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## As Judge and Citizen: An Ethical Path to Racial Justice

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# As Judge and Citizen:

## An Ethical Path to Racial Justice

Judge Reba Ann Page & Justice Robert J. Torres, Jr.

The headlines have become frighteningly familiar: a deadly pandemic is engulfing the world including our nation, our streets have become byways for mobs intent on committing racially motivated violence, and our government institutions of public safety are being used as instruments of political control. Although these are among today's captions, this was also the state of affairs a hundred years ago.<sup>1</sup> According to the United States Centers for Disease Control, approximately one-third of the world's then-population was affected by the deadly global pandemic of 1918-1919. There were an estimated 50 million deaths worldwide, with about 675,000 of these occurring in the United States.<sup>2</sup> In 2020 the ravages of a viral pandemic, as well as racial and political unrest, have struck yet again. Although 2020 has been a year of "it can't happen here," the harsh reality is that it already did, and these devastations are not a first.

At this writing, we are physically constrained by the COVID-19 pandemic that has infected over 30 million and killed almost 550,000 Americans, there has been racial unrest across the county, and the outcome of the 2020 presidential election remains divisive.<sup>3</sup> Despite these challenges, we as judges carry a sacred duty to uphold the rule of law. In addition, we must each answer the deeply personal question of what can I, as a private citizen, do to ensure the lessons now being hard-learned result in a better society. This article examines ethical constraints placed on judges by virtue of position and considers appropriate yet meaningful action for those seeking racial justice. As the Rev. Dr. Martin Luther King, Jr., wrote in 1963 from a Birmingham jail: "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."<sup>4</sup>

This article looks at both judicial and extra-judicial aspects of the turmoil of today and yesteryear that can affect how we go forward. From a judicial perspective, it examines how dreadful circumstances brought about significant societal change. The United States Supreme Court's ruling in *Moore v. Dempsey* is an important decision from that earlier period that remains instructive. Although the legal gains from the strengths of that opinion can never overcome the horror from which it arose, it is an example of an "on the bench" ruling that resonates today for racial justice. The case serves as a reminder to judges to consider how the

law may properly advance social justice for all. The article considers ethical constraints placed upon today's judges who take extrajudicial action to support social causes. It summarizes select codes of judicial conduct, looks at opinions issued by various state judicial ethics advisory committees that pertain to how a judge may act privately for public good, and suggests resources for judges wanting to know and do more.

### CALLING JUDGES TO ACTION

Judge Jeremy D. Fogel, now of Berkeley's Justice Institute, published a powerful article on June 19, 2020: "Courts Had an Ethical Obligation to Speak Out After George Floyd's Death." He issued a call for judges to act, predicated on Canon 2A of the Code of Conduct for United States Judges. This canon, which is echoed in states' judicial codes, provides judges with an express mandate to act in ways "that promote public confidence in the integrity and impartiality of the judiciary." Judge Fogel urged that measures such as the formal statements issued by justices of the Supreme Courts of California, Texas, Massachusetts, and Washington, as well as judges of other courts, be used to fulfill this mandate. His view is that judges acting appropriately to decry injustice facilitate the judiciary's obligation to address racial disparities and will "earn and maintain the trust and confidence of all of the people it serves."<sup>5</sup>

### RESOURCES FOR JUDGES SEEKING TO TAKE APPROPRIATE ACTION

Recent editions of *Court Review* from 2020 have also looked at the leadership roles judges play, both on the bench and off. Volume 56, combined issues 3 and 4 looked at countering racial inequality (including addressing implicit bias), whereas volume 56, issue 2 brought a collection of articles addressing judicial leadership. These editions are part of the American Judges Association's longtime efforts to enhance justice and were published during 2020's greatest time of unrest. Thoughtful articles therein examine the challenges faced today, frame the issues judges must consider in acting privately and professionally, and present ethical considerations that must be considered when gauging appropriate action. Articles by Cynthia Gray, Esq., of the National Center for State Courts, and by Dr. Shawn C. Marsh and Ms. Diane

