increased, concerns over legal ethics have intensified—at least as measured by the number of lawyers working for presidents who end up indicted and the number of headlines critiquing the Supreme Court over financial disclosures, conflicts of interest, and recusals.

This article, written for the *Cardozo Law Review Symposium on Ethics in the Judiciary and the Legal Profession: Are We in Crisis?*, seeks to understand the limitations of past ethics reforms and suggests an agenda for the next era of ethics accountability in the judiciary and the legal profession. Part I of this Article examines the indictments of lawyers involved in the 2020 election litigation and the Supreme Court’s adoption of its first-ever ethics code in 2023 as case studies to demonstrate the challenges of ethics accountability and the concerns of politicization in the enforcement of ethics codes. Part II explores sources of ethics accountability, including disciplinary bodies, courts, legislators, journalists, and nonprofit advocacy organizations. Part III concludes by reflecting on the next era of ethics accountability and offering a preliminary agenda to move beyond politicization and bolster public confidence in the legal profession and the judiciary. Recommendations include a call for more law school-based ethics centers and institutes.

I. CASE STUDIES ON THE POLITICIZATION OF ETHICS ACCOUNTABILITY

Part I of this Article examines the indictments of lawyers involved in the 2020 presidential election litigation and the Supreme Court’s 2023 adoption of a code of conduct as case studies to demonstrate the challenges of ethics accountability and the concerns of politicization in the enforcement of ethics codes.

A. *Case Study #1: Lawyer Indictments, Sanctions, and Discipline in the 2020 Presidential Election Litigation*

More than a dozen lawyers faced civil liability, criminal penalties, disbarment, or other sanctions for their involvement in efforts to overturn the results of the 2020 presidential election. These efforts included litigation filed in courts across the country and, for some, active support of the January 6 protest/riot at the U.S. Capitol.³⁰ The threat to our democracy cannot be overstated. Judge Randolph Moss, writing for

³⁰ See discussion of Powell, Eastman, and others *infra* Section I.A.; see also Renee Knake Jefferson, *When Lawyers Protest*, forthcoming MICH. L. REV. (2026) (manuscript on file with author).

the U.S. District Court for the District of Columbia, called January 6 “a singular and chilling event in U.S. history, raising legitimate concern about the security—not only of the Capitol building—but of our democracy itself.”³¹ Of the broader efforts, Judge David Carter of the U.S. District Court for the Eastern District of California concluded that President Donald Trump and his lawyers “launched a campaign to overturn a democratic election, an action unprecedented in American history. Their campaign was not confined to the ivory tower—it was a coup in search of a legal theory.”³² In short, if the “plan had worked, it would have permanently ended the peaceful transition of power, undermining American democracy and the Constitution.”³³ Accordingly, these lawyers faced severe consequences in various forms.

Sanctions for lawyer misconduct may be levied directly by the judge in which the relevant matter is pending, or by a lawyer discipline authority in the jurisdiction where the lawyer is licensed to practice or the misconduct occurred. For example, in the election cases, some judges sanctioned lawyers directly. A Colorado federal district court judge was the first to do so. In early August 2021, Judge N. Reid Neureiter awarded attorneys’ fees to the lawyers defending against an election challenge, finding that the complaint was “one enormous conspiracy theory.”³⁴ A Michigan federal district court judge was the second to act, later that same month.³⁵ Judge Linda V. Parker fined several lawyers more than \$175,000, ruling that the litigation was a “historic and profound abuse of the judicial process.”³⁶ She also ordered the lawyers to take continuing legal education courses and referred them for discipline in the jurisdictions where they were licensed.³⁷ Parker found that these lawyers “scorned their oath, flouted the rules, and attempted to undermine the integrity of the judiciary along the way.”³⁸ For one of the lawyers involved, Sidney Powell, Michigan Attorney General Dana Nessel also joined with Michigan’s Governor Gretchen Whitmer and Secretary of State Jocelyn Benson,

³¹ *United States v. Burno Joseph CUA*, No. 21-107, 2021 WL 918255, at *3 (D.D.C. Mar. 10, 2021).

³² *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1198 (C.D. Cal. 2022).

³³ *Id.*

³⁴ *O’Rourke v. Dominion Voting Sys. Inc.*, 552 F. Supp. 3d 1168, 1175 (D. Colo. 2021), *modified on reconsideration*, No. 20-cv-03747, 2021 WL 3400671 (D. Colo. Oct. 5, 2021).

³⁵ See *King v. Whitmer*, 556 F. Supp. 3d 680, 688 (E.D. Mich. 2021).

³⁶ *Id.*

³⁷ See *id.* at 734–35.

³⁸ *Id.* at 689. The Supreme Court denied the lawyers’ appeal seeking to overturn sanctions imposed against them. See Press Release, Mich. Dep’t of Att’y Gen., SCOTUS Denies Rehearing Request by Attorneys Sanctioned for Meritless Election Lawsuit (Apr. 18, 2024), <https://www.michigan.gov/ag/news/press-releases/2024/04/18/scotus-denies-rehearing-request-by-attorneys-sanctioned-for-meritless-election-lawsuit> [https://perma.cc/9AAC-KQ49].

themselves attorneys, to request that the State Bar of Texas disbar Powell.³⁹

Powell was among the first, along with Rudy Giuliani and L. Lin Wood, to face sanctions and discipline.⁴⁰ Powell and Giuliani also were among the first to be criminally indicted.⁴¹ Both were also sued for defamation over their election fraud lies. Powell, for example, “falsely stated on television and in legal briefs that Dominion machines ran on technology that could switch votes away from Trump, technology she said had been invented in Venezuela to help steal elections for the late Hugo Chávez.”⁴² As a defense, she later argued “no reasonable person” would have believed her.⁴³ Giuliani was ordered to pay two Georgia election workers \$148 million after he falsely accused them of tampering with election results.⁴⁴ Wood falsely claimed that the election was stolen both at political rallies and in court filings, which eventually led him to become the subject of a Georgia Secretary of State voter fraud

³⁹ See Letter from Gretchen Whitmer, Governor of the State of Michigan, to the State Bar of Texas (Feb. 1, 2021), https://www.michigan.gov/documents/ag/Powell_atty_complaint_-_signed_714982_7.pdf [<https://perma.cc/JN2X-L7CY>]; Letter from Dana Nessel, Att’y Gen. of the State of Michigan, to the State Bar of Texas (Feb. 1, 2021), https://www.michigan.gov/documents/ag/Powell_atty_complaint_-_signed_714982_7.pdf [<https://perma.cc/7E7E-4UEH>]; Letter from Jocelyn Benson, Michigan Sec’y of State, to the State Bar of Texas (Feb. 1, 2021), https://www.michigan.gov/documents/ag/Powell_atty_complaint_-_signed_714982_7.pdf [<https://perma.cc/YWW3-BXC9>].

⁴⁰ See Rosalind S. Helderman, *Sidney Powell, L. Lin Wood Among Attorneys Ordered to Pay \$175,000 over Michigan ‘Kraken’ Suit*, WASH. POST (Dec. 2, 2021), https://www.washingtonpost.com/politics/sidney-powell-lin-wood-michigan-legal-fees/2021/12/02/a9e81e96-53bd-11ec-8769-2f4ecdf7a2ad_story.html [https://web.archive.org/web/20250424015040/https://www.washingtonpost.com/politics/sidney-powell-lin-wood-michigan-legal-fees/2021/12/02/a9e81e96-53bd-11ec-8769-2f4ecdf7a2ad_story.html]; Nicole Hong, William K. Rashbaum & Ben Protess, *Court Suspends Giuliani’s Law License, Citing Trump Election Lies*, N.Y. TIMES (June 24, 2021), <https://www.nytimes.com/2021/06/24/nyregion/giuliani-law-license-suspended-trump.html> [<https://perma.cc/UX6G-MALY>].

⁴¹ See Alison Durkee, *Giuliani, Powell, and Trump’s Other Attorneys Criminally Charged—After Years of Efforts to Punish Them for 2020 Election Roles*, FORBES (Aug. 16, 2023, 1:09 PM), <https://www.forbes.com/sites/alisondurkee/2023/08/16/giuliani-powell-and-trumps-other-attorneys-criminally-charged---after-years-of-efforts-to-punish-them-for-2020-election-roles> [<https://perma.cc/29ZG-3QGH>].

⁴² Tom McCarthy, *Pro-Trump Lawyer Says ‘No Reasonable Person’ Would Believe Her Election Lies*, GUARDIAN (Mar. 23, 2021, 11:51 AM), <https://www.theguardian.com/us-news/2021/mar/23/sidney-powell-trump-election-fraud-claims> [<https://perma.cc/W3EB-LHGT>].

⁴³ *Id.*

⁴⁴ See Brandon Drenon, *Georgia Election Workers Want Giuliani Watches and Mercedes Seized*, BBC NEWS (Aug. 30, 2024), <https://www.bbc.com/news/articles/cj4xz7e59zvo> [<https://perma.cc/Z75M-44JJ>].

investigation in 2021.⁴⁵ The Georgia State Bar instituted proceedings against Wood to suspend him from law practice because of the conspiracy theories he championed, but he chose to retire rather than face disbarment.⁴⁶ Rudy Giuliani claimed election fraud in press conferences and even in his opening statement during a court proceeding.⁴⁷ However, after questions from Pennsylvania U.S. District Judge Matthew W. Brann, Giuliani conceded that no fraud could be proven.⁴⁸ A New York State appellate court suspended his New York law license in 2021, finding “uncontroverted evidence” that he “communicated demonstrably false and misleading statements to courts, lawmakers and the public at large in his capacity as lawyer for former President Donald J. Trump and the Trump campaign in connection with Trump’s failed effort at reelection in 2020.”⁴⁹ He was ultimately disbarred in both New York and the District of Columbia in 2024.⁵⁰

These are just three of the more than a dozen lawyers who contributed in substantial ways to undermine valid presidential election results.⁵¹ Given the seriousness of their acts, and the number of lawyers involved, the legal profession has a responsibility to engage in self-reflection and assess whether the ethical structures foundational to lawyer regulation are functioning appropriately. Democracy was fundamentally undermined by the deception of lawyers. Cass Sunstein, a law professor

⁴⁵ See Andrea Salcedo, *Lin Wood Spent Months Falsely Claiming Voter Fraud Cost Trump the Election. Now Georgia Is Investigating Whether He Voted Illegally*, WASH. POST (Feb. 3, 2021), <https://www.washingtonpost.com/nation/2021/02/03/lin-wood-georgia-voter-fraud> [<https://web.archive.org/web/20211023061432/https://www.washingtonpost.com/nation/2021/02/03/lin-wood-georgia-voter-fraud>].

⁴⁶ See Adam Klasfeld, *Georgia State Bar Says There’s a Glaring Problem with Lin Wood’s Claim About How Mental Health Exam Request Went Public*, LAW & CRIME (May 12, 2021, 10:48 AM), <https://lawandcrime.com/2020-election/georgia-state-bar-says-theres-a-glaring-problem-with-lin-woods-claim-about-how-mental-health-exam-request-went-public> [<https://perma.cc/DBA6-EW7V>].

⁴⁷ See Jon Swaine & Aaron Schaffer, *Here’s What Happened When Rudolph Giuliani Made His First Appearance in Federal Court in Nearly Three Decades*, WASH. POST (Nov. 18, 2020, 11:05 AM), https://www.washingtonpost.com/politics/giuliani-pennsylvania-court-appearance/2020/11/18/ad7288dc-2941-11eb-92b7-6ef17b3fe3b4_story.html [https://web.archive.org/web/20230422225513/https://www.washingtonpost.com/politics/giuliani-pennsylvania-court-appearance/2020/11/18/ad7288dc-2941-11eb-92b7-6ef17b3fe3b4_story.html].

⁴⁸ See *id.*

⁴⁹ *In re Giuliani*, 146 N.Y.S.3d 266, 268 (App. Div. 2021).

⁵⁰ See Josh Gerstein & Kyle Cheney, *Rudy Giuliani Permanently Disbarred in Washington, DC*, POLITICO (Sept. 26, 2024, 11:26 AM), <https://www.politico.com/news/2024/09/26/rudy-giuliani-disbarred-washington-00181183> [<https://perma.cc/FMH2-DB3K>].

⁵¹ See Alison Durkee, *Giuliani Disbarred in D.C.: Here Are All the Other Ex-Trump Lawyers Now Facing Legal Consequences*, FORBES (Sept. 27, 2024, 9:23 AM), <https://www.forbes.com/sites/alisdurkee/2024/09/26/kenneth-chesebro-charged-in-wisconsin-here-are-all-the-former-trump-lawyers-now-facing-legal-consequences> [<https://perma.cc/JFS3-CGV2>].

who served in the Obama Administration as the head of the Office of Information and Regulatory Affairs, concluded that these lawyers “cut the legs out from under democratic processes, by making it difficult or impossible for citizens to know whom to trust.”⁵²

Some might say that the legal system functioned as it should, with the courts rejecting election challenges and sanctioning the lawyers involved. To be sure, the actions of many lawyers saved our constitutional democracy.⁵³ But the profession nonetheless has an obligation to examine whether the ethical structures governing lawyers and judges may have contributed to these abuses, and it should consider the efficacy of reforms to enhance ethics accountability, a topic taken up in Part III of this Article. Before doing so, it is important to understand what led to this lawyering crisis.

It might be tempting to dismiss these lawyers as not representative of the profession, to simply write them off as unqualified or unethical. But this would ignore the reality that until their involvement with President Trump’s 2020 election fraud efforts, these lawyers were generally respected in their fields, trained at elite institutions, and considered highly accomplished professionals, as discussed more fully below. To assess potential reforms, we must first understand more about the lawyers whose advocacy crossed the ethical boundaries into sanctionable conduct.

Who were these lawyers? Let’s start with Giuliani, Powell, and Wood, among the first to face consequences, and then we will briefly examine the backgrounds and election fraud involvement of all other lawyers who were indicted.⁵⁴

⁵² Cass R. Sunstein, *On the Wrongness of Lies* 9 (Harv. Pub. L. Working Paper No. 21-05, 2020), <https://ssrn.com/abstract=3594420>.

⁵³ See, e.g., Margaret Tarkington, *The Role of Attorney Speech and Advocacy in the Subversion and Protection of Constitutional Governance*, 69 WASH. U. J.L. & POL’Y 287, 288–89 (2022) (“[W]e likely owe the fact that we currently still live in a constitutional democracy to lawyers, including Attorney General Bill Barr; Acting Attorney General Jeff Rosen; the DOJ lawyers who threatened to resign en masse if Trump went through with his plan to try to install a new Attorney General who would keep him in power; attorney Christopher Krebs who, as the Director of the Cybersecurity and Infrastructure Security Agency in the United States, Department of Homeland Security, certified that it was a secure and safe election; the numerous lawyers who resigned rather than bring lawsuits that were frivolous or fraudulent; state and federal judges (including Republican and even Trump appointees) who heard and dismissed scores of election fraud cases (including the U.S. Supreme Court); and Mike Pence, who has a law license and chose to complete his constitutional duty as Vice President and count the certified electoral votes”); W. Bradley Wendel, *The Good Lawyers of January 6*, 46 CARDOZO L. REV. 2143 (2025).

⁵⁴ In addition to the indicted lawyers, many others have faced discipline or other consequences for their work on behalf of Donald Trump. These include Cleta Mitchell and Michael Cohen, also discussed in Part I, and others not included in this article. See, e.g., Michael Kruse, *The Final Lesson*

L. Lin Wood was the first to permanently lose his law license over involvement in the election fraud cases, retiring from the bar in 2023, as noted above, rather than facing the consequences of two Georgia disciplinary proceedings against him.⁵⁵ A graduate of Mercer University for both undergraduate and law, receiving his Juris Doctor in 1977, Wood often represented well-known clients in defamation matters after getting his start in personal injury cases.⁵⁶ Among his most notable clients, Wood represented a security guard who was falsely accused in the 1996 Atlanta Centennial Olympic Park bombing⁵⁷ as well as the family of JonBenét Ramsey after the young girl was murdered.⁵⁸ He also has represented politicians, including U.S. Representative Gary Condit (D-CA),⁵⁹ Republican presidential candidate Herman Cain,⁶⁰ and U.S.

Donald Trump Never Learned from Roy Cohn, POLITICO (Sept. 19, 2019), <https://www.politico.com/magazine/story/2019/09/19/roy-cohn-donald-trump-documentary-228144> [<https://perma.cc/W82H-SERB>] (noting Trump attorney Roy Cohen faced “three-year-plus disbarment proceedings based on accusations of ‘dishonesty, fraud, deceit and misrepresentation,’ stemming from four separate cases over the course of three decades—that he didn’t pay back a loan from a client until disbarment was underway, that he misappropriated escrowed property of a client, that he forged a signature on a client’s will, and that he lied on his application to the Washington, D.C., bar”); Katelyn Polantz, *First on CNN: Trump DOJ Official Cooperating with Justice Department’s Criminal Jan. 6 Probe*, CNN (July 28, 2022, 6:38 PM), <https://www.cnn.com/2022/07/28/politics/klukowski-justice/index.html> [<https://perma.cc/FMV6-5364>] (“Former Justice Department staffer Ken Klukowski, who worked with Jeffrey Clark at the agency, is cooperating in the DOJ’s January 6 criminal investigation, after investigators searched and copied his electronic records several weeks ago.”).

⁵⁵ See Anjali Huynh, *L. Lin Wood, Lawyer Who Tried to Overturn Trump’s 2020 Loss, Gives Up License*, N.Y. TIMES (July 6, 2023), <https://www.nytimes.com/2023/07/06/us/politics/lin-wood-trump-attorney.html> [<https://perma.cc/Q7XL-H6HQ>].

⁵⁶ See Rosie Manins, *Lin Wood Hit with \$4.5M Defamation Verdict in Fight with Former Colleagues*, ATL. J. CONST. (Aug. 16, 2024), <https://www.ajc.com/news/atlanta-news/lin-wood-hit-with-375m-defamation-verdict-in-fight-with-former-colleagues/T4VDFT5G5BE33EXDYPK BXFPQOU>.