### Footnotes

1. See, e.g., Roudabeh Kishi and Sam Jones, *Demonstrations and Political Violence in America: New Data for Summer 2020*, <https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/>; Robert Greenstein, *Greenstein: CBPP Adds Its Voice to Calls for Justice and Systemic Reform*, Center on Budget and Policy Priorities (June 2, 2020), <https://www.cbpp.org/press/statements/greenstein-cbpp-adds-its-voice-to-calls-for-justice-and-systemic-reform>; Jonathan A. Greenblatt, *Fighting Hate in the Era of Coronavirus*, 17 HORIZONS: J. INT'L REL. AND SUSTAINABLE DEV. 208 (2020).
2. Ctrs. for Disease Control and Prevention, *1918 Pandemic*, <https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html> (last visited Nov. 9, 2020).
3. *Id.*
4. Rev. Dr. Martin Luther King, Jr., *Letter from a Birmingham Jail*, 71 J. NEGRO HIST. 38 (1986), <http://www.jstor.org/stable/2717650>.
5. Jeremy D. Fogel, *Courts Had an Ethical Obligation to Speak Out After George Floyd's Death* (June 19, 2020), <https://www.law.berkeley.edu/research/berkeley-judicial-institute/news-from-bji/>.

C. Marsh of the University of Nevada, Reno (UNR) and National Judicial College (NJC), respectively, are of particular note. These authors not only call cogently for judges to act but represent organizations that furnish invaluable resources to the judicial community.

### THE NATIONAL CENTER FOR STATE COURTS

Noting that “[t]he problems that roil society affect the judiciary,” Ms. Gray called upon “[i]ndividual judges willing to take up the challenge of justice movements [to] remember the ethical restrictions that require both impartiality and the appearance of impartiality to protect the judiciary’s credibility.” Her article, *Ethical Judicial Culture*, encourages judges to act, albeit within the constraints imposed by relevant codes of judicial conduct, and to make good use of advisory opinions from state judicial ethics commissions to first ascertain the propriety of proposed conduct.<sup>6</sup>

Since 1990, Ms. Gray has been the director of the Center for Judicial Ethics (CJE), which is a “national clearinghouse for information about judicial ethics that is part of the National Center for State Courts [NCSC].”<sup>7</sup> The mission of the NCSC is “improv[ing] the administration of justice through leadership and service to state courts,” and it remains an organization committed to “play[ing] a key role in the development of court administration worldwide.” Through the CJE, the NCSC provides an invaluable resource for understanding and remaining current in judicial ethics requirements.<sup>8</sup>

### THE JUDICIAL STUDIES PROGRAM AT THE UNIVERSITY OF NEVADA, RENO AND THE NATIONAL JUDICIAL COLLEGE

Two unique resources for judicial education are housed at UNR. Although separate, these institutions work in concert to provide exceptional training for judges throughout the United States and abroad. Judicial ethics is an important part of the curriculum for each.

#### The Judicial Studies Program, UNR

In *Being Explicit about Implicit Bias Education for the Judiciary*,<sup>9</sup> Dr. Shawn C. Marsh and Diane C. Marsh<sup>10</sup> write of ways for judges to confront implicit bias on the bench and elsewhere. These authors are among the leadership of two separate but affiliated judicial education entities at the UNR: the university’s Judicial Studies Graduate Degree Program (JSP) and the National Judicial College. The JSP, which also partners with the National

Council of Juvenile and Family Court Judges (NCJFCJ), was established in 1986. With concentrated study for Trial Court Judges and Juvenile and Family Court Judges, JSP offers a Master of Judicial Studies (MSJ) and a Doctor of Philosophy (Ph.D.) in Judicial Studies.