⁵⁷ See Kevin Sack, *Atlanta Papers are Sued in Olympic Bombing Case*, N.Y. TIMES (Jan. 29, 1997), <https://www.nytimes.com/1997/01/29/us/atlanta-papers-are-sued-in-olympic-bombing-case.html> [<https://perma.cc/5YVG-AWW2>].

⁵⁸ See Rebecca Leung, *JonBenet: DNA Rules Out Parents*, CBS NEWS (Dec. 16, 2004, 3:44 PM), <https://www.cbsnews.com/news/jonbenet-dna-rules-out-parents> [<https://perma.cc/Z8AQ-D7A2>].

⁵⁹ See *Bryant’s Team up Against ‘Attorney for the Damned,’* CHI. TRIB. (Aug. 19, 2021, 10:07 PM), <https://www.chicagotribune.com/2004/09/28/bryants-team-up-against-attorney-for-the-damned> [<https://perma.cc/L6B2-PDQ8>].

⁶⁰ See Rachel Van Dongen, *Herman Cain’s Powerful Attorney: L. Lin Wood*, WASH. POST (Nov. 8, 2011), https://www.washingtonpost.com/blogs/election-2012/post/herman-cains-powerful-attorney-l-lin-wood/2011/11/08/gIQASVqS3M_blog.html [https://web.archive.org/web/20220815023036/https://www.washingtonpost.com/blogs/election-2012/post/herman-cains-powerful-attorney-l-lin-wood/2011/11/08/gIQASVqS3M_blog.html].

Representative Marjorie Taylor Greene (R-GA).⁶¹ Not only was Wood involved in the Michigan election fraud matter where he was sanctioned by Judge Parker, but he also filed litigation in Georgia that was dismissed. His conduct was described by Delaware Superior Court Judge Craig Karsnitz as “a toxic stew of mendacity, prevarication and surprising incompetence,” in denying Wood’s request for temporary admission in Delaware for matters unrelated to the election cases.⁶²

Rudy Giuliani was the second to permanently lose his license, disbarred in New York in late 2024 following a 2021 suspension. In addition to facing a defamation case brought by voting machine manufacturers Dominion Voting Systems and Smartmatic, he also was ordered to pay \$148 million to Georgia election workers whom he defamed, which resulted in Giuliani declaring bankruptcy.⁶³ Giuliani also is among several lawyers named as coconspirators in the federal indictment against Trump and indicted personally in both Georgia and Arizona.⁶⁴ Giuliani graduated with a J.D. from New York University in

⁶¹ See Jeremy W. Peters & Alan Feuer, *How Richard Jewell’s Lawyer Became a Pro-Trump Conspiracy Theorist*, N.Y. TIMES (Dec. 29, 2020), <https://www.nytimes.com/2020/12/29/us/politics/lin-wood-georgia-trump.html> [<https://perma.cc/47XN-FKJJ>].

⁶² *Page v. Oath Inc.*, No. S20C-07-030, 2021 WL 82383, at *2 (Del. Super. Ct. Jan. 11, 2021), *vacated*, 270 A.3d 833 (Del. 2022).

⁶³ See Alison Durkee, *\$150 Million and Counting: How Much Trump’s Attorneys Have Paid for Trying to Overturn the 2020 Election—As Giuliani Ordered to Post Bond*, FORBES (May 22, 2024, 11:53 AM), <https://www.forbes.com/sites/alisondurkee/2024/05/22/150-million-and-counting-how-much-trumps-attorneys-have-paid-for-trying-to-overturn-the-2020-election-as-giuliani-ordered-to-post-bond> [<https://perma.cc/47SA-ZB5T>].

⁶⁴ See Jacques Billeaud, *Charges Revealed Against a Former Trump Aide and 4 Lawyers in Arizona Fake Electors Case*, ASSOCIATED PRESS (Apr. 26, 2024, 4:48 PM), <https://apnews.com/article/arizona-fake-electors-charges-2020-election-indictment-747677165e1f1d34ac47e8a6fec2bace> [<https://web.archive.org/web/20250424020611/https://apnews.com/article/arizona-fake-electors-charges-2020-election-indictment-747677165e1f1d34ac47e8a6fec2bace>] (noting that “conspiracy, fraud and forgery charges had been filed against 11 Arizona Republicans,” including Rudy Giuliani, and nine other felony counts had been filed against John Eastman, Christina Bobb, Boris Epshteyn, and Jenna Ellis); Renee Jefferson, *Legal Ethics Roundup No. 2—Lawyer Co-Conspirators in a Presidential Indictment*, SCOTUS v. Congress on Ethics, ABA Stifles Ethics Innovation Op-Ed & More (08.07.23), LEGAL ETHICS ROUNDUP (Aug. 7, 2023), <https://legalethics.substack.com/p/legal-ethics-roundup-no-2-lawyer> [<https://web.archive.org/web/20250424021503/https://legalethics.substack.com/p/legal-ethics-roundup-no-2-lawyer>] (noting that five lawyers have been indicted by the U.S. government as coconspirators, including attorneys Rudy Giuliani, John Eastman, Sidney Powell, Jeffrey Clark, and Kenneth Chesebro); Renee Jefferson, *Legal Ethics Bonus Content No. 1—8 Lawyers Indicted* (08.17.23), LEGAL ETHICS ROUNDUP (Aug. 17, 2023), <https://legalethics.substack.com/p/legal-ethics-indictment-lawyers-georgia> [<https://web.archive.org/web/20250424020205/https://legalethics.substack.com/p/legal-ethics-indictment-lawyers-georgia>] (showing eight lawyers indicted in Georgia, including Rudy Giuliani, John Eastman, Kenneth Chesebro, Jeffrey Clark, Jenna Ellis, Ray Smith III, Robert Cheeley, and Sidney Powell); *Wisconsin Charges Three with Felonies in 2020 ‘Fake Electors’ Scheme*, WBAY (June 4, 2024, 3:29 PM), <https://www.wbay.com/2024/06/04/charges-filed-against->

1968⁶⁵ and clerked for Judge Lloyd Francis MacMahon in the U.S. District Court for the Southern District of New York before serving as a deputy to U.S. Attorney General Harold Tyler under President Gerald Ford from 1975 to 1977.⁶⁶ He followed Tyler to the firm Patterson, Belknap, Webb and Tyler from 1977 to 1981, at which point he was appointed an associate attorney general under President Ronald Reagan.⁶⁷ In 1983, he became the U.S. Attorney for the Southern District of New York until 1989.⁶⁸ He then worked at various New York City law firms before winning the 1993 mayoral race as the first Republican in twenty years to do so, ultimately serving two terms from 1994 to 2001.⁶⁹ His tenure is mostly known for the drop in crime rates across the city and his response to the attacks on 9/11, which earned him the Time Magazine Person of the Year award for 2001 and an honorary knighthood from Queen Elizabeth II.⁷⁰ He eventually joined the firm now known as Bracewell LLP as a name partner in 2005, with the firm operating as Bracewell & Giuliani at the time, until his departure in January 2016.⁷¹ He moved to Greenberg Traurig to serve as the global chairman for the firm's cybersecurity and crisis management group, eventually resigning in May 2018 to focus on representing President Trump in the Robert Mueller investigation into allegations of election interference in the 2016 presidential election.⁷² He was later put in charge of the lawsuits challenging the 2020 election results by President Trump.⁷³

Giuliani appealed his disbarment in New York. Among his defenses, he argued that the discipline was politically motivated and that lies regularly go unpunished by bar authorities. But Giuliani's claim that

three-people-2020-fake-electors-scheme [https://web.archive.org/web/20250424021748/https://www.wbay.com/2024/06/04/charges-filed-against-three-people-2020-fake-electors-scheme] (stating the Wisconsin Attorney General "ha[d] filed charges against three men" including attorneys Kenneth Chesebro and James Troupis).

⁶⁵ See *Rudy Giuliani*, BRITANNICA (May 30, 2025), <https://www.britannica.com/biography/Rudy-Giuliani> [https://perma.cc/4MK7-WL8K].

⁶⁶ See *Rudy Giuliani Fast Facts*, CNN (May 16, 2025, 2:11 PM), <https://www.cnn.com/2013/05/30/us/rudy-giuliani-fast-facts/index.html> [https://perma.cc/6884-XEKH].

⁶⁷ See *id.*; *Ronald Reagan*, WHITE HOUSE, <https://trumpwhitehouse.archives.gov/about-the-white-house/presidents/ronald-reagan> [https://perma.cc/59VP-Y4UF].

⁶⁸ See *Rudy Giuliani Fast Facts*, *supra* note 66.

⁶⁹ *Id.*

⁷⁰ See *id.*

⁷¹ See Andrew Schneider, *Ex-New York Mayor Rudolph Giuliani Leaves Bracewell Law Firm*, HOUS. PUB. MEDIA (Jan. 20, 2016, 5:16 PM), <https://www.houstonpublicmedia.org/articles/news/2016/01/20/134811/ex-new-york-mayor-rudolph-giuliani-leaves-bracewell-law-firm> [https://perma.cc/3SXX-M8XJ]; *Rudy Giuliani Fast Facts*, *supra* note 66.

⁷² See Schneider, *supra* note 71.

⁷³ See CNN, *supra* note 66.

lawyers are never disciplined for their lies is not entirely accurate.⁷⁴ For example, former president Bill Clinton lost his law license after committing perjury in the Paula Jones litigation.⁷⁵ (He surrendered it when official disbarment appeared inevitable.⁷⁶) John Mitchell, who served as Attorney General during the Nixon administration, was disbarred for his deception and served jail time.⁷⁷ After bringing false rape allegations against three Duke lacrosse players, North Carolina prosecutor Mike Nifong had his law license revoked.⁷⁸ Thus, while discipline for lies as a lawyer may be somewhat rare, it happens.

Unlike Wood and Giuliani, Sidney Powell kept her license even though she was subject to sanctions in federal district court and pled guilty in the Georgia criminal indictment. Powell was “the first member of Trump’s close advisers to admit to crimes related to the 2020 election.”⁷⁹ She cut a plea deal days before her trial was scheduled to begin in late 2023 and admitted to six misdemeanor counts of conspiracy to commit intentional interference with performance of election duties.⁸⁰ Judge McAfee asked her: “Are you pleading guilty today because you agree that there is a sufficient factual basis, that there are enough facts that support this plea of guilty?” “I do,” Powell said.⁸¹ She was sentenced to six years of probation and ordered to write Georgia citizens an apology letter.⁸² She had to pay a \$6,000 fine and restitution of \$2,700.⁸³ This was the first criminal sentence for Powell in the election fraud litigation, but

⁷⁴ See, e.g., Tom Goldstein, *New York Court Disbars Nixon for Watergate Acts*, N.Y. TIMES (July 9, 1976), <https://www.nytimes.com/1976/07/09/archives/new-york-court-disbars-nixon-for-watergate-acts-nixon-disbarred-by.html> [<https://web.archive.org/web/20250424020712/https://www.nytimes.com/1976/07/09/archives/new-york-court-disbars-nixon-for-watergate-acts-nixon-disbarred-by.html>].

⁷⁵ See Duncan Campbell, *Lewinsky Scandal Ends as Clinton Is Disbarred*, GUARDIAN (Oct. 1, 2001, 9:18 PM), <https://www.theguardian.com/world/2001/oct/02/duncancampbell> [<https://perma.cc/V9S3-7YTT>]; Goldstein, *supra* note 74.

⁷⁶ See Stephen Braun, *AP Fact Check: Trump Says Bill Clinton Lost Law License*, ASSOCIATED PRESS (Oct. 9, 2016, 9:54 PM), <https://apnews.com/article/08c9ddda95024ee4a778628f749e9f4d> [<https://web.archive.org/web/20250424020836/https://apnews.com/article/id-08c9ddda95024ee4a778628f749e9f4d>].

⁷⁷ See Kaplan, *supra* note 2.

⁷⁸ See *Comments of Disciplinary Panel’s Chairman*, N.Y. TIMES (June 17, 2007), <https://www.nytimes.com/2007/06/17/us/17duke-text.html> [<https://web.archive.org/web/20250424022601/https://www.nytimes.com/2007/06/17/us/17duke-text.html>].

⁷⁹ Josh Gerstein & Kyle Cheney, *Sidney Powell, Attorney Who Aided Trump’s Bid to Subvert Election, Pleads Guilty*, POLITICO (Oct. 19, 2023, 10:45 AM), <https://www.politico.com/news/2023/10/19/sidney-powell-attorney-who-aided-trumps-bid-to-subvert-election-pleads-guilty-00122444> [<https://perma.cc/2BH2-MRLN>].

⁸⁰ See *id.*

⁸¹ *Id.*

⁸² See *id.*

⁸³ See *id.*

of course not her first sanction, which, as discussed above, occurred in the Michigan case.⁸⁴

Powell attended the University of North Carolina at Chapel Hill for her undergraduate degree and J.D., which she graduated with in 1978 after enrolling at the age of 19.⁸⁵ In the decade after graduating, she worked for the U.S. Attorney's Office as an Assistant United States Attorney ("AUSA") in various districts, including the Eastern District of Virginia and the Western and Northern Districts of Texas, and was the youngest AUSA in the country when first appointed.⁸⁶ She served as the Appellate Section Chief for the Western District of Texas, and later for the Northern District of Texas.⁸⁷ In 1993, she opened her own law firm in Dallas, focusing on practice in federal courts, particularly appellate practice, including representation of former National Security Advisor Michael Flynn.⁸⁸ She is also the author of the book *Licensed to Lie: Exposing Corruption in the Department of Justice*, which in her words reveals "the strong-arm, illegal, and unethical tactics used by headline-grabbing federal prosecutors in their narcissistic pursuit of power to the highest halls of our government" based on her experience working for the Department of Justice.⁸⁹ Like Giuliani, Powell faced liability in the defamation case brought by Dominion Voting Systems and Smartmatic. The potential damages were significant. Dominion sought \$1.3 billion from both Giuliani and Powell, with Smartmatic claiming \$2.7 from Giuliani and while not specifying a damages amount against Powell claimed "her allegedly defamatory actions have cost the company at least \$1.2 million."⁹⁰ Powell settled with Dominion Voting Systems for an undisclosed amount,⁹¹ while the Smartmatic lawsuit remained pending in

⁸⁴ See *King v. Whitmer*, 556 F. Supp. 3d 680 (E.D. Mich. 2021).

⁸⁵ See Keith Kloor, *The #MAGA Lawyer Behind Michael Flynn's Scorched-Earth Legal Strategy*, POLITICO (Jan. 17, 2020, 5:09 AM), <https://www.politico.com/news/magazine/2020/01/17/maga-lawyer-behind-michael-flynn-legal-strategy-098712> [<https://perma.cc/TXB9-Q453>]; *Find a Lawyer: Ms. Sidney 'Sidney' Powell*, STATE BAR TEX. (June 23, 2024), https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=183136 [<https://perma.cc/4AKA-4XAZ>].

⁸⁶ See *Sidney Powell*, SIDNEY POWELL P.C., <https://www.federalappeals.com/sidney-powell> [<https://perma.cc/FU25-8GU8>]; *About the Author: Sidney Powell*, LICENSED TO LIE, <https://www.licensedtolie.com> [<https://perma.cc/543K-SYC7>].

⁸⁷ See *Sidney Powell*, *supra* note 86.

⁸⁸ See *About: Expertise*, SIDNEY POWELL P.C., <https://www.federalappeals.com/about-2> [<https://perma.cc/5ERN-4UYQ>]; Kloor, *supra* note 85.

⁸⁹ *Preview*, LICENSED TO LIE, <https://www.licensedtolie.com> [<https://perma.cc/543K-SYC7>].

⁹⁰ Durkee, *supra* note 63.

⁹¹ See Quinn Wilson, *Sidney Powell Settles Ex-Dominion Worker's Defamation Lawsuit*, BLOOMBERG L. (June 26, 2024, 8:16 PM), <https://news.bloomberglaw.com/litigation/sidney-powell-settles-ex-dominion-workers-defamation-lawsuit> [<https://perma.cc/R4SS-53LG>].

early 2025.⁹² Notwithstanding her admission of guilt in the Georgia indictment, along with receiving federal court sanctions similar to those imposed upon Wood and Giuliani, in 2024, the “attempt by the Texas State Bar to discipline Powell” over her “post-election efforts” was dismissed by a Texas court.⁹³

We will explore the different results in discipline for similar election fraud conduct further in Part II and Part III, in particular why some lawyers have already lost their law licenses, some may still, and others apparently will not. But first, consider the other lawyers who contributed to the election fraud crisis and found themselves named in the various indictments, either as coconspirators or directly indicted themselves. The federal indictment against Trump included six lawyers as coconspirators, though they have not yet been formally indicted. In addition to Giuliani and Powell, Kenneth Chesebro, Jeffrey Clark, and John Eastman were believed to have been named.⁹⁴ The Georgia indictment, again in addition to Chesebro, Clark, Eastman, Giuliani, and Powell, named lawyers Robert Cheeley, Jenna Ellis, and Ray Smith III.⁹⁵ The Arizona indictment included Eastman, Ellis, and Giuliani as well as lawyers Christina Bobb and Boris Epshteyn.⁹⁶ The Wisconsin indictment added yet another lawyer, James Troupis.⁹⁷ Each of their backgrounds is explored briefly below.

Kenneth Chesebro quickly followed Powell in pleading guilty to avoid trial in Georgia, becoming the second Trump lawyer in as many days to do so.⁹⁸ He was sentenced with three to five years of probation,

⁹² See *Smartmatic USA Corp. v. Powell* (1:21-cv-02995), CT. LISTENER, https://www.courtlistener.com/docket/60988251/smartmatic-usa-corp-v-powell/?filed_after=&filed_before=&entry_gte=&entry_lte=&order_by=desc [https://perma.cc/S3EQ-CZ8E].

⁹³ Durkee, *supra* note 51.

⁹⁴ See Alan Feuer, *The Indictment Says Trump Had Six Co-Conspirators in His Effort to Retain Power*, N.Y. TIMES (Aug. 3, 2023), <https://www.nytimes.com/2023/08/01/us/politics/trump-indictment-election-co-conspirators.html> [https://perma.cc/8VC6-R9MZ]; Indictment, United States v. Trump, No. 23-cr-257 (D.D.C. Aug. 1, 2023).

⁹⁵ See Indictment, State v. Trump, 23-SC-188947 (Fulton Cty. Ct. Aug. 14, 2023).