The program brings together experts who lecture on various legal specialties and relevant associated fields including medicine, social science, literature, economics, and media.<sup>11</sup>

#### The National Judicial College

The National Judicial College began as part of a 1961 initiative of the American Bar Association, along with the American Judicature Association and the Institute of Judicial Administration. Since 1964, NJC’s permanent academic location is on the UNR campus. It was the first American institution to offer nationwide judicial education to judges of all jurisdictions and it continues that tradition by offering over 100 courses/programs each year on a wide variety of legal topics. NJC continues to pursue its mission of making the world a more just place by educating and inspiring the judiciary, and during this time of public health restrictions, it has augmented its traditional in-person offerings with expanded online courses.<sup>12</sup>

On June 22, 2020, NJC President Benes Aldana issued a statement<sup>13</sup> decrying the recent killings of African Americans George Floyd, Ahmaud Arbery, Breonna Taylor, Rayshard Brooks, and others. The statement carried a clarion call: “We call for all people of conscience to commit to the hard work of confronting bigotry at every turn and ending racial injustice.” In reiterating NJC’s mission “to make the world a more just place through educating and inspiring its judiciary,” President Aldana highlighted one of the most important courses offered by NJC. For decades, *When Justice Fails: Threats to the Independence of the Judiciary* has examined periods when justice was corrupted, and tackles the hard question: what can we as judges do differently to avoid the mistakes of the past to keep the promise of equal justice? Among those failures of justice examined in depth are the rise of Hitler, Nazism, and Fascism in Europe; the civil rights struggles of African Americans; and the incarceration and disparate treatment of Japanese Americans following the attack on Pearl Harbor. NJC has also sponsored widely attended webinars that have discussed the need for achieving racial equality and social justice. These and other NJC courses critically examine the roles judges have

“‘[T]he problems that roil society affect the judiciary’”

6. Cynthia Gray, *Ethical Judicial Culture*, 56 CT. REV. 144 (2020).  
7. *Id.* Ms. Gray also “summarizes recent cases and advisory opinions, answers requests for information about judicial conduct,” publishes a weekly blog, and has spoken and written extensively on judicial ethics. See Cynthia Gray, *The Code of Judicial Conduct and Public Education*, 39 JUDGES’ J. 6 (1999); Cynthia Gray and Frances Kahn Zemans, *Instructing Judges: Ethical Experience and Educational Technique*, 58 L. & CONTEMP. PROBS. 305 (1995); Cynthia Gray, *How Judicial Conduct Commissions Work*, 28 JUST. SYS. J. 405 (2007).  
8. See generally, National Center for State Courts, <https://www.ncsc.org/> (last visited Nov. 28, 2020); Center for Judicial Ethics, <https://www.ncsc.org/topics/judicial-officers/ethics/center-for-judicial-ethics> (last visited Nov. 28, 2020).

9. Shawn C. Marsh and Diane C. Marsh. *Being Explicit about Implicit Bias Education for the Judiciary*, 56 CT. REV. 92 (2020).  
10. *Id.* at 97. Dr. Marsh is the director of the Judicial Studies Program and associate professor of judicial studies, communication studies, and social psychology at UNR. Ms. Marsh, now retired, was formerly the chief advancement officer for NJC.  
11. See generally, UNR Judicial Studies, <https://www.unr.edu/judicial-studies> (last visited Nov. 28, 2020).  
12. See NJC, *History*, <https://www.judges.org/about/njc-history> (last visited Nov. 28, 2020).  
13. Benes Z. Aldana, *A Message from President Aldana on Recent Events* (Jun. 22, 2020), <https://www.judges.org/news-and-info/a-message-from-president-aldana-on-recent-events/>.

**“We are reminded of ... the responsibilities of judges to ensure that justice is fairly administered for all.”**

played in these examples, and whether they were complacent, courageous, complicit, or insufficiently involved.