⁹⁶ See Zachary Cohen & Holmes Lybrand, *Meadows, Giuliani Among Indicted in Arizona in Latest 2020 Election Subversion Case*, CNN (Apr. 25, 2024, 7:58 AM), <https://www.cnn.com/2024/04/24/politics/arizona-criminal-charges-2020-election-subversion/index.html> [https://perma.cc/7YY6-JAS3]; Indictment, State v. Ward, No. CR2024-006850 (Maricopa Cty. Super. Ct. Apr. 25, 2024).

⁹⁷ See Rich Kremer & Anya Van Wagtendonk, *Jim Troupis, Other Trump Associates Appear in Court on Felony False Elector Charges*, WIS. PUB. RADIO (Dec. 13, 2024, 9:06 AM), <https://www.wpr.org/news/jim-troupis-trump-associates-appear-court-felony-false-elector-charges> [https://perma.cc/6MS6-UDNV]; Criminal Complaint, State v. Chesebro, No. 2024CF001293 (Dane Cty. Cir. Ct. June 4, 2024).

⁹⁸ See Holly Bailey & Amy Gardner, *Trump Co-Defendant Kenneth Chesebro Pleads Guilty in Georgia Election Case*, WASH. POST (Oct. 20, 2023), <https://www.washingtonpost.com/national-security/2023/10/20/chesebro-guilty-plea-trump-georgia> [https://perma.cc/V246-JM2W].

100 hours of community service, a \$5,000 fine, and a required apology letter as well.⁹⁹ In 2025, he was disbarred in New York.¹⁰⁰ His involvement in the election fraud litigation surprised those who knew him in the early years of his legal career. Chesebro attended Northwestern University, graduating in 1983 before earning his J.D. from Harvard Law School.¹⁰¹ At Harvard, he served as a research assistant for Professor Laurence Tribe, along with his classmate U.S. Supreme Court Justice Elana Kagan.¹⁰² After a clerkship for U.S. District Judge Gerhard Gesell in Washington, D.C., Chesebro returned to Cambridge, opened a law firm, and worked with Professor Tribe as well as his research assistants, including then-student Barack Obama.¹⁰³ Their work included matters like the *Bush v. Gore* case.¹⁰⁴ In October 2022, he was hired by the personal injury firm Napoli Shkolnik to lead their Law & Motions Department, and was subsequently let go following the filing of criminal charges against him in connection with the 2020 presidential election.¹⁰⁵ Professor Tribe has expressly disavowed his work:

My own conclusion is that all of this, the indictment included, reveals that from at least mid-November 2020, Chesebro had contrived a scheme (later adapted by [John] Eastman), which included misusing the very parts of my treatise that Chesebro had helped me with as a research assistant . . . thereby casting me falsely as a supporter of a ludicrous reading of the Constitution that Chesebro and Eastman both apparently sought to normalize so that it would make it easier for Trump to get away with circumventing the [Electoral Count] Act.¹⁰⁶

⁹⁹ See Justin Stabley & Kenichi Serino, *What You Need to Know About Kenneth Chesebro's 2020 Election Charges*, PBS NEWS (Oct. 20, 2023, 3:22 PM), <https://www.pbs.org/newshour/politics/what-you-need-to-know-about-kenneth-chesebros-2020-election-charges> [<https://perma.cc/7HJH-EDBB>].

¹⁰⁰ See Tim Balk, *Lawyer Who Pushed Bogus Trump Elector Scheme Is Disbarred in New York*, N.Y. TIMES (June 26, 2025), <https://www.nytimes.com/2025/06/26/us/politics/kenneth-chesebro-disbarred-trump.html> [<https://perma.cc/GLY5-YDZM>].

¹⁰¹ See Jeffrey Toobin, *Legal Weasel*, AIR MAIL (Aug. 12, 2023), <https://airmail.news/issues/2023-8-12/legal-weasel> [<https://perma.cc/5JVN-6R7N>].

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ See *id.*

¹⁰⁵ See Isaac Stanley-Becker, *The 'Brains' Behind Fake Trump Electors Was Once a Liberal Democrat*, WASH. POST (Aug. 16, 2023), <https://www.washingtonpost.com/national-security/2023/08/16/kenneth-chesebro-trump-indictment-fake-electors> [<https://perma.cc/FC4D-9JFD>].

¹⁰⁶ Laurence H. Tribe, *Anatomy of a Fraud: Kenneth Chesebro's Misrepresentation of My Scholarship in His Efforts to Overturn the 2020 Presidential Election*, JUST SECURITY (Aug. 8, 2023), <https://www.justsecurity.org/87498/kenneth-chesebros-misrepresentation-of-laurence-tribe-scholarship-in-his-efforts-to-overturn-the-2020-presidential-election> [<https://perma.cc/Y5XD-U3NH>].

John Eastman not only was indicted in both Georgia and Arizona, but the California State Bar filed eleven charges against him.¹⁰⁷ And, after a trial that lasted several months, he was sanctioned \$10,000, his law license was suspended, and he was referred for permanent disbarment,¹⁰⁸ which was affirmed by a review court in 2025.¹⁰⁹ Eastman earned a B.A. in politics and economics from the University of Dallas in 1982, an M.A. and Ph.D. in government from Claremont University in 1993, and a J.D. from the University of Chicago in 1995.¹¹⁰ He clerked for Judge J. Michael Luttig on the Fourth Circuit immediately after graduation, then clerked for U.S. Supreme Court Justice Clarence Thomas from 1996 to 1997.¹¹¹ Eastman worked at Kirkland & Ellis LLP from 1997 to 1999 before becoming a law professor at Chapman University School of Law in Orange, California, and eventually the law school's dean from 2007 to 2010.¹¹² Eastman left Chapman to run for the Republican nomination in the 2010 California Attorney General race, ultimately coming in second place behind Los Angeles County District Attorney Steve Cooley, who would in turn go on to lose to former Vice President Kamala Harris.¹¹³ Much as Chesebro's actions were critiqued by his mentor, Professor Tribe, Eastman also found his own former mentor, Judge Luttig, discrediting his work, calling Eastman's legal analysis "incorrect at every turn."¹¹⁴

¹⁰⁷ See Press Release, State Bar of Cal., Attorney John Eastman Charged with Multiple Disciplinary Counts by the State Bar of California (Jan. 26, 2023), <https://www.calbar.ca.gov/About-Us/News/News-Releases/attorney-john-eastman-charged-with-multiple-disciplinary-counts-by-the-state-bar-of-california> [https://perma.cc/54KQ-F5FW].

¹⁰⁸ See Durkee, *supra* note 51.

¹⁰⁹ See Kyle Cheney, *California Court Upholds John Eastman's Disbarment for Role in Trump 2020 Plot*, POLITICO (June 17, 2025), <https://www.politico.com/news/2025/06/17/california-court-john-eastman-disbarment-00411266> [https://perma.cc/NM4R-TS6N].

¹¹⁰ See *John C. Eastman*, CLAREMONT INST., <https://www.claremont.org/bio/john-c-eastman> [https://perma.cc/MF28-TW77]; Andrew Buncombe, *Who Is 'Coup Memo' Author John Eastman and What Role Did He Play in Pushing Trump's Plan to Derail Democracy?*, YAHOO NEWS (June 16, 2022, 9:50 PM), <https://news.yahoo.com/coup-memo-author-john-eastman-215019360.html> [https://perma.cc/RVR2-DNNU].

¹¹¹ See *John C. Eastman*, *supra* note 110.

¹¹² See *id.*; Susan Valot, *Chapman Law School Dean Resigns to Run for State Attorney General*, LAIST (Jan. 28, 2010, 6:03 PM), <https://laist.com/news/kpcc-archive/chapman-dean> [https://perma.cc/2CCH-2BT8].

¹¹³ See CAL SEC'Y OF STATE, STATEMENT OF VOTE: JUNE 8, 2010, STATEWIDE DIRECT PRIMARY ELECTION 21 (2010), <https://elections.cdn.sos.ca.gov/sov/2010-primary/pdf2010-complete-sov.pdf> [https://perma.cc/M3KB-NMAR]; CAL SEC'Y OF STATE, STATEMENT OF VOTE: NOVEMBER 2, 2010, GENERAL ELECTION 8 (2010), <https://elections.cdn.sos.ca.gov/sov/2010-general/complete-sov.pdf> [https://perma.cc/J827-4SVX].

¹¹⁴ Rachel Treisman, *A Respected Conservative Judge is Now a Critic of His Party—And Former Clerks*, NPR (June 16, 2022, 4:29 PM), <https://www.npr.org/2022/06/16/1105607895/judge-michael-luttig-john-eastman-jan-6> [https://perma.cc/95V4-9E26].

Jeffrey Clark's career includes government and private practice experience. He received an A.B. in economics and Russian history from Harvard University in 1989, an M.A. in urban affairs from the University of Delaware in 1993, and a J.D. from Georgetown in 1995.¹¹⁵ Following graduation, he clerked for Judge Danny Boggs on the Sixth Circuit Court of Appeals before working for Kirkland & Ellis LLP from 1996 to 2001.¹¹⁶ In 2001, Clark was appointed as the Deputy Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice ("DOJ"), a role he held until 2005, at which point he returned to Kirkland & Ellis.¹¹⁷ He remained with the firm until October 2018, when the Senate confirmed him to become the U.S. Assistant Attorney General for the Environment and Natural Resources Division of the DOJ.¹¹⁸ In September 2020, he was named the acting head of the Civil Division at the DOJ, in addition to the Environment and Natural Resources position.¹¹⁹ He resigned from the DOJ in early 2021, and later that summer was named the Chief of Litigation and Director of Strategy for the New Civil Liberties Alliance.¹²⁰ He then became a Senior Fellow and the Director of Litigation at the Center for Renewing America, a nonprofit that focuses on championing "God, country, and community."¹²¹ A D.C. ethics committee recommended that Clark's law license be suspended for two years after a disciplinary hearing in 2024.¹²²

¹¹⁵ See *Jeff Clark*, CTR. FOR RENEWING AM., <https://americarenewing.com/team/jeff-clark> [<https://web.archive.org/web/20250214100445/https://americarenewing.com/team/jeff-clark>].

¹¹⁶ See *President Donald J. Trump Announces Key Additions to His Administration*, WHITE HOUSE (June 6, 2017), <https://trumpwhitehouse.archives.gov/presidential-actions/president-donald-j-trump-announces-key-additions-administration> [<https://perma.cc/F2PE-53J5>]; Katie Benner & Charlie Savage, *Jeffrey Clark Was Considered Unassuming. Then He Plotted With Trump*, N.Y. TIMES (Oct. 13, 2022), <https://www.nytimes.com/2021/01/24/us/politics/jeffrey-clark-trump-election.html> [<https://perma.cc/58AG-SHJP>].

¹¹⁷ See *President Donald J. Trump Announces Key Additions to His Administration*, *supra* note 116.

¹¹⁸ See *id.*; Timothy Cama, *Senate Confirms Climate Skeptic to Head DOJ Environment Office*, HILL (Oct. 11, 2018, 1:33 PM), <https://thehill.com/policy/energy-environment/410993-senate-confirms-climate-skeptic-to-head-doj-environment-office> [<https://perma.cc/3DNZ-K68P>].

¹¹⁹ See Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. TIMES (Oct. 13, 2022), <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html> [<https://perma.cc/QL9K-KGYU>].

¹²⁰ See Pamela King, *Ex-DOJ Enviro Chief Joins Firm to Fight 'Federal Leviathan'*, POLITICO: E&E NEWS (July 22, 2021, 1:47 PM), <https://www.eenews.net/articles/ex-doj-enviro-chief-joins-firm-to-fight-federal-leviathan> [<https://perma.cc/9YJZ-X445>].

¹²¹ *Who We Are*, CTR. FOR RENEWING AM., <https://americarenewing.com/about> [<https://perma.cc/P5LN-G6Y4>]; *Jeffrey Bossert Clark*, LINKEDIN, <https://www.linkedin.com/in/jeffreymbossertclark> [<https://perma.cc/BAN6-L5EJ>].

¹²² See Kyle Cheney, *Key Trump Ally in 2020 Should Lose Law License for Two Years, DC Disciplinary Panel Rules*, POLITICO (Aug. 1, 2024, 3:59 PM), <https://www.politico.com/news/2024/08/01/jeffrey-clark-law-license-suspension-00172320> [<https://perma.cc/J7K6-6YXX>].

In early 2025, his name was floated for appointment by President Donald Trump as head of the White House Office of Information and Regulatory Affairs.¹²³

Boris Epshteyn was born in Moscow in the former Soviet Union and emigrated with his family to the United States in 1993 at age 11, growing up in New Jersey.¹²⁴ He attended Georgetown University for both undergraduate studies, earning a B.S. in Foreign Service in 2004, and for law school, graduating with his J.D. in 2007.¹²⁵ He is licensed to practice in New York.¹²⁶ As a student, Epshteyn met and befriended Eric Trump, who also attended Georgetown at that time.¹²⁷ Following graduation, Epshteyn worked at the law firm of Milbank LLP for almost three years before becoming a communications aide on the McCain-Palin campaign.¹²⁸ In 2009, he was named Vice President for Legal Affairs at the investment bank West America Securities, holding that position until 2013 when the corporation was expelled by the Financial Industry Regulatory Authority.¹²⁹ He began working with the Trump campaign in 2016, often commenting in the media, and joined the White House communication team for a few months during 2017.¹³⁰ Epshteyn's indictment in Arizona is not his first encounter with the criminal justice system: In 2014, he had a misdemeanor assault charge that was dropped after he agreed to undergo anger management counseling and perform community service, and then in 2021 he pled guilty to disorderly conduct,

¹²³ See Robin Bravender, *Trump to Name Embattled Ex-Enviro Lawyer for Top Regs Job*, POLITICO: E&E NEWS (Feb. 26, 2025, 6:26 PM), <https://www.eenews.net/articles/trump-to-name-embattled-ex-enviro-lawyer-for-top-regs-job> [<https://web.archive.org/web/20250313183017/https://www.eenews.net/articles/trump-to-name-embattled-ex-enviro-lawyer-for-top-regs-job>].

¹²⁴ See Meridith McGraw, *Boris Epshteyn Rises in Trump Land*, POLITICO (Oct. 18, 2022, 4:30 AM), <https://www.politico.com/news/2022/10/18/boris-epshteyn-trump-bannon-inner-circle-00062222> [<https://web.archive.org/web/20250417083332/https://www.politico.com/news/2022/10/18/boris-epshteyn-trump-bannon-inner-circle-00062222>]; Barry Meier & Susanne Craig, *The Obscure Lawyer Who Became Donald Trump's TV Attack Dog*, N.Y. TIMES (Oct. 13, 2016), https://www.nytimes.com/2016/10/14/us/politics/boris-epshteyn-trump.html?_r=0 [https://web.archive.org/web/20240807190109/https://www.nytimes.com/2016/10/14/us/politics/boris-epshteyn-trump.html?_r=0].

¹²⁵ See Maggie Haberman, Alan Feuer & Jesse McKinley, *He Helps Trump Navigate Legal Peril While Under Scrutiny Himself*, N.Y. TIMES (Mar. 14, 2023), <https://www.nytimes.com/2023/03/14/us/politics/boris-epshteyn-trump-lawyer.html> [<https://web.archive.org/web/20240416183003/https://www.nytimes.com/2023/03/14/us/politics/boris-epshteyn-trump-lawyer.html>].

¹²⁶ See Maggie Haberman & Jonathan Swan, *The Trump Lawyer Who Wields Outsize Influence on the Next White House*, N.Y. TIMES (Nov. 15, 2024), <https://www.nytimes.com/2024/11/15/us/politics/boris-epshteyn-trump.html> [<https://perma.cc/5QUQ-JWZS>].

¹²⁷ See McGraw, *supra* note 124.

¹²⁸ See *id.*

¹²⁹ See Meier & Craig, *supra* note 124.

¹³⁰ See McGraw, *supra* note 124.

and his sentence included paying a fine and serving probation.¹³¹ He does not appear to have faced any disciplinary action related to the misdemeanor or disorderly conduct charges.¹³² In early 2025, Epshteyn was serving as one of Trump's top advisors and lobbying for a role as "special envoy for the Russia-Ukraine conflict."¹³³

As of mid-2025, Jenna Ellis was the only lawyer to accept plea deals in both the Arizona and Georgia cases.¹³⁴ The Colorado Bar suspended her from practicing law for three years after she entered her guilty plea in Georgia, following a prior censure "for violating rules that bar attorneys from engaging in 'dishonesty, fraud, deceit, or misrepresentation,'" where she admitted making "'misrepresentations' while representing Trump after the election that had a selfish motive."¹³⁵ Ellis received her J.D. from the University of Richmond School of Law and became a Deputy District Attorney in Weld County, Colorado, for approximately six months, at which time she was fired for "mistakes."¹³⁶ She subsequently went into private practice and taught political science and prelaw courses at the Colorado Christian University from 2015 to 2018.¹³⁷ In November 2019, Ellis was hired as a senior legal advisor for President Trump's 2020 campaign and later became part of the team challenging the November 2020 presidential election results.¹³⁸

Other indicted lawyers include Robert "Bob" David Cheeley, who attended the University of Georgia for his undergraduate and law school degrees.¹³⁹ He eventually formed Cheeley Law Group, LLC, a firm specializing in high-stakes litigation such as catastrophic injury and wrongful death claims, as well as representing small businesses.¹⁴⁰ Leading up to the 2020 election, Cheeley shifted away from primarily a

¹³¹ See Haberman, Feuer & McKinley, *supra* note 125.

¹³² See *Attorney Online Services—Search*, N.Y. STATE UNIFIED CT. SYS., <https://iapps.courts.state.ny.us/attorneyservices/search?1> [<https://perma.cc/858S-8LXV>].

¹³³ Haberman & Swan, *supra* note 126.

¹³⁴ See Durkee, *supra* note 51.

¹³⁵ *Id.*; see also Jesse Paul, *Jenna Ellis, President Trump's Lawyer, Was Fired from Weld County DA's Office for "Mistakes," Records Show*, COLO. SUN (Oct. 30, 2022, 9:13 AM), <https://coloradosun.com/2020/12/15/jenna-ellis-weld-county-district-attorneys-office> [<https://perma.cc/8WUM-84UW>].

¹³⁶ Paul, *supra* note 135.

¹³⁷ See Jeremy W. Peters & Alan Feuer, *How Is Trump's Lawyer Jenna Ellis 'Elite Strike Force' Material?*, N.Y. TIMES (Dec. 3, 2020), <https://www.nytimes.com/2020/12/03/us/politics/jenna-ellis-trump.html> [<https://perma.cc/L9C6-9ZQD>].

¹³⁸ See *id.*

¹³⁹ See *Episode 163: Bob Cheeley | Richards v. U.S. Xpress | \$15 million verdict*, GREAT TRIALS PODCAST (May 23, 2023), <https://www.greattrialspodcast.com/podcast/episode-163-bob-cheeley-richards-v-us-xpress-15-million-verdict> [<https://perma.cc/29ZY-NZSR>].

¹⁴⁰ See *About Us*, CHEELEY L. GROUP, <https://cheeleylawgroup.com/about> [<https://perma.cc/ZLZ3-5Y8C>].

personal injury practice into more political legal work, including representing one of the so-called “fake electors” from Georgia.¹⁴¹

Ray Smith III also is a Georgia lawyer.¹⁴² He received a B.A. in political science and speech communications from the University of North Carolina at Chapel Hill in 1983 before earning a J.D. from Mercer University in 1987.¹⁴³ He is currently a partner at the firm Smith & Liss, LLC in Atlanta, where he is the head of the firm’s litigation department.¹⁴⁴ He has previously served in a variety of local council and board positions, including as a special assistant to the Attorney General of the State of Georgia¹⁴⁵ and as a member of the Fulton County Board of Elections and Registration.¹⁴⁶

Christina Bobb was indicted in Arizona, having previously avoided being named in the federal or Georgia indictments. She joined Trump’s legal team in 2020 and, at the time of her indictment, was serving as the attorney for the Republican National Committee. Bobb attended Arizona State University, earned a J.D. from California Western School of Law and was admitted to the California State Bar in 2008, followed by an L.L.M. in national security law from Georgetown.¹⁴⁷ She became a Judge Advocate General in the U.S. Marine Corps in 2010, serving in various roles until 2012—including as an operational law attorney in Afghanistan.¹⁴⁸ Following her military service, she worked as a civil litigation attorney at Higgs, Fletcher, & Mack LLP in San Diego, then became an executive secretary at the Department of Homeland Security, and later the Executive Director of Policy for Customs and Border

¹⁴¹ See Danny Hakim & Richard Fausset, *Little-Known Lawyer, a Trump Ally, Draws Scrutiny in Georgia*, N.Y. TIMES (Mar. 12, 2023), <https://www.nytimes.com/2023/03/12/us/trump-georgia-lawyer-robert-cheeley.html> [<https://perma.cc/PP78-UZ9R>]; Robert Cheeley, NAT’L TRIAL LAWS., <https://thenationaltriallawyers.org/members/robert-cheeley> [<https://perma.cc/Y85Y-9S4M>].

¹⁴² See *Mr. Ray Stallings Smith, III*, MARTINDALE, <https://www.martindale.com/attorney/mr-ray-stallings-smith-iii-868276> [<https://perma.cc/C5CL-G86H>].

¹⁴³ See *id.*

¹⁴⁴ See *id.*; see also Ray S. Smith, III, SMITH & LISS, LLC, <https://www.smithliss.com/lawyers/ray-smith.html> [<https://perma.cc/3EVX-X4AT>].

¹⁴⁵ See Ray S. Smith, III, *supra* note 144.

¹⁴⁶ See *id.*

¹⁴⁷ See Christina Bobb, U.S. DEP’T HOMELAND SEC. (Aug. 7, 2024), <https://www.dhs.gov/archive/person/christina-bobb> [<https://perma.cc/6MPS-H9HR>].

¹⁴⁸ See Glenn Thrush, Maggie Haberman & Michael S. Schmidt, *She Went Out on a Limb for Trump. Now She’s Under Justice Dept. Scrutiny.*, N.Y. TIMES (Oct. 11, 2022), <https://www.nytimes.com/2022/10/11/us/politics/christina-bobb-trump-lawyer-investigation.html> [<https://perma.cc/B2D8-P6H3>].

Patrol.¹⁴⁹ In June 2020, Bobb was hired by One American News Network, eventually anchoring her own show.¹⁵⁰ She left the network in March 2022 to work for the Save America PAC.¹⁵¹ She also wrote a book, *Stealing Your Vote: The Inside Story of the 2020 Election and What It Means for 2024*.¹⁵²

The last lawyer to be indicted in 2024 was James Troupis, as part of charges brought in Wisconsin, for his involvement in efforts seeking to overturn the 2020 presidential election results. Troupis received his law degree from Northwestern University,¹⁵³ and served as a law clerk on the Illinois Supreme Court before working as a general practitioner in Illinois.¹⁵⁴ He joined Michael Best & Friedrich LLP in 1987 and then, in 2010, he started his own Wisconsin-based law firm that specialized in intellectual property and constitutional law.¹⁵⁵ He was appointed to the Dane County Circuit Court bench in 2015 and resigned in May 2016 to return to private practice.¹⁵⁶ He has represented the Republican Party in Wisconsin on a variety of matters, including redistricting litigation.¹⁵⁷ He was appointed in 2020 to the Wisconsin Judicial Conduct Advisory Committee, which provides opinions and advice to judicial officers and judges in relation to the state's code of judicial conduct. But he was suspended in June 2024 following his indictment.¹⁵⁸

¹⁴⁹ See *id.*; Tami Abdollah, *How Trump Lawyer Christina Bobb, an Ex-OAN Host, Took Spotlight in Mar-a-Lago Case*, USA TODAY (Aug. 31, 2022, 12:57 PM), <https://www.usatoday.com/story/news/2022/08/31/trump-mar-lago-document-investigation-christina-bobb/7879225001/?gnt-cfr=1>.

¹⁵⁰ See Sophia Ankel, *Meet Christina Bobb—Former OAN Presenter, 2020 Election Denier, and Trump's Latest Attorney to Face Legal Trouble*, BUS. INSIDER (Sept. 10, 2022, 4:05 AM), <https://www.businessinsider.com/christina-bobb-profile-trump-lawyer-former-oan-presenter-2022-9> [<https://web.archive.org/web/20220930125058/https://www.businessinsider.com/christina-bobb-profile-trump-lawyer-former-oan-presenter-2022-9>]; Abdollah, *supra* note 149.

¹⁵¹ See Ankel, *supra* note 150; Thrush, Haberman & Schmidt, *supra* note 148.

¹⁵² See Michael Scherer, Josh Dawsey & Marianne LeVine, *Trump Takes Control of the RNC with Mass Layoffs, Restructuring*, WASH. POST (Mar. 12, 2024, 6:16 PM), <https://www.washingtonpost.com/politics/2024/03/12/rnc-trump-firings-takeover> [<https://web.archive.org/web/20240717211508/https://www.washingtonpost.com/politics/2024/03/12/rnc-trump-firings-takeover>].

¹⁵³ See *James (Jim) R. Troupis*, LAW FORWARD, <https://www.lawforward.org/james-troupis> [<https://perma.cc/88UE-QD4Z>].

¹⁵⁴ See Scott Walker, *Governor Scott Walker Announces Several Appointments*, URB. MILWAUKEE (May 22, 2015, 5:10 PM), <https://urbanmilwaukee.com/pressrelease/governor-scott-walker-announces-several-appointments> [<https://perma.cc/GW27-T8U6>].

¹⁵⁵ See *id.*

¹⁵⁶ See *James (Jim) R. Troupis*, *supra* note 153.

¹⁵⁷ See *Prosser v. Elections Bd.*, 793 F. Supp. 859, 861 (W.D. Wis. 1992).

¹⁵⁸ See Scott Bauer, *Former Trump Attorney in Wisconsin Suspended from State Judicial Ethics Panel*, AP NEWS (June 11, 2024, 4:38 PM), <https://apnews.com/article/wisconsin-donald-trump->

Some lawyers involved in the election fraud have escaped civil or criminal actions but still face discipline in the jurisdictions where they are licensed to practice. Cleta Mitchell, once a Democrat, was heavily involved in the election fraud scheme.¹⁵⁹ She helped recruit Eastman and participated in the phone call to Georgia's Secretary of State when Trump sought to change the outcome of the election in that state.¹⁶⁰ She graduated from the University of Oklahoma with a B.A. in 1973 and attended the school's law school, graduating from it in 1976.¹⁶¹ In 1976, Mitchell was elected to the Oklahoma legislature for the first of her four terms, where she developed a reputation for supporting women's rights and progressive education policies.¹⁶² She chaired the house appropriations and budget committee, the first woman to hold that position in any state legislature, and was a leading figure in support of the Equal Rights Amendment.¹⁶³ Following a failed bid for lieutenant governor of Oklahoma, Mitchell worked in private practice in Oklahoma before moving to Washington D.C. to serve as the executive director and general counsel for the Term Limits Legal Institute.¹⁶⁴ In 2001, she joined Foley & Lardner LLP.¹⁶⁵ She represented a range of Republican political candidates and conservative organizations like the National Rifle Association.¹⁶⁶ Mitchell resigned from Foley & Lardner shortly after the news of the Georgia Secretary of State call became public, having come under pressure from the firm over her involvement with Trump.¹⁶⁷ She now serves in various advisory and legal roles for conservative

jim-troupis-fake-electoral-da8b6c5ba4eb29667fb59f1917f0b22c[<https://web.archive.org/web/20241212055025/https://apnews.com/article/wisconsin-donald-trump-jim-troupis-fake-electoral-da8b6c5ba4eb29667fb59f1917f0b22c>].

¹⁵⁹ See Kira Lerner, *She Was a Firebrand Democrat. Now, Cleta Mitchell is a Rising Star of Republican Election Denialism*, GUARDIAN (July 2, 2024, 6:00 AM), <https://www.theguardian.com/us-news/ng-interactive/2024/jul/02/cleta-mitchell-republican-election-denial> [https://perma.cc/6AC6-CX4S].

¹⁶⁰ See Alexandra Berzon, *Lawyer Who Plotted to Overturn Trump Loss Recruits Election Deniers to Watch Over the Vote*, N.Y. TIMES (May 30, 2022, 9:51 AM), <https://www.nytimes.com/2022/05/30/us/politics/republican-poll-monitors-election-activists.html> [https://perma.cc/EE3A-6PSW].

¹⁶¹ See Lerner, *supra* note 159.

¹⁶² See *id.*

¹⁶³ See *id.*

¹⁶⁴ See *id.*

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*

¹⁶⁷ See Durkee, *supra* note 51.

organizations, and also hosts a weekly podcast called “Who’s Counting?” that discusses topics relating to election integrity.¹⁶⁸

How did this cohort of accomplished lawyers, most with no prior history of ethics issues or discipline, end up facing criminal charges for their work in the election challenges? While not included among the indicted lawyers, another former Trump attorney has spoken at length offering some insights into how the others likely found themselves in this dilemma.¹⁶⁹ Michael Cohen was born and raised on Long Island, New York, and he graduated from American University in 1988 and then Cooley Law School in 1991.¹⁷⁰ A former personal injury attorney, Cohen began working for President Trump in 2006, eventually serving as the executive vice president and special counsel of the Trump Organization.¹⁷¹ Cohen is perhaps most notorious for being President Trump’s “fixer,” resolving various issues for the president—maybe none more widely-known than his payment to an adult film star for the purpose of keeping her alleged affair with Trump secret.¹⁷² In 2018, Cohen was disbarred after pleading guilty to eight felonies, including campaign finance violations as well as tax and bank fraud.¹⁷³ Here is an excerpt from the statement he read at his sentencing, which sheds light on his mindset and, perhaps, that of the other lawyers profiled above:

I have been living in a personal and mental incarceration ever since the fateful day that I accepted the offer to work for a famous real estate mogul whose business acumen I truly admired. In fact, I now know that there is little to be admired. I want to be clear. I blame myself for the conduct which has brought me here today, and it was my own weakness, and a blind loyalty to this man that led me to choose a path

¹⁶⁸ Jaclyn Diaz, *Attorney on Call with Trump and Georgia Officials Resigns from Law Firm*, NPR (Jan. 6, 2021, 2:02 AM), <https://www.npr.org/2021/01/06/953823383/attorney-on-call-with-trump-and-georgia-officials-resigns-from-law-firm> [<https://perma.cc/Q9FL-SGXD>]. See generally *Cleta Mitchell*, CONSERVATIVE P’SHIP INST., <https://www.cpi.org/staff/cleta-mitchell> [<https://perma.cc/27YC-M72Q>].

¹⁶⁹ See *infra* note 174 and accompanying text.

¹⁷⁰ See Shelbi Austin, *10 Things You Didn’t Know About Michael Cohen*, U.S. NEWS (Apr. 16, 2018, 6:30 PM), <https://www.usnews.com/news/national-news/articles/2018-04-16/10-things-you-didnt-know-about-michael-cohen> [<https://perma.cc/62G7-9CU5>].

¹⁷¹ See *id.*

¹⁷² See Ilya Marritz & Andrea Bernstein, *The Company Michael Cohen Kept*, N.Y. PUB. RADIO: WNYC STUDIOS (Apr. 18, 2018), <https://www.wnycstudios.org/podcasts/trumpinc/episodes/trump-inc-podcast-company-michael-cohen-kept> [<https://perma.cc/W2TX-Q5VE>]; see also Josh Nathan-Kazis, *Meet Michael Cohen, Donald Trump’s Jewish Wingman*, FORWARD (July 20, 2015), <https://forward.com/news/312123/meet-michael-cohen-donald-trumps-jewish-wingman> [<https://perma.cc/4KKH-Q3AT>] (further describing Cohen as Trump’s “attack dog”).

¹⁷³ See Erica Orden, *Michael Cohen Disbarred in New York*, CNN POL. (Feb. 26, 2019, 8:04 PM), <https://www.cnn.com/2019/02/26/politics/michael-cohen-disbarred-in-new-york/index.html> [<https://perma.cc/F4DD-JUN4>].

of darkness over light. It is for these reasons I chose to participate in the [illicit] act of the President rather than to listen to my own inner voice which should have warned me that the campaign finance violations that I later pled guilty to were insidious.¹⁷⁴

Whatever Cohen's motivations behind this statement, it offers some perspective on how he became caught up crossing ethical boundaries. While we have not yet heard similar explanations from any of the lawyers involved in the election fraud efforts, Cohen's sentiments may very well ring true for them too.

This long list of lawyers discussed above, most of whom were trained in the wake of the Watergate-inspired reforms to law school ethics curriculums, apparently did not fully embrace those lessons. With the reelection of President Donald Trump to a second term, these lawyers may avoid their prosecutions, as it appears he will, at least during his time in office.¹⁷⁵ However, at least as of mid-2025, authorities had not dismissed the charges nor had Trump issued pardons for the indicted lawyers.¹⁷⁶ Indeed, the Michigan Attorney Discipline Board scheduled disciplinary hearings against Powell, Wood, and several other lawyers for May 2025.¹⁷⁷

Before exploring how the legal profession might aid its members in avoiding similar plights in the future, this Article first turns to an ethics crisis that unfolded almost simultaneously at the nation's highest court.

B. Case Study #2: The U.S. Supreme Court's Code of Conduct

On November 13, 2023, the Supreme Court—for the first time ever in its history—adopted an ethics code. The Court issued the following statement along with its fourteen-page Code of Conduct for Justices of the Supreme Court of the United States:

¹⁷⁴ Read Michael Cohen's Full Sentencing Statement and Why 'Blind Loyalty' to Trump Was the Biggest Mistake of His Life, NBC NEWS (Dec. 12, 2018, 4:22 PM), <https://www.nbcnews.com/news/us-news/read-michael-cohen-s-full-sentencing-statement-why-blind-loyalty-n947206> [<https://perma.cc/E338-BEYH>].

¹⁷⁵ See, e.g., Madeline Halpert, *Special Counsel's Last Criminal Case Against Trump Dismissed*, BBC NEWS (Nov. 26, 2024), <https://www.bbc.com/news/articles/c4gvd7kxxj5o> [<https://perma.cc/8F92-DBAC>].

¹⁷⁶ See, e.g., Kyle Cheney & Megan Messerly, *Trump Outran the Law. His Allies Haven't*, POLITICO (Dec. 11, 2024, 10:00 AM), <https://www.politico.com/news/2024/12/11/trump-allies-state-legal-challenges-000246> [<https://perma.cc/CGC7-NS2R>].

¹⁷⁷ See Craig Mauger, *Misconduct Hearing Set for Lawyers Who Attempted to Overturn 2020 Michigan Election*, DETROIT NEWS (Mar. 5, 2025, 5:54 PM), <https://www.detroitnews.com/story/news/politics/2025/03/05/misconduct-hearing-set-in-michigan-for-lawyers-who-sued-to-overturn-2020-election/81653023007> [<https://perma.cc/L9Y9-8C9R>].

The undersigned Justices are promulgating this Code of Conduct to set out succinctly and gather in one place the ethics rules and principles that guide the conduct of the Members of the Court. For the most part these rules and principles are not new: The Court has long had the equivalent of common law ethics rules, that is, a body of rules derived from a variety of sources, including statutory provisions, the code that applies to other members of the federal judiciary, ethics advisory opinions issued by the Judicial Conference Committee on Codes of Conduct, and historic practice. The absence of a Code, however, has led in recent years to the misunderstanding that the Justices of this Court, unlike all other jurists in this country, regard themselves as unrestricted by any ethics rules. To dispel this misunderstanding, we are issuing this Code, which largely represents a codification of principles that we have long regarded as governing our conduct.¹⁷⁸

All nine Justices signed the document indicating that they each individually “subscribe to this Code and the accompanying Commentary.”¹⁷⁹

The announcement came after intensifying calls from the press, politicians, and nonprofit advocacy organizations like Fix the Court¹⁸⁰ to adopt an ethics code. For example, soon after taking office, former President Joe Biden established the Presidential Commission of the Supreme Court of the United States. The purpose of the Commission was “to provide an analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals.”¹⁸¹ The group of thirty-six Commissioners were charged with examining “the genesis of the reform debate; the Court’s role in the Constitutional system; the length of service and turnover of [J]ustices on the Court; the membership and size of the Court; and the Court’s case selection, rules, and practices.”¹⁸² The Commission ultimately made no official, formal recommendations, but it gathered significant information about the ethical concerns surrounding the Supreme Court and assessed reform

¹⁷⁸ *Statement of the Court Regarding the Code of Conduct of CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S.* (U.S. SUP. CT. 2023). See generally *CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S.* (U.S. SUP. CT. 2023).