**Moore v. Dempsey: A Continuing Lesson on Racial Justice Learned “On the Bench”**

Tragically, the United States has a long history of racial injustice that adversely affected the development of the nation and still reverberates today. The United

States Supreme Court’s opinion in *Moore v. Dempsey*, 261 U.S. 86 (1923), grew out of that difficult period a hundred years ago when the nation faced some of the same challenges we struggle to meet today. While this decision was a seminal procedural ruling on habeas corpus, the underlying facts show it also remains highly relevant to today’s crying need for racial justice and to our responsibilities as judges to ensure fair and just trials. This Supreme Court decision also demonstrates how important institutional remedies can emerge from the direst circumstances.<sup>14</sup>

The case came about during the infamous “Red Scare of 1919,” when “red” referred both to fears of communism and bloodshed, especially as black soldiers returning from World War I were denied the freedoms they had fought for. Race riots broke out in over two dozen cities, including Washington, D.C., Chicago, Omaha, and Tulsa, but urban areas were not the only cauldrons of unrest.

One (if not the worst) of the riots, known as the “Elaine Massacre,” took place in Phillips County, surrounding rural Elaine, Arkansas. *Moore v. Dempsey* arose from the outcome of that horrible clash in September 1919 between Black agricultural workers and White landowners. A group of Black sharecroppers had quietly met late on the night of September 30, 1919, in a nearby country church. Their purpose was to discuss possible unionization so they could band together to resist unfair economic and social treatment. Shots rang out after a carload of White men drove up to challenge them. One White man was killed, and another was wounded. False rumors quickly spread of a Black insurrection being planned with the aim of killing all Whites.<sup>15</sup>

Retaliation by the White community was swift and brutal. Although an accurate death toll is lost to history, within days an estimated 100 to 800 Black men, women, and children were killed. Local police and paramilitary groups, augmented by 500 federal troops, seized control of the area. No Whites were charged in the violence, but 300 Blacks were arrested, and many were badly beaten and tortured. Some pled guilty to lesser crimes, and many spent the rest of their lives in prison. After 73 Blacks were indicted for murder on October 29, 1919, those who agreed to testify against the others were punished less or released.<sup>16</sup>

The trial was held on November 3, 1919, little more than a month after the confrontation at the church, and 12 Black defen-

dants were convicted of murder. It was a foregone conclusion they would be found guilty by the all-White jury. The trial itself was less than an hour, and deliberations took under ten minutes. During the proceeding, the courthouse was surrounded by a teeming mob so unruly that the judge could not hear, defense counsel called none of the available witnesses, and the defendants feared for their lives as the throng outside clamored for lynching them on the spot.<sup>17</sup>

Eventually, the plight of these 12 men reached the United States Supreme Court under a petition for habeas corpus. Writing for the Court, Justice Oliver Wendell Holmes, Jr., ruled in their favor. His straightforward recitation of the underlying facts reveals the intensity of the violent racial conflict, which carried through in the systemic bias displayed by the state courts at both trial and appellate levels. Justice Holmes harkened back to an earlier mob-dominated trial, *Frank v. Mangum*, 237 U.S. 309 (1915) (from which he dissented), in which the Court found that state court efforts were sufficient to erase the improprieties of wrongful intimidation and the denial of due process.<sup>18</sup>

This time, Justice Holmes found that the defendants in *Moore v. Dempsey* had been denied their constitutional rights to a fair trial and equal protection and ordered a retrial. He wrote of the lower courts’ proceedings:

But if the case is that the whole proceeding is a mask—that counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong, neither perfection in the machinery for correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this Court from securing to the petitioners their constitutional rights.”

*Moore*, 261 U.S. at 91.

There are critical and hard-earned lessons from *Moore v. Dempsey* we must not forget. We are reminded of the ongoing need for racial equality and the responsibilities of judges to ensure that justice is fairly administered for all. As the events of 2020 show, although strides have been made, our society and our legal system have not come far enough. Each judge should consider what he or she can do prevent the repeat of these injustices.