¹⁷⁹ *CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S.*, *supra* note 178, at 9.

¹⁸⁰ See *infra* Part II.

¹⁸¹ *President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States*, UNIV. OF ARIZ.: NAT’L INST. FOR CIV. DISCOURSE (Apr. 9, 2021), <https://nicd.arizona.edu/blog/2021/04/09/presidential-commission-on-the-supreme-court> [<https://perma.cc/T5EW-XKGV>].

¹⁸² *Id.*; see Exec. Order No. 14,023, 86 Fed. Reg. 19569 (Apr. 9, 2021).

options.¹⁸³ Among the findings, the Commission recounted recent history that escalated concerns about the Court:

First, after Justice Antonin Scalia died in February 2016, the Republican majority in the Senate refused to consider President Barack Obama's March 2016 nomination of Chief Judge Merrick Garland to fill that seat. The Republican Senate leadership argued that the nation was poised in a matter of months to elect a new President, who should be able to appoint Justice Scalia's successor. It thus declined to take any formal action, such as a hearing or a vote, on the Garland nomination. President Donald Trump later appointed Judge Neil Gorsuch to fill the vacant seat. Next, in the summer of 2018, Justice Anthony Kennedy—widely viewed as occupying the Court's ideological center—announced his retirement. President Trump then nominated Judge Brett Kavanaugh, whom the Senate confirmed in October 2018 after contentious hearings and floor debate. Finally, Justice Ruth Bader Ginsburg died in September 2020, creating another election-year vacancy. Although the Senate's Republican majority had opposed the election-year confirmation of Judge Garland for nearly eight months before the 2016 election, this time it took up President Trump's nomination of Judge Amy Coney Barrett and confirmed her in one month, on October 26, after voting in the 2020 presidential election had already commenced. . . . These events directly motivate some of the current calls for Supreme Court reform by those who argue that the seats previously occupied by Justices Scalia and Ginsburg were "stolen" by Republicans from Democrats. According to these critics, Republicans achieved the current conservative dominance of the Court by disregarding the norms that should govern and have governed the appointments process in the past.¹⁸⁴

The Commission "speculated that the Court's adoption of an internal Code would be beneficial, even if there were no enforcement mechanism."¹⁸⁵

Layered on that tension, the independent, nonprofit news outlet *ProPublica* published a series of stories documenting the failure of some Justices to recuse themselves over conflicts of interest and to report luxury gifts on their annual financial disclosures.¹⁸⁶ *ProPublica's* reporting began with an April 2023 article about the close relationship

¹⁸³ MICHELLE ADAMS ET AL., PRESIDENTIAL COMMISSION ON THE SUPREME COURT OF THE UNITED STATES FINAL REPORT 14–15 (2021), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=4795&context=faculty_scholarship [https://perma.cc/UWQ8-2PZM].

¹⁸⁴ *Id.*

¹⁸⁵ Teresa J. Schmid, *Enforcing the Code, Restoring Confidence in the Supreme Court*, JUDGES' J., Summer 2024, at 15 (2024).

¹⁸⁶ See, e.g., Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas and the Billionaire*, PROPUBLICA (Apr. 6, 2023, 5:00 AM), <https://www.propublica.org/article/clarence-thomas-sctus-undisclosed-luxury-travel-gifts-crow> [https://perma.cc/T8ZT-QKSQ].

between Justice Clarence Thomas and billionaire Harlan Crow—and the fact that the many trips they apparently took together went unreported on Justice Thomas’s financial disclosures.¹⁸⁷ The authors noted that “[f]ederal judges sit in a unique position of public trust” given their lifetime tenure, which is “intended to insulate them from the pressures and potential corruption of politics,” and they concluded that Justice Thomas’s failure to report these trips on his financial disclosures could constitute a violation of federal ethics laws.¹⁸⁸ Subsequent investigation and reporting revealed that the relationship between the men extended beyond travel companionship—Justice Thomas and his family sold real estate where the Justice’s mother continues to live to Crow’s company,¹⁸⁹ and Crow also paid for tuition at a private school for Justice Thomas’s grand-nephew.¹⁹⁰ The journalists also discovered that Justice Thomas had attended donor events for the Koch network¹⁹¹ and spoken at such events.¹⁹² As the authors pointed out, the code of conduct for federal district and appellate courts imposes rules that are meant to preserve the impartiality and independence of judges, specifically forbidding “political activity and participation in fundraising.”¹⁹³ Those rules do not apply to the Supreme Court, however, and Justices are free to “decide what’s appropriate for themselves.”¹⁹⁴ The *ProPublica* journalists also uncovered information about Justice Samuel Alito and his own connections to

¹⁸⁷ See *id.*

¹⁸⁸ *Id.*

¹⁸⁹ See Justin Elliott, Joshua Kaplan & Alex Mierjeski, *Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn’t Disclose the Deal*, PROPUBLICA (Apr. 13, 2023, 2:20 PM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus> [https://perma.cc/5JE5-XSXA].

¹⁹⁰ See Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Had a Child in Private School. Harlan Crow Paid the Tuition*, PROPUBLICA (May 4, 2023, 6:00 AM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-private-school-tuition-scotus> [https://perma.cc/76EU-KCPW].

¹⁹¹ See generally Alexander Hertel-Fernandez, Caroline Tervo & Theda Skocpol, *How the Koch Brothers Built the Most Powerful Rightwing Group You’ve Never Heard Of*, GUARDIAN (Sept. 26, 2018), <https://www.theguardian.com/us-news/2018/sep/26/koch-brothers-americans-for-prosperity-rightwing-political-group> [https://perma.cc/B6W6-L8KU] (describing the Koch network as “a vast network of organizations that pool hundreds of millions of dollars . . . in support of conservative idea generation, leadership training, election campaigning and policy advocacy”).

¹⁹² See Joshua Kaplan, Justin Elliott & Alex Mierjeski, *Clarence Thomas Secretly Participated in Koch Network Donor Events*, PROPUBLICA (Sept. 22, 2023, 5:00 AM), <https://www.propublica.org/article/clarence-thomas-secretly-attended-koch-brothers-donor-events-scotus> [https://perma.cc/248F-833H].

¹⁹³ *Id.*

¹⁹⁴ *Id.*

billionaires.¹⁹⁵ In describing a June 2008 fishing trip Justice Alito took to Alaska, *ProPublica* noted that “Justices are almost entirely left to police themselves on ethical issues . . . When a potential conflict arises, the sole arbiter of whether a [J]ustice should step away from a case is the [J]ustice him or herself.”¹⁹⁶ The trip included a stay at a luxury fishing lodge and a flight on a private jet.¹⁹⁷ One of the other guests on this trip later had a matter pending before the Court, from which Justice Alito did not recuse himself.¹⁹⁸ Though the Court voted 7–1 on the matter, making a recusal unlikely to alter the outcome, it nevertheless called into question recusal standards for the Court.¹⁹⁹ As a result of this reporting, members of Congress began putting pressure on the Supreme Court. For example, in July 2023, the Senate Judiciary Committee advanced the Supreme Court Ethics, Recusal, and Transparency Act, which would “require the Supreme Court to set up a code of conduct, tighten financial disclosures and bolster recusal requirements for [J]ustices.”²⁰⁰

The creation of the first-ever ethics code for the Supreme Court represents a step toward greater accountability, but it lacks consistent and transparent enforcement mechanisms. The code consists of five ethical canons and accompanying commentary intended to guide the Justices, but without any mandates or requirements. The five canons are similar to what is found in codes for federal and state justices:

1. A Justice Should Uphold the Integrity and Independence of the Judiciary.
2. A Justice Should Avoid Impropriety and the Appearance of Impropriety in All Activities.
3. A Justice Should Perform the Duties of Office Fairly, Impartially, and Diligently.
4. A Justice May Engage in Extrajudicial Activities that Are Consistent with the Obligations of the Judicial Office.

¹⁹⁵ See Justin Elliot, Joshua Kaplan & Alex Mierjeski, *Justice Samuel Alito Took Luxury Fishing Vacation with GOP Billionaire Who Later Had Cases Before the Court*, PROPUBLICA (June 20, 2023, 11:49 PM), <https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court> [<https://perma.cc/W3GK-S8HC>].

¹⁹⁶ *Id.*

¹⁹⁷ *See id.*

¹⁹⁸ *See id.*

¹⁹⁹ *See id.* *See generally* Republic of Argentina v. NML Cap., Ltd., 573 U.S. 134 (2014).

²⁰⁰ Sahil Kapur & Lawrence Hurley, *Key Senate Committee Advances Supreme Court Ethics Bill*, NBC NEWS (July 20, 2023, 12:53 PM), <https://www.nbcnews.com/politics/supreme-court/key-senate-committee-advances-supreme-court-ethics-bill-rcna95171> [<https://perma.cc/AF82-BN6J>].

5. A Justice Should Refrain from Political Activity.²⁰¹

According to the Congressional Research Service, “Canons 1 and 2 are broadly worded and are accompanied by brief notes explaining that each Justice should ‘maintain and observe high standards of conduct’ and ‘should not allow family, social, political, financial, or other relationships to influence official conduct or judgment.’”²⁰² Disqualification, or recusal, is governed by Canon 3, which sets “out circumstances in which Justices should recuse themselves from participating in cases because their impartiality might reasonably be questioned.”²⁰³ Under Canon 4, the Justices are permitted “to speak, write, and teach about the law and engage in other extrajudicial activities, subject to certain limitations,” and “Canon 5 provides that Justices should not engage in political activities, such as holding a leadership role in a political organization, endorsing candidates for political office, political fundraising, making campaign contributions, and running for elected office.”²⁰⁴

While the Supreme Court’s Code of Conduct is similar to the code followed by other federal judges, it differs significantly in at least two ways. First, it contains what is known as the “duty to sit,” meaning that the “rule of necessity may override the rule of disqualification” because there is no way to replace a Justice under the current system, which might lead to a tie.²⁰⁵ Second, there is no enforcement process for litigants whose cases might be impacted when Justices should disqualify themselves under the Code but fail to do so, and there is no enforcement mechanism for the Justices to hold each other accountable. Thus, objections cut across partisan lines, because without a meaningful enforcement mechanism the code “lets individual [J]ustices decide ethics questions for themselves.”²⁰⁶ Moreover, the Supreme Court lacks a publicly available record of precedent on past disqualification decisions, which further compromises transparency.

Part III explores suggestions for improving the Code of Conduct, among other legal ethics reforms, but first we turn in Part II to an

²⁰¹ CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S., *supra* note 178; *see, e.g.*, CODE OF CONDUCT FOR UNITED STATES JUDGES, CANONS 1–5; 22 NYCRR § 100.1–5.

²⁰² JOANNA R. LAMPE, CONG. RSCH. SERV., LSB11078, THE SUPREME COURT ADOPTS A CODE OF CONDUCT 2 (2023) (quoting CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S., *supra* note 178, at 1).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S., *supra* note 178, at 11.

²⁰⁶ Adam Liptak, *Supreme Court’s New Ethics Code is Toothless, Experts Say*, N.Y. TIMES (Nov. 14, 2023), <https://www.nytimes.com/2023/11/14/us/politics/supreme-court-ethics-code-clarence-thomas-sotomayor.html> [<https://web.archive.org/web/20250322013515/https://www.nytimes.com/2023/11/14/us/politics/supreme-court-ethics-code-clarence-thomas-sotomayor.html>].

investigation of sources for ethics accountability to respond to the concerns raised by these case studies.

II. SOURCES OF ETHICS ACCOUNTABILITY

Part II explores sources of ethics accountability for lawyers and judges, including disciplinary bodies, courts, legislators, journalists, and nonprofit advocacy organizations.

A. *Disciplinary Bodies*

Lawyer licensing and discipline varies among the jurisdictions. Most states have adopted a code of ethical conduct based upon the ABA Model Rules of Professional Conduct. But enforcement depends upon bar discipline counsel discretionary resources like staffing and funding. More than two decades ago, Professor Leslie Levin found that “little attention has been given in recent years to the manner in which state lawyer discipline sanctions are determined or to the consistency or efficacy of the sanctions imposed” and that has not significantly improved.²⁰⁷ We see this, of course, in the case study from Part I documenting the varying treatment among the states for similar conduct by Clark, Guiliani, Eastman, Ellis, Powell, Wood, and others.

Deborah Rhode, the most cited legal ethicist at the time of her passing in 2021, concluded from her research into lawyer discipline that “[t]he bar is just, historically, extremely reluctant to take on anything that isn’t a clear, easily provable violation of disciplinary rules, and that has any kind political overtones.”²⁰⁸ For example, in 2017, nearly two thousand lawyers submitted a complaint to the Alabama State Disciplinary Committee seeking the disbarment of Jeff Sessions, who served as Attorney General during the first Trump administration.²⁰⁹ Sessions testified under oath that he did not meet with the Russian

²⁰⁷ Leslie C. Levin, *The Emperor’s Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 AM. U.L. REV. 1, 5 (1998).

²⁰⁸ Pema Levy, *The Legal Assault on Democracy Is Clearly Unethical. But the Lawyers Will Probably Get Away with It*, MOTHER JONES (Dec. 14, 2020), <https://www.motherjones.com/2020-elections/2020/12/trump-lawyers-ethics-sanctions> [https://perma.cc/L479-RFQ4].

²⁰⁹ See Chip Brownlee, *Nearly 2,000 Lawyers Ask for Jeff Sessions to be Disbarred*, ALA. POL. REP. (Mar. 29, 2017, 11:36 AM), <https://www.alreporter.com/2017/03/28/nearly-2000-lawyers-ask-sessions-disbarred> [https://perma.cc/TTC4-G3XV].

Ambassador during Trump's presidential campaign, which was false.²¹⁰ The American Civil Liberties Union filed a separate disbarment complaint.²¹¹ But Sessions was not disbarred, and there is no public information available about the processing of the complaint let alone any discipline.

Several scholars, including myself, have called for additional rules to prevent a repeat of the lawyering that led to discipline in the 2020 election challenges. For example, in an essay for the *Yale Law Journal Forum*, I proposed that the duty of candor the courtroom mandated by ABA Model Rule 3.3 should be extended to the court of public opinion in limited circumstances related to the legitimacy of election results:

When lawyers misuse their law licenses by lying about the established results of a fair election before a judge or jury, they violate their oath and the very ethics rules affording them the right to practice law. The aftermath of the 2020 election and the Capitol riot reveals the devastating consequences that follow such lies. . . . Given what we now know about the unique and consequential damage caused by these lies, the lawyer's duty of candor should be extended to the court of public opinion, prohibiting publicly disseminated lies about election results that would not withstand scrutiny in the courthouse.²¹²

Others would go even further. For example, Professor Margaret Tarkington has proposed a new Model Rule 1.19, "Special Duties of Lawyers Who Advise or Assist Government Officials or Entities."²¹³ Her rule imposes a heightened duty upon "[l]awyers who advise or assist government officials or entities as to the use of government power or position . . . to uphold the integrity of both the constitutional system of the United States government and the governmental office or entity being advised or assisted."²¹⁴ This duty would require covered lawyers to have "a good faith basis in both law and fact that is non-frivolous and that supports the advice or assistance given" and to disclose to a government official or entity any "contrary authority controlling in the jurisdiction."²¹⁵ Her proposed rule also prohibits a lawyer from

²¹⁰ See Susan Hennessey & Benjamin Wittes, *Don't Convict Jeff Sessions of Perjury Just Yet*, FOREIGN POL'Y (Nov. 3, 2017, 4:22 PM), <https://foreignpolicy.com/2017/11/03/dont-convict-jeff-sessions-of-perjury-just-yet> [<https://perma.cc/S734-A832>].

²¹¹ See Press Release, ACLU of Ala., ACLU Files Ethics Complaint Against Attorney General Sessions for False Statements Made During Confirmation Hearing (Mar. 9, 2017), <https://www.aclu.org/press-releases/aclu-files-ethics-complaint-against-attorney-general-sessions-false-statements-made> [<https://perma.cc/4684-A5FH>].

²¹² Renee Knake Jefferson, *Lawyer Lies and Political Speech*, 131 YALE L.J. F. 114, 140 (2021).

²¹³ Margaret Tarkington, *Lawyers and the Abuse of Government Power* 142 (Feb. 19, 2024) (unpublished manuscript), <https://ssrn.com/abstract=4628233> [<https://perma.cc/GC77-UH66>].

²¹⁴ *Id.* (manuscript at 142–43).

²¹⁵ *Id.* (manuscript at 143).

“knowingly or recklessly” advising or assisting government officials from engaging in conduct that “(1) is criminal or fraudulent; (2) is prohibited by applicable law relating to that government office or entity if it is of a substantial nature and the government power will be exercised either against persons or to the direct benefit of the government office or entity; or (3) undermines the legitimate outcome of an election.”²¹⁶ It also contains a safe harbor for “non-frivolous or routine court and administrative challenges to an election, including seeking a recount through appropriate processes.”²¹⁷

Reforms like these, however, are viewed as controversial by some²¹⁸ and unlikely to gain sufficient traction for passage by the ABA or individual states anytime soon. Indeed, at the time this Article went to press, nearly five years after the 2020 election, no jurisdiction had adopted reforms such as those proposed by Tarkington. But that does not mean improvements cannot be made. Rather than implement election-specific reforms, we could use this moment of reckoning to galvanize long-needed reforms not tied to a specific event but that apply more broadly to a range of situations.

One potential reform that is likely to be more achievable is to reassess the standards applied when imposing lawyer discipline. The ABA issued the amended Standards for Imposing Lawyer Sanctions in 1992, intended to guide courts and disciplinary authorities when they determine sanctions for lawyers who have violated the ethical obligations.²¹⁹ The Standards are composed of four considerations: (1) Was a duty owed “to a client, the public, the legal system, or the profession” with a priority for duties owed to clients; (2) Was the “lawyer act[ing] intentionally, knowingly, or negligently” with the greatest culpability attached to intentional acts; (3) Was the injury serious; and (4) Would any aggravating or mitigating circumstances warrant the adjustment of a sanction.²²⁰

Professor Alex Long has called for reform of the standards, not only because he believes they “amount to a deeply flawed approach” but also because “it is long past time for the legal profession to revisit them.”²²¹ In particular, he notes that “[t]here have also been dramatic societal events that have influenced how the legal profession views its obligations viz a

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ See, e.g., Bruce A. Green & Rebecca Roiphe, *Lawyers and the Lies They Tell*, 69 WASH. U. J.L. & POL’Y 37 (2022).

²¹⁹ See STANDARDS FOR IMPOSING LAWYER SANCTIONS Part II (AM. BAR ASS’N 1992).

²²⁰ *Id.*

²²¹ Alex B. Long, *Imposing Lawyer Sanctions in a Post-January 6 World*, 36 GEO. J. LEGAL ETHICS 273, 307 (2023).

viz clients and the public.”²²² For example, he cites “[t]he corporate fraud scandals of the early 21st century, which led the ABA to amend the *Model Rules* to recognize additional exceptions to a lawyer’s duty of confidentiality.”²²³ In addition, he points out that since the last amendments to the Standards in 1992, the nation has undergone significant threats to democracy, including “two presidents impeached, increased governmental surveillance following the September 11 attack, the Bush-era ‘torture memos,’ numerous incidents of prosecutorial misconduct, the murder of George Floyd, and the active involvement of lawyers in the events of the 2020 election and the January 6 attack on the Capitol.”²²⁴ As Long concludes, “[n]one of the lessons learned from these sorts of events are reflected in the current Standards. Fifty years ago, Watergate helped spawn a re-evaluation of the ethical obligations of lawyers. A similar opportunity presents itself today.”²²⁵

B. *Journalists*

The work of investigative journalists has been called “the lifeblood of a healthy democracy.”²²⁶ As Professor Hannah Bloch-Wehba explains: “A free press informs the public, fosters self-governance, and checks potential abuses of power. . . . News reporting plays a crucial role in ‘gathering and distributing the information that propels us forward in our collective search for truth.’”²²⁷ Investigative reporting serves an especially important function in ethics accountability, where “the role of reporters as detectives remains central to the operation of democracy.”²²⁸

Consider the history of the press in ethics accountability and transparency for lawyers and judges. For example, in 1973, Bob Woodward and Carl Bernstein of the *Washington Post* were awarded the Pulitzer Prize in Public Service for their reporting on the Watergate scandal.²²⁹ Much of their news coverage exposed the wrongdoing of lawyers. Woodward and Bernstein uncovered the financial wrongdoings

²²² *Id.* at 308.

²²³ *Id.*

²²⁴ *Id.* (footnote omitted).

²²⁵ *Id.*

²²⁶ Hannah Bloch-Wehba, *The Ideology of Press Freedom*, 14 U.C. IRVINE L. REV. 1, 3 (2024).

²²⁷ *Id.* (quoting RonNell Andersen Jones & Lisa Grow Sun, *Freedom of the Press in Post-Truthism America*, 98 WASH. U. L. REV. 419, 423 (2020)).

²²⁸ JAMES T. HAMILTON, *DEMOCRACY’S DETECTIVES: THE ECONOMICS OF INVESTIGATIVE JOURNALISM* 11 (2016).

²²⁹ See *The 1973 Pulitzer Prize Winner in Public Service*, PULITZER PRIZES, <https://www.pulitzer.org/winners/washington-post> [https://perma.cc/C98L-FBVQ].

of former Attorney General John N. Mitchell²³⁰ and former finance committee counsel for the campaign G. Gordon Liddy.²³¹ Woodward and Bernstein also exposed the roles of various attorneys involved at the highest levels of the scandal.²³² These included Robert C. Mardian, an assistant attorney general and political coordinator of Nixon's reelection committee, and Frederick LaRue, former White House counsel to the President as well as special assistant to the director of the Nixon campaign.²³³ The reporters found that Mardian and LaRue ordered "a massive 'house-cleaning' in which financial records were destroyed" after being "instructed" by Mitchell "to take charge of the committee's response" to the Watergate bugging.²³⁴ Woodward and Bernstein also focused on Donald H. Segretti, a former lawyer in the Treasury Department who served in Vietnam and tried to recruit other military lawyers to join the Watergate scheme.²³⁵ Based upon their reporting, more than a dozen lawyers were suspended from practice or permanently disbarred, and the ABA adopted a new accreditation requirement that law schools ensure that each graduate receive instruction in legal ethics.²³⁶

More recently, a 2021 investigation by *Wall Street Journal* reporters including James V. Grimaldi, Coulter Jones, and Joe Palazzolo documented that 131 federal judges presided over 685 cases from 2010 to 2018 involving companies in which they or their family members owned stock in violation of a federal statute governing financial disclosures and stock transaction reports, 28 U.S.C. § 455.²³⁷ This reporting led to the passage of bipartisan legislation in 2022—the Courthouse Ethics and Transparency Act—which increases public access to judges' financial holdings by requiring online publication of a financial disclosure

²³⁰ See Carl Bernstein & Bob Woodward, *Mitchell Controlled Secret GOP Fund*, WASH. POST (Sept. 29, 1972), <https://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/092972-1.htm> [<https://perma.cc/44VQ-B7B7>].

²³¹ See *id.*

²³² See *The 1973 Pulitzer Prize Winner in Public Service*, *supra* note 229 (describing former Attorney General John N. Mitchell and White House counsel Frederick LaRue, both of whom participated in cover-up activities).

²³³ See *id.*

²³⁴ *Id.*

²³⁵ See Carl Bernstein & Bob Woodward, *FBI Finds Nixon Aides Sabotaged Democrats*, WASH. POST (Oct. 10, 1972), <https://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/101072-1.htm> [<https://perma.cc/P2GR-UYKZ>].

²³⁶ See Kathleen Clark, *The Legacy of Watergate for Legal Ethics Instruction*, 51 HASTINGS L.J. 673, 673 (2000).

²³⁷ See James V. Grimaldi, Coulter Jones, Joe Palazzolo, Ava Sasani & Lisa Schwartz, *131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest*, WALL ST. J. (Sept. 28, 2021, 9:07 AM), <https://www.wsj.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421> [<https://perma.cc/8HQG-A9SA>].

report.²³⁸ Notably, this reform was also advanced by nonprofit advocacy organizations like Fix the Court and the Project on Government Oversight, along with testimony from academics like me.²³⁹ The role of nonprofit organizations like these in ethics reform is further explored below.

In 2024, Joshua Kaplan, Justin Elliott, Brett Murphy, Alex Mierjeski, and Kirsten Berg of *ProPublica* received the Pulitzer Prize for Public Service for their series of articles about gifts received by certain members of the Supreme Court.²⁴⁰ As explained in the discussion of the second case study above, this investigative reporting “began a national conversation about ethics and judicial reform of the Supreme Court” and ultimately, “[i]n response to ProPublica’s reporting, the court announced in November [2023] that it had unanimously adopted the first ethics code in its 234-year history.”²⁴¹ In receiving the Pulitzer, the journalists were recognized for their “[g]roundbreaking and ambitious reporting that pierced the thick wall of secrecy surrounding the Supreme Court to reveal how a small group of politically influential billionaires wooed [J]ustices with lavish gifts and travel, pushing the Court to adopt its first code of conduct.”²⁴² Berg and Murphy described the revelations as “the worst ethics scandal in a generation” for the Court and highlighted the double standard that exists between the members of the Supreme Court and the rest of the federal judiciary in terms of financial disclosures and related ethical judicial conduct.²⁴³

It is noteworthy that some of the most significant reforms in lawyer and judicial ethics over the past half-century were fueled by the work of

²³⁸ Press Release, Deborah Ross, Congresswoman, House of Representatives, President Biden Signs into Law Ross Bill to Enhance Judicial Ethics and Transparency Requirements (May 13, 2022), <https://ross.house.gov/2022/5/president-biden-signs-law-ross-bill-enhance-judicial-ethics-and-transparency> [<https://perma.cc/4D3M-FB8Y>].

²³⁹ See *Judicial Ethics and Transparency: The Limits of Existing Statutes and Rules Hearing Before the Subcomm. on Cts., Intell. Prop., and the Internet of the H. Comm. on the Judiciary*, 117th Cong. 7, 18 (2021) (statement of Renee Knake Jefferson, Professor, University of Houston Law Center); Kelsey Reichmann, *Supreme Court Fails to Quiet Ethics Critiques with New Code of Conduct*, COURTHOUSE NEWS SERV. (Nov. 14, 2023), <https://www.courthousenews.com/supreme-court-fails-to-quiet-ethics-critiques-with-new-code-of-conduct> [<https://perma.cc/UBE7-AVRR>].

²⁴⁰ *The 2024 Pulitzer Prize Winner in Public Service*, PULITZER PRIZES, <https://www.pulitzer.org/winners/propublica-work-joshua-kaplan-justin-elliott-brett-murphy-alex-mierjeski-and-kirsten-berg> [<https://perma.cc/VF9G-HW8G>].

²⁴¹ *ProPublica Wins Pulitzer Prize for Supreme Court Coverage*, PROPUBLICA (May 6, 2024, 3:50 PM), <https://www.propublica.org/article/pulitzer-prize-announcement-propublica-supreme-court> [<https://perma.cc/P3FT-GQY8>].

²⁴² *The 2024 Pulitzer Prize Winner in Public Service*, *supra* note 240.

²⁴³ Brett Murphy & Kirsten Berg, *The Judiciary Has Policed Itself for Decades. It Doesn’t Work*, PROPUBLICA (Dec. 13, 2023, 5:00 AM), <https://www.propublica.org/article/judicial-conference-scotus-federal-judges-ethics-rules> [<https://perma.cc/C3ZT-DMQE>].

journalists. These examples show how reporters “can consistently change lives and laws, with advancing technology making it possible to tell stories in greater detail, affecting more people, over a wider geography.”²⁴⁴ In short, investigative journalism can be an effective source of ethics accountability.

C. Nonprofit Advocacy Organizations

Over the past decade, and in particular after the first Trump presidency, nonprofit organizations have emerged to advocate for reform of lawyer and judicial ethics. As noted above, these groups have successfully supported reforms like the Courthouse Ethics and Transparency Act in partnership with legislators and journalists. Most operate explicitly as bipartisan or nonpartisan organizations. Reforms to lawyer and judicial ethics should not involve political partisanship. Ideally, these groups would advance reforms that improve access to and the integrity of the legal system regardless of impact on a particular politically motivated goal. Understanding these organizations, including their leadership and their agendas, can help assess their effectiveness in ethics accountability. Here are some examples.

Fix the Court, a 501(c)(3) organization founded in 2014 by Gabe Roth,²⁴⁵ played a key role in federal legislation to improve judicial financial disclosures and in the Supreme Court’s adoption of its ethics code.²⁴⁶ Roth, notably, is not a lawyer but instead has a background as a journalist.²⁴⁷ Prior to launching Fix the Court, he managed the Coalition for Court Transparency, a national alliance of media and legal organizations that advocated for the broadcast of Supreme Court proceedings.²⁴⁸ Also noteworthy is the organization’s advocacy for bipartisan reforms, working with “Republicans and Democrats, liberals and conservatives, libertarians and independents, to advance policies that will open up the federal judiciary.”²⁴⁹ These include “fixes” that would improve transparency and accountability in the federal courts—primarily in the U.S. Supreme Court—including livestreaming Supreme Court and

²⁴⁴ HAMILTON, *supra* note 228, at 10.

²⁴⁵ See *About Us*, FIX THE CT., <https://fixthecourt.com/about-us> [<https://perma.cc/AA7Z-5BMZ>].

²⁴⁶ See, e.g., *Recent Times a Justice Failed to Recuse Despite a Conflict*, FIX THE CT. (Sept. 10, 2024), <https://fixthecourt.com/2024/05/recent-times-justice-failed-recuse-despite-clear-conflict-interest> [<https://perma.cc/5DU5-APFF>] (tracking ethics concerns, including the failure of Justice Thomas to recuse from a case that involved his spouse’s role in January 6 activities).

²⁴⁷ See *About Us*, *supra* note 245.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

lower-court proceedings, ending Justices' life tenures in favor of 18-year term limits, requiring an enforceable Supreme Court Code of Conduct, publicizing the Justices' out-of-Court events (for example, speaking engagements), and improving disclosure and recusal rules for financial and other conflicts across the judiciary.²⁵⁰

Lawyers Defending American Democracy ("LDAD") was founded in January 2019 in response to the "aggressive undermining of the rule of law" under President Trump.²⁵¹ Their purpose is to "unite[] lawyers to speak out and take action to defend and uphold the rule of law" in response to a "share[d] . . . conviction that constitutional and legal principles critical to American freedoms and democracy are under attack."²⁵² LDAD's Chairman is Scott Harshbarger, a former public defender, civil rights attorney, district attorney, and Massachusetts Attorney General, and the Executive Director is Lauren Stiller Rikleen, a former law firm equity partner and recipient of the American Bar Association's Margaret Brent Women Lawyers of Achievement Award.²⁵³ LDAD's reform efforts involve the submission of ethics complaints in disciplinary proceedings against lawyers involved in the 2020 election challenges and other government matters.²⁵⁴ For example, more than 7,600 individuals, including over 3,000 attorneys, signed onto a

²⁵⁰ *The Fixes*, FIX THE CT., <https://fixthecourt.com/the-fixes> [<https://perma.cc/N3A8-2GH8>]

²⁵¹ *Our Mission*, LAWS. DEFENDING AM. DEMOCRACY, <https://ldad.org/about> [<https://perma.cc/33QQ-8WN8>].

²⁵² *Id.*

²⁵³ See *Our Board*, LAWS. DEFENDING AM. DEMOCRACY, <https://ldad.org/our-board> [<https://perma.cc/TV8Y-HFJQ>].

²⁵⁴ See, e.g., *LDAD Collects 1000s of Signatures for Ethics Complaint Against Rudy Giuliani*, LAWS. DEFENDING AM. DEMOCRACY (Jan. 20, 2021), <https://ldad.org/letters-briefs/ldad-files-grievance-against-giuliani> [<https://perma.cc/3JLS-95UM>]; *LDAD Files Ethics Complaint Against Former Assistant AG Jeffrey Clark*, LAWS. DEFENDING AM. DEMOCRACY (Oct. 5, 2021), <https://ldad.org/letters-briefs/jeffrey-clark-ethics-complaint> [<https://perma.cc/ZB78-RWM5>]; *LDAD Files Ethics Complaint Against John Eastman*, LAWS. DEFENDING AM. DEMOCRACY (Dec. 16, 2021), <https://ldad.org/letters-briefs/ldad-files-ethics-complaint-against-former-assistant-john-eastman> [<https://perma.cc/TH7N-MB7H>] (complaint filed in California); *Ethics Complaint Filed Against John Eastman in DC*, LAWS. DEFENDING AM. DEMOCRACY (Aug. 12, 2022), <https://ldad.org/letters-briefs/ldad-files-dc-ethics-complaint-against-eastman> [<https://perma.cc/V64N-BBWH>] (complaint filed in Washington, D.C.); *LDAD Files Ethics Complaint Against Kenneth John Chesebro*, LAWS. DEFENDING AM. DEMOCRACY (Oct. 12, 2022), <https://ldad.org/letters-briefs/chesebro-complaint> [<https://perma.cc/AJV8-LWZT>] (complaint filed in New York); *LDAD Files Ethics Complaint in California Against Kenneth Chesebro*, LAWS. DEFENDING AM. DEMOCRACY (Dec. 6, 2022), <https://ldad.org/letters-briefs/ldad-files-complaint-against-chesebro-in-california> [<https://perma.cc/KEH6-U2E7>] (complaint filed in California); *LDAD Calls for the Disbarment of Sidney Powell Following Her Guilty Plea*, LAWS. DEFENDING AM. DEMOCRACY (Nov. 8, 2023), <https://ldad.org/letters-briefs/ldad-calls-for-the-disbarment-of-sidney-powell> [<https://perma.cc/8EVJ-Q3DU>]; *LDAD & States United Call for the Disbarment of Jenna Ellis Following Her Guilty Plea*, LAWS. DEFENDING AM. DEMOCRACY (Dec. 15, 2023), <https://ldad.org/letters-briefs/jenna-ellis> [<https://perma.cc/7BGL-RHMY>].

complaint filed by LDAD with the New York State Bar seeking the suspension of Giuliani's New York license,²⁵⁵ and LDAD filed supplemental bar complaints in California and New York against Chesebro after his guilty plea in the Georgia indictment.²⁵⁶ LDAD was also behind the Sessions complaint mentioned in Part I.²⁵⁷

The 65 Project is a "bi-partisan effort to protect democracy and preserve the rule of law by deterring future attacks on our electoral system."²⁵⁸ The organization seeks to hold lawyers accountable for bringing "fraudulent and malicious lawsuits" in an effort to overturn legitimate election results, while also collaborating with various bar associations in an effort to "revitalize the disciplinary process" so lawyers are held accountable.²⁵⁹ It was founded in the aftermath of the 2020 Presidential election in response to the sixty-five lawsuits filed by President Trump and his allies.²⁶⁰ It is led by Michael Teter, a Yale Law School graduate who previously served as an assistant attorney general in Utah.²⁶¹ The 65 Project filed numerous ethics complaints against lawyers who participated in the 2020 election challenges.²⁶² Leading up to the 2024 presidential election, the group placed "advertisements in legal journals published in swing states, reminding lawyers that they are ethically barred from bringing false claims on behalf of any client."²⁶³ As

²⁵⁵ See *LDAD Collects 1000s of Signatures for Ethics Complaint Against Rudy Giuliani*, *supra* note 254 (reporting that over 7,600 lawyers joined as cosigners of LDAD's complaint as of February 3, 2021).

²⁵⁶ See *LDAD Responds to Atty. Chesebro's Guilty Plea with Supplemental Ethics Complaints*, LAWS. DEFENDING AM. DEMOCRACY (Oct. 30, 2023), <https://ldad.org/letters-briefs/ldad-responds-to-chesebros-guilty-plea> [<https://perma.cc/99DA-CLK6>].