**Weighing Extrajudicial Actions Against Judicial Codes of Conduct**

The American Bar Association, the world’s largest voluntary legal organization, first developed a code of ethics for lawyers in 1908 and first proposed its “Canons of Judicial Ethics” in 1909. The latter were not formally adopted until 1924, following the extrajudicial actions of the colorful United States Federal District Judge Kennesaw Mountain Landis (N.D. IL). While a full-time sitting judge making \$7,500 per year, Judge Landis took on a second, full-time job. In 1920 he began concurrently serving as both a judge and as the commissioner of Major League Baseball,

14. Michael J. Klarman, *Scottsboro*, 93 MARQ. L. REV. 379 (2009).

15. Jeannie M. Whayne, *Low Villains and Wickedness in High Places: Race and Class in the Elaine Riots*, 58 ARK. HIST. Q. 285 (1999); RICHARD C. CORTNER, A MOB INTENT ON DEATH: THE NAACP AND THE ARKANSAS

RIOT CASES (1988).

16. *Id.*

17. *Id.*; see also *Moore*, 261 U.S. at 87-90.

18. *Id.* at 90-91.

for which he was paid \$42,000 annually. While Judge Landis was lauded by many for restoring honor to the game, which had suffered greatly because of the infamous “Black Sox” game-fixing scandal of the 1919 World Series, he was pilloried by others for doing so while still on the bench.<sup>19</sup>

Although many in the public and legal community were outraged, Judge Landis had broken no laws and could not be penalized for violating a required code of conduct because none yet existed. The outcry led to the ABA’s promulgation in 1924 of the first model judicial code, which has been updated periodically. Although it does not carry the force of law, the states have used the model code as the template for their judicial standards. The ABA Model Code of Judicial Conduct also served as the basis for ethical conduct of federal judges until 1973, when the Judicial Conference of the United States adopted the Code of Conduct for United States Judges (Federal Code of Conduct) in response to particular issues facing the federal judiciary.

The preamble of the ABA Model Code emphasizes the “principle that an independent, impartial, and competent judiciary, [is] composed of men and women of integrity.” Judges are exhorted to “maintain the dignity of the judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.” Although it “establishes standards for the conduct of judges and judicial candidates,” the ABA Model Code “is not intended as an exhaustive guide” for these individuals’ conduct, as they are also “governed in their judicial and personal conduct by general ethical standards as well as by the Code.”<sup>20</sup> The code broadly defines the “judges” to which it applies as “anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.”<sup>21</sup>

The fundamental tenets of the ABA Model Code of Judicial Conduct are in its canons:

**CANON 1** A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**CANON 2** A judge shall perform the duties of judicial office impartially, competently, and diligently.

**CANON 3** A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

**CANON 4** A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsis-

tent with the independence, integrity, or impartiality of the judiciary.<sup>22</sup>

Each canon is augmented by numbered rules and comments that further explain each rule.<sup>23</sup> These rules, which are more specific in elucidating the conduct covered by the relevant canon, were added beginning in 1972, when the ABA also supplemented the canons with penalties for their violation. The ABA Model Code has been adopted by several states, which have modified its requirements to meet the needs of their judiciaries.<sup>24</sup> As states have adopted their own judicial codes of conduct, they have also formed advisory committees on judicial ethics that provide important guidance interpreting relevant canons and responding to queries raised.<sup>25</sup>

The state judicial advisory committees have addressed several situations that have arisen or may occur, clarifying whether the questioned conduct is acceptable or actionable and under what circumstances. For example, questions have come up following the outpouring of public sentiment against recent racially linked violence, as well as other social causes including women’s rights, climate change, and advocacy for victims of domestic violence and drunk driving. While laudable that judges wish to support these causes by participating in events such as protests, marches, rallies, and vigils, or by issuing statements on these issues, they must do so with great care, if at all. The authors surveyed a sampling of judicial ethics opinions from select states across the country, and provide the following summary of perspectives on participating in events of this sort:

#### ***Participating in Protests, Marches, and Rallies, and Making Public Statements regarding Social Issues***

Judges seeking to participate in such events associated with Black Lives Matter, Women’s March on Washington, March on Science (climate change), and immigration were told to avoid doing so where it could undermine public confidence in the judiciary or if related issues were pending before the court. However, specific statements made by Justices of the Washington Supreme Court and the Chief Justice of Louisiana that recognized the need to improve the legal system to address problem of police misconduct and racial bias were regarded as acceptable. *See, e.g.,* California Supreme Court Committee on Judicial Ethics For-