²⁵⁷ See *supra* Part II.

²⁵⁸ *About Us*, 65 PROJECT, <https://the65project.com/about> [<https://perma.cc/NN5U-WUQF>]. (Author's note: I have served as a volunteer advisor to the 65 Project.)

²⁵⁹ *Id.*

²⁶⁰ See *id.*

²⁶¹ *Id.*

²⁶² See, e.g., *Ethics Complaint Against Trump Attorney Boris Epshteyn*, 65 PROJECT (Mar. 7, 2022), <https://the65project.com/ethics-complaint-against-trump-attorney-boris-epshteyn> [<https://perma.cc/SN7R-4CFB>]; *Ethics Complaint Against Trump Attorney Jenna Ellis*, 65 PROJECT (Mar. 7, 2022), <https://the65project.com/ethics-complaint-against-trump-attorney-jenna-ellis> [<https://perma.cc/C32Q-B4H6>]; *Ethics Complaint Against Kenneth Chesebro*, 65 PROJECT (July 20, 2022), <https://the65project.com/ethics-complaint-against-kenneth-chesebro> [<https://perma.cc/48TG-RQYQ>]; *Ethics Complaint Against John Eastman*, 65 PROJECT (July 28, 2022), <https://the65project.com/ethics-complaint-against-john-eastman> [<https://perma.cc/3C8J-MAAT>]; *Ethics Complaint Against John D. Wilenchik*, 65 PROJECT (Oct. 20, 2022), <https://the65project.com/ethics-complaint-against-john-d-wilenchik> [<https://perma.cc/DXY7-WWFE>]; *Ethics Complaint Against Ray Smith III*, 65 PROJECT (Feb. 15, 2023), <https://the65project.com/ethics-complaint-against-ray-smith-iii> [<https://perma.cc/AUJ8-EU2L>].

²⁶³ Alan Feuer, *Legal Watchdog Group Warns Pro-Trump Lawyers Against Subverting Democracy in November*, N.Y. TIMES (Sept. 19, 2024), <https://www.nytimes.com/2024/09/19/us/politics/trump-lawyers-election-results.html> [<https://perma.cc/BBL8-8XS3>].

one ad stated: “Don’t risk your law license by joining an effort to subvert democracy . . . We—and the public—are watching.”²⁶⁴

Citizens for Responsibility and Ethics in Washington (“CREW”) was founded in 2003 and is “committed to reforming ethics, transparency and campaign finance laws and to enshrining strong checks and balances and democratic protections into law.”²⁶⁵ Its President and Chief Executive Officer is Noah Bookbinder, a graduate of Stanford Law School and former clerk to District Judge Douglas Woodlock, who has held various high-level governmental roles, including Chief Counsel for Criminal Justice for the U.S. Senate Judiciary Committee.²⁶⁶ CREW’s executive director and chief counsel is Donald K. Sherman, a graduate of Georgetown Law who has served in multiple ethics, policy, and oversight roles within the executive and legislative branches of the federal government, including the White House and the House Ethics Committee.²⁶⁷ Though it does not appear that CREW has filed ethics complaints against the attorneys who have been charged in connection with the 2020 presidential election results, the organization has published several articles referring to and discussing those attorneys with respect to the election results aftermath and other news regarding President Trump’s legal difficulties.²⁶⁸ CREW also filed a criminal complaint against Clark with the DOJ.²⁶⁹ In fall 2024, CREW submitted a formal request to Chief Justice John Roberts recommending the adoption of an ethics panel to enforce the Supreme Court’s newly adopted Code of Conduct.²⁷⁰

²⁶⁴ *Id.*

²⁶⁵ *About CREW (Citizens for Responsibility and Ethics in Washington)*, CREW, <https://www.citizensforethics.org/about> [<https://perma.cc/S3HZ-ARND>].

²⁶⁶ *See Our Team*, CREW, <https://www.citizensforethics.org/about/our-team> [<https://perma.cc/VQV5-D52Y>].

²⁶⁷ *See id.*

²⁶⁸ *See, e.g., Elizabeth Schick Vigna, Donald Trump Is Going to Be Indicted in Georgia: Here’s What That Means*, CREW (Nov. 16, 2022), <https://www.citizensforethics.org/news/analysis/donald-trump-is-going-to-be-indicted-in-georgia-heres-what-that-means> [<https://perma.cc/Z3N7-2NED>] (discussing the involvement of Rudy Giuliani, Jenna Ellis, and John Eastman in the efforts to overturn the results of the 2020 presidential election in Georgia); Matt Corley, *Did Trump’s PAC Funnel Money to Georgia Election Audit?*, CREW (Feb. 13, 2023), <https://www.citizensforethics.org/reports-investigations/crew-investigations/did-trumps-pac-funnel-money-to-georgia-election-audit> [<https://perma.cc/72NM-SM8J>] (discussing Bob Cheeley’s involvement in the efforts to overturn the results of the 2020 presidential election in Georgia).

²⁶⁹ *See CREW Files Criminal Complaint Against Jeffrey Clark*, CREW (Aug. 20, 2021), <https://www.citizensforethics.org/legal-action/legal-complaints/crew-files-criminal-complaint-against-jeffrey-clark> [<https://perma.cc/3DWR-7JV2>].

²⁷⁰ *See Letter from Noah Bookbinder & Jeremy Fogel to Hon. John G. Roberts* (Oct. 7, 2024), <https://www.citizensforethics.org/wp-content/uploads/2024/10/SCOTUS-Code-of-Conduct-Letter.pdf> [<https://perma.cc/KN69-CH7H>].

The Article III Project is a nonprofit organization formed in 2019, with the purpose, in the words of its founder Mike Davis, to “take off the gloves, put on the brass knuckles and fight back” on judicial ethics issues.²⁷¹ Davis is “a former Republican Senate and White House aide who was a central figure in the confirmations of Justices Neil M. Gorsuch and Brett M. Kavanaugh.”²⁷² While much of the organization’s work has focused on Supreme Court nominations, it also has intervened in judicial conduct matters. The Article III Project filed a disciplinary complaint against Senior Judge Michael A. Ponsor of the U.S. District Court for the District of Massachusetts after he penned an op-ed published by the *New York Times* critical of Justice Samuel Alito.²⁷³ Judge Ponsor issued a public apology after Chief Judge Albert Diaz of the U.S. Court of Appeals for the Fourth Circuit determined that Ponsor’s op-ed violated federal judicial ethics rules on impartiality and commentary on pending cases.²⁷⁴

The Society for the Rule of Law launched in 2023 with the mission “to protect the Constitution and the rule of law against rising threats posed by illiberal forces in our society, without regard to political party or partisan affiliation.”²⁷⁵ The organization’s work encompasses rule of law preservation and government ethics accountability broadly, and includes activities related to legal ethics. For example, in April 2025, the Society filed a complaint with the D.C. Office of Disciplinary Counsel against Edward Martin, who at the time served as interim U.S. Attorney for the District of Columbia. The charges included threatening or commencing investigations against political opponents as a prosecutor

²⁷¹ Carl Hulse, *Conservative Group Wants to Bring ‘Brass Knuckles’ Approach to Judicial Fray*, N.Y. TIMES (May 18, 2019), <https://www.nytimes.com/2019/05/18/us/politics/conservatives-judicial-nominees.html> [<https://web.archive.org/web/20250320093840/https://www.nytimes.com/2019/05/18/us/politics/conservatives-judicial-nominees.html>].

²⁷² *Id.*

²⁷³ See *Chief Judge Albert Diaz Sustains A3P’s Judicial Complaint Against Judge Michael Ponsor*, ARTICLE III PROJECT (Dec. 17, 2024), <https://www.article3project.org/post/chief-judge-albert-diaz-sustains-a3ps-judicial-complaint-against-judge-michael-ponсор> [<https://perma.cc/ZH7E-9NFG>].

²⁷⁴ See *id.*

²⁷⁵ *About Us*, SOC’Y FOR THE RULE OF L., <https://societyfortheruleoflaw.org/about> [<https://perma.cc/SEU6-3KER>] (“The Society was founded as Checks & Balances in 2018 by a group of conservative lawyers and jurists who have served at the highest levels of government in previous Republican administrations [and] . . . re-launched in 2023 as the Society for the Rule of Law with a renewed vision to defend and advance our shared beliefs.”).

and improper communications.²⁷⁶ The Society also has spoken out against threats pressuring judges.²⁷⁷

These are just a handful of organizations devoted to ethics reform efforts. Others are housed at law schools, as discussed more in Part III. These groups, along with journalists, have had substantial influence on disciplinary actions and legislative reforms, along with the Supreme Court accepting responsibility for its own Code of Conduct.²⁷⁸

D. Judges and Legislators

Judges, perhaps, are the most obvious source of ethics accountability for lawyers, though this is not their role or responsibility unless the misconduct occurs within the context of litigation pending before the court. For example, in the election cases, some judges sanctioned lawyers directly. As noted in Part I, these penalties included fines, mandatory continuing legal education, and referrals to disciplinary authorities recommending disbarment.²⁷⁹ One way to address the lack of resources for lawyer discipline faced by some jurisdictions, Professor Bruce Green has suggested, “would be to eliminate disciplinary rules dealing with adversary misconduct that is better addressed exclusively by courts.”²⁸⁰ Under this sort of system, according to Green, “judges could expand their sanctioning role to cover wrongdoing over which they have exclusive authority” and ultimately this “approach would address not only the perception that disciplinary authorities ignore scofflaws or single out some minor offenders, but also the general concern about arbitrary discretion.”²⁸¹

Legislators, similarly, are the most obvious source of ethics accountability for judges.²⁸² But it is also impossible to achieve reform through Congress without bipartisan agreement. For this reason, Professor Josh Blackman explains most proposals are “pointless” because “[p]rogressives, who are unhappy with the current right-leaning

²⁷⁶ See *Request for Disciplinary Investigation of Edward Robert Martin, Jr.*, SOC’Y FOR THE RULE OF L. (Apr. 14, 2025), <https://societyfortheruleoflaw.org/ed-martin-complaint> [https://perma.cc/RU4Y-2PSX].

²⁷⁷ See Statement from Gregg Nunziata, Exec. Dir. of Soc’y for the Rule of L. Inst., Statement on Attacks Against Judges (Apr. 11, 2024), <https://societyfortheruleoflaw.org/statement-on-attacks-against-judges> [https://perma.cc/JN7B-AZRT].

²⁷⁸ See *supra* Sections II.B, II.C.

²⁷⁹ See *supra* Part I.

²⁸⁰ Bruce A. Green, *Selectively Disciplining Advocates*, 54 CONN. L. REV. 151, 191 (2022).

²⁸¹ *Id.*

²⁸² See Daniel Epps & Ganesh Sitaraman, *The Future of Supreme Court Reform*, 134 HARV. L. REV. F. 398, 402 (2021) (“Legislative action is the most obvious way to reform the Court.”).

judiciary, propose reforms that make it harder for conservatives to prevail in court” while at the same time “[c]onservatives, who are pleased with the current right-leaning judiciary, oppose reforms that make it harder for conservatives to prevail in court.”²⁸³ And this dynamic, of course, has shifted over the years (recall our discussion in the Introduction about conservative calls to impeach Chief Justice Earl Warren).²⁸⁴ Ultimately, partisanship, or dissatisfaction with the outcome of a particular case, ought not be the motivation for reform. As Blackman concludes, “any federal judicial reform must be bilateral.”²⁸⁵ His “bilateral” proposals include “[r]equir[ing] Justices to ride circuit and preside when federal courts of appeals sit en banc” and “[i]mpos[ing] statutory caps for outside income earned through book royalties, advances, and other similar business dealings.”²⁸⁶ He also suggests docket reforms, recommending that the Supreme Court “remains in session year-round, with at least one public sitting for oral argument and one conference per calendar month” and “[e]stablish[s] a standard timeline for review of petitions and applications on the merits, emergency, and capital dockets.”²⁸⁷

Another set of recommendations comes from the bipartisan U.S. Supreme Court Working Group of the American Academy of Arts & Sciences’ Commission on the Practice of Democratic Citizenship (the “Working Group”), which prepared a report in 2020.²⁸⁸ The Working Group’s proposed reforms include:

[E]ighteen-year terms for Supreme Court [J]ustices with appointments staggered such that one nomination comes up during each term of Congress. At the end of their term, [J]ustices will transition to an appeals court or, if they choose, to senior status for the remainder of their life tenure, which would allow them to determine how much time they spend hearing cases on an appeals court.²⁸⁹

In 2021, Senator Sheldon Whitehouse (D-RI) and Senator Lindsey Graham (R-SC) joined forces to send a letter to Chief Justice John Roberts declaring that “a legislative solution may be in order to bring the judiciary’s financial disclosure requirements in line with other branches

²⁸³ See, e.g., Josh Blackman, *Bilateral Judicial Reform*, 1 TEX. A&M J.L. & CIV. GOVERNANCE 59, 64 (2024).

²⁸⁴ See *supra* Introduction.

²⁸⁵ *Id.* at 65.

²⁸⁶ *Id.* at 68, 72.

²⁸⁷ *Id.* at 84, 99.

²⁸⁸ See AM. ACAD. OF ARTS AND SCIS., OUR COMMON PURPOSE: REINVENTING AMERICAN DEMOCRACY FOR THE 21ST CENTURY 6–9 (2020), https://www.amacad.org/sites/default/files/publication/downloads/2020-Democratic-Citizenship_Our-Common-Purpose.pdf [<https://perma.cc/Y3EU-BDZX>].

²⁸⁹ *Id.* at 30.

of government if the Court does not address the issue itself.”²⁹⁰ That same year, Senator John Kennedy (R-LA) advanced legislation to place more obligations on the Justices over their financial disclosures with the Supreme Court Transparency Act.²⁹¹ In recent years, Democrats have also advanced a number of legislative reforms to provide oversight, including a “Supreme Court Complaints Committee” within the House of Representatives²⁹² and a complaint review panel made up of lower federal court judges.²⁹³ Similarly, Senators Lisa Murkowski (R-AK) and Angus King (I-ME) “introduced a bill in 2023 that would take a similar approach to setting up a process for addressing ethics issues in the Supreme Court” by designating an individual charged with review of complaints about the Justices.²⁹⁴ Other bilateral or nonpartisan reforms include an Office of the Inspector General for the federal judiciary.²⁹⁵

Of the various proposals, studies show that the call for term limits receives support from “scholars on both the left and the right” as well as the public generally, with “over 70% support among Democrats and Republicans for imposing eighteen-year term limits” according to a public-opinion poll.²⁹⁶ Some scholars, however, have raised concerns

²⁹⁰ Letter from Sheldon Whitehouse and Lindsey O. Graham, U.S. Sens., to Hon. John G. Roberts and Hon. Scott S. Harris (Feb. 4, 2021), <https://www.whitehouse.senate.gov/imo/media/doc/2.4.2021%20Whitehouse-Graham%20SCOTUS%20travel%20%20gift%20disclosure%20letter.pdf> [http://perma.cc/QEA3-Q23K].

²⁹¹ See Supreme Court Transparency Act, S. 956, 117th Cong. (2021).

²⁹² Jennifer Ahearn & Michael Milov-Cordoba, *The Role of Congress in Enforcing Supreme Court Ethics*, 52 HOFSTRA L. REV. 557, 574–75 (2024) (“Legislation introduced in 2022 and again in 2023 by Senator Elizabeth Warren and Representative Pramila Jayapal would . . . create a new standing committee within the House of Representatives, the ‘Supreme Court Complaints Review Committee’ . . .”).

²⁹³ See *id.* at 575–76 (“Representative Hank Johnson and Senator Sheldon Whitehouse, in bills introduced in 2022 and 2023, would . . . direct the Supreme Court to establish a process to receive complaints and to automatically refer them to . . . a panel of [five] judges selected randomly from among the chief judge of each circuit . . .” (alteration in original) (quoting Supreme Court Ethics, Recusal, and Transparency Act of 2023, H.R. 926, 118th Cong. § 2(a) (2023); Supreme Court Ethics, Recusal, and Transparency Act of 2023, S. 359, 118th Cong. § 2(a) (2023))).

²⁹⁴ *Id.* at 576 (footnote omitted).

²⁹⁵ See, e.g., Richard W. Painter, *SCOTUS House: Can a Supreme Court Ethics Lawyer and Inspector General Help Get this Fraternity Under Control*, 37 GEO. J. LEGAL ETHICS 347 (2023); Press Release, Chuck Grassley, U.S. Sen., Grassley Bill Would Improve Oversight of the Federal Judiciary (May 22, 2015), <https://www.grassley.senate.gov/news/news-releases/grassley-bill-would-improve-oversight-federal-judiciary> [https://perma.cc/ZF2P-YKDM] (“Senate Judiciary Committee Chairman Chuck Grassley of Iowa introduced legislation creating an Inspector General for the judicial branch to provide greater oversight and uphold the constitutional checks and balances on the federal judiciary. The Judicial Transparency and Ethics Enhancement Act would establish an independent office to investigate claims of fraud, waste and misconduct, and ensure that the judiciary is carrying out its duties free from corruption, bias and hypocrisy.”).

²⁹⁶ Christopher Sundby & Suzanna Sherry, *Term Limits and Turmoil: Roe v. Wade’s Whiplash*, 98 TEX. L. REV. 121, 122 (2019).

about an “instability” in the Court’s jurisprudence term limits might cause.²⁹⁷ Specifically, they warn that “this reduced stability could fundamentally change the nature of jurisprudential evolution and change the focus of litigants, policy makers, and lower court judges from precedent to the Court’s composition.”²⁹⁸ Those concerns are not a reason to discard the reform, however, but can be addressed in the implementation. Other scholars have raised questions about whether term limits can even be enacted by Congress or would require a constitutional amendment.²⁹⁹ Importantly, who decides these questions? The Justices themselves to whom the term limits would apply?

These sources of ethics accountability offer potential avenues for moving the legal profession and the judiciary beyond the latest controversies. Part III reflects on how the lessons learned from the past half-century can be a catalyst for an improved era of legal ethics.