**“While laudable that judges wish to support these causes ..., they must do so with great care, if at all.”**

19. *See, e.g.,* RAYMOND J. MCKOSKI, JUDGES IN STREET CLOTHES: ACTING ETHICALLY OFF-THE-BENCH 10-13, 55 (2017); *see also* Andrew J. Lieven and Avern Cohn, *The Federal Judiciary and the ABA Model Code: The Parting of Ways*, 28 JUST. SYS. J. 272-73 (2007).

20. Model Code of Judicial Conduct, Preamble (Am. Bar. Ass’n 2010), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_preamble\\_scope\\_terminology.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_preamble_scope_terminology.pdf).

21. *Id.*, Application, [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_application.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_application.pdf).

22. *Id.*, Canons, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct/](https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/).

23. *Id.*, Scope, [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mcjc\\_preamble\\_scope\\_terminology.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mcjc_preamble_scope_terminology.pdf).

24. Jessica Conser, *Achievement of Judicial Effectiveness Through Limits on Judicial Independence: A Comparative Approach*, 31 N.C. J. OF INT’L L. & COM. REG. 274-286 (2005).

25. Barry R. Schaller, *Ethical Aspects of Political Dilemmas Faced by Appointed Judges*, 30 YALE L. & POL’Y REV. 101 (2011). In this article, Justice Schaller, who has taught in the UNR Judicial Studies Program, offered the unique perspective as chair of the Committee on Judicial Ethics for the Connecticut Judicial Branch.

mal Opinion 2020-014, entitled “Judicial Participation in Public Demonstrations and Rallies”<sup>26</sup>; Colorado Judicial Ethics Advisory Board’s Advisory Opinion 2020-02, regarding whether judges and their staff may properly use social media to make public posts condemning racism and to express general support for various reforms being discussed in the public arena<sup>27</sup>; Connecticut Committee on Judicial Ethics Opinion 2020-03 concerning participation in “A Silent March of Black Female Attorneys of Connecticut” by meeting the marchers at the steps of the Connecticut Supreme Court and reading an excerpt from the state constitution<sup>28</sup>; Florida Advisory Opinion 1995-41, which permitted judges to attend a candlelight vigil held by “Mothers Against Drunk Driving” (MADD) because it was “not an event calling for changes in the law, such as harsher penalties for impaired drivers”<sup>29</sup>; Indiana Advisory Opinion 2020-1, which cautioned judges about attending and participating in marches, demonstrations, vigils, protests, and other public events aimed at addressing various social issues<sup>30</sup>; New York Advisory Opinion 2017-108 disallowing judges’ participation in a “Call to Service and Compassionate Workshop” sponsored by local child advocacy groups that honored victims of child abuse victims and survivors<sup>31</sup>; New York Advisory Opinions 2020-59<sup>32</sup> and 2004-91<sup>33</sup>, and New Jersey Advisory Opinion 2008-1, which prohibited judges from participating in candlelight vigils for victims of domestic abuse.<sup>34</sup>

A readable and helpful guide for judges seeking to better understand the ABA Model Code of Judicial Conduct and the state requirements patterned after it is Judge Raymond J. McKoski’s 2017 book, *Judges in Street Clothes: Acting Ethically Off-the-Bench*.<sup>35</sup>

### Some Final Thoughts for Judges Seeking Racial Justice within Ethical Bounds

As citizens and lawyers, judges must make choices in this time of unprecedented turmoil as the nation struggles to properly respond to widespread racial unrest amid a pandemic that has altered virtually every aspect of daily life. While what the authors propose may seem simplistic, none is an anodyne. To begin with, you must carry out your responsibilities as a judge. Consistent

with the ABA Model Code, we are reminded by the Code of Conduct for United States Judges that “an independent and honorable judiciary is indispensable to justice in our society,” and that our faithfulness to these standards, which are reiterated in other judicial codes of conduct, is essential “so that the integrity and independence of the judiciary may be preserved.”<sup>36</sup>