III. THE NEXT ERA OF LEGAL ETHICS ACCOUNTABILITY

Part III concludes by offering a preliminary agenda for the next era of legal ethics accountability. At this moment of reckoning for the legal profession, at least four areas deserve priority. First, as the leader of the judicial branch, the Supreme Court should continue its efforts to improve ethics accountability. Second, state disciplinary authorities should coordinate to engage in more consistent and transparent lawyer discipline. Third, investments should be made into partnerships between law schools and independent, nonpartisan ethics centers and institutes. Fourth, investigative journalism has an important role to play in ensuring ethics accountability. Each of these priorities could be the subject of an entire law review article on its own (and in fact, as noted below, some have been). While extensive analysis is beyond the scope of this piece, a preliminary agenda for each is set forth here.

²⁹⁷ *Id.* at 129.

²⁹⁸ *Id.* at 160.

²⁹⁹ Daniel Epps & Ganesh Sitaraman, *The Future of Supreme Court Reform*, 134 HARV. L. REV. F. 398, 403 (2021) (“On top of all that, whether term limits can be imposed via statute (rather than constitutional amendment) is deeply controversial. These concerns are another reason to question whether term limits could obtain sufficient support to be enacted into law. As a result, we see any major structural changes as unlikely in the short term.” (footnote omitted)).

A. Continuing Reforms at the Supreme Court

Ideally, the Justices would on their own initiative embrace additional reforms to ensure accountability, for example, by adopting enforceable, transparent consequences for noncompliance with their Code of Conduct. Many commentators and scholars are skeptical, however, that this will occur. For example, Jennifer Ahearn and Michael Milov-Cordoba explain:

While it is understandable that many would wish, both for practical and constitutional reasons, that the Justices would take these steps themselves—thus obviating concerns about a balancing between the Supreme Court’s independence from outside corrupting influences and its independence from Congress—recent history shows us that we simply cannot rely on the Justices collectively to do this effectively. The Supreme Court’s recent adoption of a “code of conduct” demonstrates that, even with its best efforts, the Court is not capable of creating a sufficient system for itself; the system remains, exactly as it was before, entirely self-regulated, with each Justice policing their own ethics, largely outside the public eye and without any sense of how the Justices consider these issues. For example, since the Court passed its Code of Conduct last November, some Justices appear to be approaching recusal matters differently, routinely explaining their recusal decisions (at least when they do decide to recuse and note that recusal), but most Justices are still not explaining recusal decisions, even if the reasons are, it would appear, largely noncontroversial.³⁰⁰

Ahearn and Milov-Cordoba note that in the initial year after the Court adopted the Code, the Justices handled recusal in different ways.³⁰¹ Some explained their recusal decisions, but most continued to fail to explain their recusal decisions, even when their reasons seemed “noncontroversial.”³⁰² A *Bloomberg Law* investigative report in fall 2024 found that conservative members of the Court, “unlike their liberal colleagues, routinely decline[d] to explain why they recuse[d] from cases nearly a full term after all of the [J]ustices embraced a code of conduct aimed at improving transparency.”³⁰³ Adopting a uniform practice for explaining recusals would be a step toward increasing the confidence of litigants who appear before the Court and the public as a whole.

³⁰⁰ Ahearn & Milov-Cordoba, *supra* note 292, at 560.

³⁰¹ *See id.*

³⁰² *Id.*

³⁰³ Kimberly Strawbridge Robinson & John Crawley, *Supreme Court Conservatives Are Less Likely to Explain Recusals*, BLOOMBERG L. (Sept. 3, 2024, 4:45 AM), <https://news.bloombergtax.com/ip-law/supreme-court-conservatives-are-less-likely-to-explain-recusals> [https://perma.cc/6GDV-259A].

The concluding lines in the Commentary to the Justices' Code of Conduct state: "To assist the Justices in complying with these Canons, the Chief Justice has directed Court officers to undertake an examination of best practices, drawing in part on the experience of other federal and state courts."³⁰⁴ We have yet to see evidence that the Court is actually engaging in this examination, but it should do so immediately in a transparent, public manner. There are numerous well-studied proposals for reform already in existence for the Court to consider, including the Biden Commission report and the report from the Working Group discussed above in Part II. The National Center for State Courts is another robust resource, with a specialized clearinghouse for information about judicial ethics and discipline.³⁰⁵ As Professor James Sample has written: "Fair, impartial courts with rigorous processes and enforcement mechanisms benefit *all* Americans, regardless of partisan differences."³⁰⁶ The Court's response to the continued critiques about its ethics should be to create structures that enhance accountability, ensure a fair process for litigants, and increase public trust.

B. *Increasing Consistency and Transparency in Lawyer Discipline*

Discipline for lawyers across jurisdictions should be more consistent and transparent. This is most strikingly exemplified by comparing the lawyers whose licenses were suspended or revoked with the lawyers who evaded such consequences, at least for now, over similar conduct in the election fraud cases. As just one example of the inconsistent treatment described in Part I,³⁰⁷ Jenna Ellis and Sidney Powell admitted guilt to the same charges in the Georgia indictment, but only Ellis has had her license suspended. The lack of transparency in Powell's disbarment proceedings makes it difficult to know whether there were extenuating circumstances that warranted preservation of her license or whether it was a matter of politics, resources, or simply luck. The opaqueness of disciplinary processes is one factor that contributes to inconsistent outcomes.

³⁰⁴ CODE OF CONDUCT FOR JUSTS. OF THE SUP. CT. OF THE U.S., *supra* note 178, at 11.

³⁰⁵ See *Center for Judicial Ethics*, NAT'L CTR. FOR STATE CTS., <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-leadership/center-for-judicial-ethics> [<https://perma.cc/D9K5-F8AW>] ("With guidance from a distinguished advisory board, the Center for Judicial Ethics at the National Center for State Courts equips state conduct commissions with research and training that support their work investigating complaints of judicial misconduct. As a clearinghouse, the center also tracks information about who serves on conduct commissions, how they conduct their business and what types of sanctions they issue or recommend.").

³⁰⁶ James J. Sample, *The Supreme Court and the Limits of Human Impartiality*, 52 HOFSTRA L. REV. 579, 580 (2024).

³⁰⁷ See *supra* Part I.

Another factor is the significant discretion that disciplinary counsel enjoy over whether to bring charges and the sanctions to pursue.³⁰⁸ According to Professor Bruce Green, this issue has “largely escaped public and professional scrutiny.”³⁰⁹ Green’s research found “no evidence that the courts that delegate authority to disciplinary prosecutors can or do exercise meaningful oversight of discretionary charging decisions.”³¹⁰ As a consequence, “[d]isciplinary agencies are under no discernable public or professional pressure to adopt decision-making principles, to announce them to the public or to the profession, or to adhere to them.”³¹¹

Returning specifically to the case study of lawyers disciplined over the 2020 election fraud, Green suggests that “disciplinary authorities’ own political preferences may influence their decisions” about whether or not to take action against a lawyer.³¹² While the public will know if a jurisdiction imposes public discipline, “the public may not know whether disciplinary authorities declined to file charges, whether a disciplinary prosecution resulted in a lawyer’s exoneration, or whether a private sanction was issued.”³¹³ Green recommends requiring disciplinary authorities “to acknowledge and explain their discretionary decisions,” which “would help allay suspicions that the disciplinary authorities are generally under-charging or that they are sometimes overcharging because of political bias, public pressure, or other illegitimate considerations.”³¹⁴ Although the “public and profession might not agree with every decision,” Green concludes, “greater assurance that decisions are not made arbitrarily or politically would likely boost public confidence in the regulatory process.”³¹⁵ Green’s recommendations are in line with the proposal from Professor Long discussed in Part II for reform to the ABA Standards for Imposing Lawyer Sanctions.³¹⁶

At the same time, as I have written elsewhere, “bar authorities and regulators should take caution to ensure that the lawyer discipline system is not weaponized against disfavored political alliances or causes.”³¹⁷ The First Amendment protects against “[e]fforts to politicize professional ethics against lawyers based on specific causes and beliefs—like those

³⁰⁸ Green, *supra* note 280, at 190.

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.* at 191.

³¹⁴ *Id.* at 193.

³¹⁵ *Id.*

³¹⁶ See Long, *supra* note 221, at 307–08.

³¹⁷ Jefferson, *supra* note 212, at 138.

seen with Communism in the 1940s and 1950s and with Southern civil rights attorneys in the 1960s.”³¹⁸

Three decades ago, Professor David Wilkins called for bar discipline proceedings to be “open and accessible to ensure that information about the conduct in question and the standards being applied can be reviewed and critiqued.”³¹⁹ The inconsistent disciplinary treatment of the election fraud lawyers shows that his recommendation has not yet been implemented and serves as evidence for why this sort of openness is needed. Rather than devising new rules, the profession should devote energy and resources to consistency and transparency in enforcement of existing professional conduct codes.³²⁰

C. *Funding Independent, Nonpartisan Ethics Centers and Institutes Partnered with Law Schools*

In late 2024, the Brennan Center for Justice, which works in partnership with New York University School of Law, announced a \$30 million gift to “seek reform of the Supreme Court.”³²¹ Specifically, this funding will support efforts “to require term limits and an enforceable standard of ethics requiring recusal in conflicts of interest.”³²² Notably, the donor, Jim Kohlberg, is not a lawyer, nor is he “a political actor or activist.”³²³ As he explains it, his motivation in supporting the Brennan Center is not partisan: “I have voted for both Republican and Democratic presidents. And these critical reforms are not designed to help one party over the other. Each president should get a pick for the Supreme Court,

³¹⁸ *Id.*

³¹⁹ David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 884 (1992).

³²⁰ This observation applies similarly to other emerging issues in legal ethics, including, for example, the use of generative artificial intelligence. See, e.g., Andrew M. Perlman, *The Legal Ethics of Generative AI*, 57 SUFFOLK U. L. REV. 345, 346 (2024) (“Part II of this essay explains why the Model Rules of Professional Conduct (Model Rules) do not pose a regulatory barrier to lawyers’ careful use of generative AI, just as the Model Rules did not ultimately prevent lawyers from adopting many now-ubiquitous technologies. Drawing on my experience as the Chief Reporter of the ABA Commission on Ethics 20/20 . . . which updated the Model Rules to address changes in technology, I explain how lawyers can use generative AI while satisfying their ethical obligations.” (footnote omitted)).

³²¹ Press Release, Brennan Ctr. for Just., Brennan Center Receives \$30 Million Commitment for Supreme Court Reform (July 23, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/brennan-center-receives-30-million-commitment-supreme-court-reform> [<https://perma.cc/8EST-JYFA>].

³²² Jim Kohlberg, *I’m Committing \$30 Million to Reforming the Supreme Court. It’s a Small Price to Pay to Protect Our Democracy*, FORTUNE (Aug. 30, 2024, 10:30 AM), <https://fortune.com/2024/08/30/supreme-court-reform-term-limits-ethics-standard> [<https://perma.cc/AW7D-GLKY>].

³²³ *Id.*

thereby making it accountable to the will of the citizens of this country.”³²⁴ These reforms are necessary, in his view, because “[s]eventy percent of Americans think the court now puts ideology over impartiality.”³²⁵ According to Kohlberg,

[s]tarting with *Citizens United*, which equated money with speech, to *Shelby*, which weakened the Voting Rights Act, through the repeal of *Roe* and to the latest immunity ruling, the Court has consistently favored the powerful, the wealthy, and ideologues over the working class and the American people. In short, it has rigged the system to make it harder to vote, made every single vote less important than wealthy contributors, and made it easier to gerrymander districts to keep corrupt parties in power and unaccountable to the electorate.³²⁶

In making this gift, he called others to “[p]lease help and do [their] part” to preserve “bedrock values of our unique and priceless democracy.”³²⁷

The Brennan Center for Justice was founded in 1995 by former law clerks of the late Supreme Court Justice William Brennan.³²⁸ Inspired by his devotion to core democratic freedoms, the Center “works to strengthen democracy, end mass incarceration, and protect liberty and security.”³²⁹ The Center works closely with NYU Law, with many students serving as interns and participating in the Center’s Public Policy Advocacy Clinic.³³⁰ The Clinic teaches students about public policy reform strategies, specifically within the context of the Center’s areas of focus which now, with the Kohlberg funding, will be significantly devoted to ethics reform.³³¹ The Brennan Center has been led by president and CEO Michael Waldman, a graduate of Columbia College and NYU School of Law, since 2005.³³² Waldman previously served as President Clinton’s special assistant for policy coordination, and he was a member of the Biden Commission on the Supreme Court in 2021.³³³

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ See *History*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/about/history> [<https://perma.cc/FQJ5-8CP7>].

³²⁹ *Id.*

³³⁰ See *Brennan Center & NYU School of Law*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/about/brennan-center-nyu-school-law> [<https://perma.cc/ZUJ9-DRPH>].

³³¹ See *id.*

³³² See *Michael Waldman*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/about/leadership/michael-waldman> [<https://perma.cc/Z268-2A58>].

³³³ See *id.*

Beyond Supreme Court reforms, we need similar efforts aimed at not only understanding the implications of the problematic lawyering documented in Section I.A as well as what Professor Bradley Wendel calls “the good lawyers of January 6.”³³⁴ As he notes:

These lawyers include Greg Jacob, counsel to Vice President Pence; White House Counsel Pat Cipollone; White House Senior Advisor Eric Herschmann; retired federal judge J. Michael Luttig; Acting Attorney General Jeffrey Rosen; Deputy Attorney General Richard Donoghue; former Attorney General William Barr; and Secretary of Labor Eugene Scalia. In various ways all of them took steps to support the rule of law and the peaceful transition of power to Joe Biden. Legal ethics scholars should be just as interested in what they did right and why, as what John Eastman, Jeffrey Clark, Kenneth Chesebro, Cleta Mitchell, Kenneth Klukowski, Rudy Giuliani, and Sidney Powell did wrong.³³⁵

If there is any lesson to be learned from the case studies explored in Part I,³³⁶ it is that the ethics governing lawyers and judges are foundational to upholding our constitutional democracy.

This model of a nonprofit ethics center or institute partnered with a law school to elevate the importance of lawyer and judicial ethics is one that should be replicated. Several similar entities exist throughout the country, including the Center for the Legal Profession and Ethics at Harvard Law School, the Center on Ethics and the Legal Profession at Georgetown Law, the Institute for the Advancement of the American Legal System at the University of Denver Law School, the Louis Stein Center for Law and Ethics at Fordham Law School, and the Deborah L. Rhode Center for the Legal Profession at Stanford Law School.³³⁷ More resources should be devoted to cultivating similar initiatives at all law schools, not only for the purpose of engaging in meaningful, real-world ethics reforms, but also to amplify the significance of lawyer and judicial ethics for law students beyond the solitary required professional responsibility course.

³³⁴ Wendel, *supra* note 53, at 2143.

³³⁵ *Id.* at 2145–46 (footnote omitted).

³³⁶ See *supra* Part I.

³³⁷ See, e.g., CTR. FOR LEGAL PROF., <https://clp.law.harvard.edu> [<https://perma.cc/6HPC-E837>]; CTR. ON ETHICS AND THE LEGAL PROF., <https://www.law.georgetown.edu/legal-profession> [<https://perma.cc/LV4H-N58D>].

D. Recognizing Accountability Through Journalism

As discussed in Part II,³³⁸ investigative reporting has been a significant force in advancing ethics reforms for lawyers and judges, from Watergate in the 1970s to federal legislation governing judicial financial disclosures in the 2020s. Although *ProPublica* does not focus exclusively on ethics, its investigative work undoubtedly shaped the reporting for other journalists and motivated the Supreme Court's adoption of its Code of Conduct. *ProPublica* launched in 2007 and began publishing mid-2008.³³⁹ Its mission is "[t]o expose abuses of power and betrayals of the public trust by government, business, and other institutions, using the moral force of investigative journalism to spur reform through the sustained spotlighting of wrongdoing."³⁴⁰ Scholars recognize that the actions of government agencies, companies, and nonprofits are affected by *ProPublica*'s reporting, with change coming at the federal, state, and local levels. The changes occurred not because of widespread impacts on public opinion but rather because of revelations conveyed in specialized media publications reaching decision-making elites.³⁴¹ Another role for philanthropy beyond funding partnerships between law schools and ethics reform organizations is to support this sort of independent investigative journalism. For example, while not directly tied to ethics reporting, Melinda French Gates made "a three-year, multimillion-dollar grant" to *The 19th*, an independent, nonprofit newsroom founded in 2020 that reports on gender, politics, and policy.³⁴² More resources should support investigative reporting that holds lawyers and judges to their professional obligations.

CONCLUSION

We are once again at a moment for introspection for the legal profession and the judiciary, just as Chief Justice Earl Warren was fifty years ago when speaking out about the Watergate scandal and a proposal

³³⁸ See *supra* Part II.

³³⁹ See *About Us*, PROPUBLICA, <https://www.propublica.org/about> [<https://perma.cc/PD8P-BRP9>].

³⁴⁰ RICHARD J. TOFEL, NON-PROFIT JOURNALISM: ISSUES AROUND IMPACT 10 (2013) https://s3.amazonaws.com/propublica/assets/about/LFA_ProPublica-white-paper_2.1.pdf [<https://perma.cc/KXX2-4MAS>].

³⁴¹ See *id.* at 6.

³⁴² Emily Ramshaw, *The 19th Receives Multimillion-Dollar Grant from Melinda French Gates*, *Pivotal*, 19TH (May 28, 2024, 7:36 AM), <https://19thnews.org/2024/05/melinda-french-gates-pivotal-multi-million-dollar-grant> [<https://perma.cc/R3V8-8E2C>].

for diluting the Supreme Court's jurisdiction.³⁴³ Today, just as Warren wrote then, "the people of our nation are shocked by the disclosures and many are becoming so cynical that they are even doubting the soundness of our constitutional system."³⁴⁴ He cautioned: "In frustration then, too many are willing to accept half-baked proposals to change provisions that over a period of almost two hundred years have served us well through enormous expansion and almost unbelievable change."³⁴⁵ The agenda set forth here is not half-baked. It starts at the top with the Supreme Court, and should extend to all state disciplinary authorities to increase transparency and consistent accountability. Expanded partnerships between law schools and nonprofit ethics advocacy centers or organizations, along with increased independent investigative journalism, can and should be major drivers for the next era of ethics accountability.

³⁴³ Warren, *supra* note 1.

³⁴⁴ *Id.* at 223.

³⁴⁵ *Id.*