We encourage each judge to consider first the ethical restrictions placed upon your position. Then, within those constraints, develop a plan of meaningful action, which we recommend include these measures: learn, teach, give, and vote your conscience. While “learn, discern, and return” lacks the popular appeal of a title such as “eat, pray, love,” we urge you to consider these steps. “Learn” more about the racial history of our nation, the disparate treatment of minorities, and how to effectuate the civil rights guaranteed by the United States Constitution; “discern” the ethical limits placed upon your actions on the bench and as a private citizen; and “return” to the greater good of society by giving of your time, talent, and money to appropriate causes and organizations, as well as exercising your precious right to vote even where you cannot engage in partisan politics.



Judge Page sits on the United States Armed Services Board of Contract Appeals (ASBCA). She has a BA and MS (biology) and a JD from the University of Louisville, and an MJS and PhD (judicial studies) from the University of Nevada, Reno. The views expressed herein are strictly those of the author, and do not represent those of the United States Department of Defense or the ASBCA.



Justice Torres is a justice on the Supreme Court of Guam and served two terms as chief justice of Guam. He has a BBA from the University of Notre Dame and a JD from Harvard Law School.

26. California Supreme Court Committee on Judicial Ethics, Formal Opn. No. 2020-014 (July 20, 2020), <https://www.judicialethicsopinions.ca.gov/wp-content/uploads/CJEO-Formal-Opinion-2020-014.pdf>.

27. Colorado Judicial Ethics Advisory Board, Advisory Opinion 2020-02 (July 17, 2020), [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/01st\\_Judicial\\_District/C\\_J\\_E\\_A\\_B\\_%20Ad\\_%20Op\\_%202020-02.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/01st_Judicial_District/C_J_E_A_B_%20Ad_%20Op_%202020-02.pdf).

28. Connecticut Committee on Judicial Ethics, Informal Opinion No. 2020-03 (June 5, 2020), <https://jud.ct.gov/Committees/ethics/sum/2020-03.pdf>.

29. Florida Judicial Ethics Advisory Committee, Opinion 95-41 (Dec. 19, 1995), <http://www.jud6.org/legalcommunity/legalpractice/opinions/jecopinions/ninet5/95-41.html>.

30. Indiana Judicial Qualifications Commission, Advisory Opinion 1-20 (July 20, 2020), [https://www.in.gov/judiciary/jud-qual/files/jud-](https://www.in.gov/judiciary/jud-qual/files/jud-qual-adops-1-20.pdf)

[qual-adops-1-20.pdf](https://www.in.gov/judiciary/jud-qual/files/jud-qual-adops-1-20.pdf).

31. New York Advisory Committee on Judicial Ethics, Opinion 17-108 (Sept. 7, 2017), <http://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/17-108.htm>.

32. *Id.*, Opinion 20-59 (May 19, 2020), <https://nycourts.gov/legacyhtm/ip/judicialethics/opinions/20-59.htm>.

33. *Id.*, Opinion 04-91 (Sept. 14, 2004), [https://www.nycourts.gov/ipjudicialethicsopinions/04-91\\_.htm](https://www.nycourts.gov/ipjudicialethicsopinions/04-91_.htm).

34. New Jersey Advisory Committee on Extrajudicial Activities, Guidelines for Extrajudicial Activities (May 2004), [http://njlegallib.rutgers.edu/misc/EJ\\_guide\\_anno\\_2004\\_May.html](http://njlegallib.rutgers.edu/misc/EJ_guide_anno_2004_May.html).

35. See McKoski, *supra* n. 19, at 10-13, 55.

36. Code of Conduct for United States Judges, Canon 1 (2019), [https://www.uscourts.gov/sites/default/files/code\\_of\\_conduct\\_for\\_united\\_states\\_judges\\_effective\\_march\\_12\\_2019.pdf](https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf).