

VOL 49 ISS 2 | I | LIABILITY FOR JUDICIAL MISCONDUCT IN OUR LEGAL SYSTEM

A. Development of the Doctrine of Judicial Immunity

The doctrine of American judicial immunity has its immediate roots in English common law.² Relevant to the origins of the doctrine in Roman law, the doctrine of judicial immunity developed in English law in historical and political symmetry with the development of an appeal system. Before an established system of appeal, litigants were limited to attacking the judgment as false and seeking a fine or amercement against the judge in question.³ Once the appellate process granted litigants a means of recourse, it was no longer procedurally necessary to seek relief from erroneous or unfounded judgments by attacking the source of those decisions: the judge. In a seminal decision during the development of the English doctrine, Lord Coke articulated one of the policy reasons underlying judicial immunity as the need for finality of judgments, an "end of causes."⁴ Significantly, the historical development of an appeals system parallels the concept of judicial immunity as it expanded in both the American legal system and in Roman law.

In 1871, the United States Supreme Court decided Bradley v. Fisher,⁵ defining judicial immunity as it exists in the United States today. Under this doctrine, judges are immune from civil liability for judicial acts performed within the jurisdiction of the court, no matter how erroneous the act or how harmful its consequences.⁶ This immunity applies to state and federal judges of all levels,⁷ whether of general or specific jurisdiction.⁸

In addition to the need for finality of judgments, a primary purpose of the doctrine in the American legal system is to protect judicial independence.⁹ Underlying this policy is the assumption that in order for judges to be truly impartial, they must be free to exercise their authority without fear of personal consequences.¹⁰ In keeping with this policy, judges remain immune from civil liability for judicial acts regardless of their motive in performing such acts.¹¹ If the law held judges liable upon a requisite showing of intent, disappointed parties could force judges into court merely by alleging partiality, malice, or corruption, and thereby defeat the goal of judicial independence.¹² Thus, to ensure



judicial independence, the doctrine must protect even the occasional corrupt judge.

Because the doctrine ensures that judges will decide cases impartially, rather than out of fear of being sued, it benefits society as a whole.

Commentators often criticize judicial immunity as a doctrine imposed by the judiciary for its own benefit to hide negligence and intentional misconduct.¹³ Judicial immunity, however, is not for the protection of judges, but for the protection of the public, which has a strong interest in an independent judiciary.¹⁴ Although individually wronged litigants cannot collect damages for a judge's wrongful conduct, an alternative remedy through the appeal system protects them.¹⁵ Similarly, the impeachment process, the criminal system, and disciplinary proceedings protect the public from corrupt or inept judges.¹⁶

Under the doctrine as it exists today, two delimited requirements determine whether judges may incur civil liability.¹⁷ First, judges may be subject to civil liability when they perform a non-judicial act.¹⁸ Second, judges may be subject to civil liability for any act performed in complete absence of jurisdiction.¹⁹

To decide whether an act is judicial, courts look to "the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity."²⁰ In making this determination, courts have relied on a number of factors, including whether "the events involved occurred in the judge's chambers [and whether] the controversy centered around a case then pending before the judge."²¹ As one scholar has noted, in ascertaining whether conduct constitutes a judicial act, courts generally construe the facts broadly in favor of immunity,²² and in fact, courts have found immunity to exist even where one or more of these factors is not present.²³

Despite the tests formulated by the courts, authorities agree that it is still somewhat unclear what constitutes a judicial act.²⁴ Although no precise definition of a judicial act exists, clearly the immunity attaches to the act itself, not the person performing the act.²⁵ Thus, an act is not judicial merely because a judge performs it.



Legal scholars and jurists have characterized non-judicial conduct as 1) conduct not requiring judicial discretion, or 2) highly aberrational behavior.²⁶ Conduct which commentators consider non-judicial because it does not require an exercise of judicial discretion or a determination of parties' rights includes ministerial, administrative, and legislative acts.²⁷ As one court noted, a judge does not "utilize his education, training, and experience in the law" to perform such acts.²⁸ Typically, a layperson could perform these non-judicial acts.²⁹ Because these acts do not involve any exercise of judicial discretion, the goal of judicial independence does not require that the law extend absolute immunity to them.³⁰ Additionally, unlike traditional judicial acts, no alternative means of review exists for such non-judicial acts.³¹ Thus, the law would provide no remedy for a party wronged by a judge's administrative, ministerial, or legislative acts if judges were immune from liability for such acts.

Courts have also characterized acts as non-judicial when judges have engaged in "highly aberrational" behavior, such as performing arrests and summary trials.³² Other examples include intentionally misleading police officers as to the identity of a person named on an arrest warrant,³³ physically evicting a person from the courtroom,³⁴ and making derogatory comments about a defendant to the press and city officials.³⁵

Finally, the judge's motive does not factor into determining whether an act is judicial.³⁶ Even a prior agreement defining the outcome of a case, whether made out of malice or partiality, or pursuant to a bribe, will not transform a judicial act into a non-judicial one.³⁷ The judicial act analysis focuses on the judge's ultimate act, such as rendering judgment in the case, rather than on any underlying motive, such as bribery.³⁸

In addition to the judicial act requirement, the doctrine of judicial immunity has a jurisdictional component. The courts generally agree that if a judge does not lack subject matter jurisdiction completely, he is judicially immune.³⁹ There is also a distinction between acts performed in excess of jurisdiction and those performed in complete absence of jurisdiction. Judicial immunity protects the former, but not the latter acts.⁴⁰ In *Bradley v. Fisher*,⁴¹ the Court gave a helpful example to distinguish the two: a probate judge

presiding over a criminal prosecution acts in complete absence of jurisdiction; however, a criminal court judge who convicts a person for a non-existent offense merely acts in excess of jurisdiction.⁴²

In *Bradley*, the Court stated that a judge is not immune from civil liability when no subject matter jurisdiction exists and the judge is aware of its absence.⁴³ Subsequently, some courts have held that a judge can only act in complete absence of jurisdiction when he is aware that he lacks jurisdiction or when he acts in the face of a clearly valid statute or case law that deprives him of jurisdiction.⁴⁴ Other courts, however, have held that a judge's imputed knowledge plays no role in determining whether the judge acted in complete absence of jurisdiction.⁴⁵

Some of the most difficult questions a judge must consider relate to his jurisdiction; therefore, courts broadly construe jurisdiction to achieve the purposes of judicial immunity.⁴⁶ Even grave procedural errors will not deprive a judge of full jurisdiction for judicial immunity purposes.⁴⁷ In fact, a judge of general jurisdiction has jurisdiction over any matter unless the law specifically denies jurisdiction.⁴⁸ Given this broad construction of the jurisdictional requirement, lack of jurisdiction rarely breaches judicial immunity.⁴⁹

B. Methods of Ensuring Judicial Accountability

Although judicial immunity is an absolute bar to recovering monetary damages against judges, the legal and political systems make judges accountable through other methods. First, judges are not immune from awards of injunctive relief.⁵⁰ Because judges need not fear the personal consequences of an injunction, such immunity is not necessary to protect judicial independence.⁵¹ Further, the Supreme Court has ruled that parties may hold judges liable for attorneys' fees under the Civil Rights Attorney's Fees Awards Act.⁵² While such liability seems to threaten judicial independence, the Court found that Congress specifically intended to impose such liability upon the judiciary.⁵³ As the Court noted, it is within Congress' authority and discretion to abrogate the common law doctrine.⁵⁴

Although judges are generally not subject to civil liability, they are subject to criminal liability. Judges remain

criminally liable for fraud, conspiracy, or any other crimes, even when they commit those crimes in ppear in court); *Ross v. Arnold*, 575 F. Supp. 1494, 1495 (E.D. Wis. 1983) (detailing how judge in a divorce proceeding ordered the husband to vacate the couple's residence, and upon the husband's refusal to vacate, ordered him incarcerated). connection with the judicial office.⁵⁵ The courts have found that providing judges with immunity from criminal liability would pose too great a risk to the public interest in law enforcement.⁵⁶ The limited exception to this rule is that the law will not hold judges criminally liable for erroneous judicial acts performed in good faith.⁵⁷

In addition to liability for their criminal behavior, society can hold judges accountable for their misconduct through several other methods. These methods include impeachment or removal from office and sanctions imposed by organizations that regulate judicial conduct. For example, Article II, Section IV of the United States Constitution provides for removal of federal judges upon impeachment and conviction for bribery, treason, or other high crimes and misdemeanors.⁵⁸ Most state constitutions have similar provisions for legislative impeachment of state judges.⁵⁹

Some states provide additional methods of removing judges from office, although such methods are infrequently used.⁶⁰ One procedure, "Address to the Executive," occurs where both houses of the state legislative body formally request that the governor remove a judge from office.⁶¹ A few states also provide for removal of judges by recall election.⁶² Under this procedure, only a designated number of voters' signatures will secure that the recall proposition is put on the ballot.⁶³ The general voting population then determines whether to remove the judge from office.⁶⁴ Finally, most states now have at least some elected judges, allowing the public to "remove" judges by choosing not to re-elect them.⁶⁵

Commentators have criticized the above methods of impeachment and removal,⁶⁶ labeling them cumbersome, time-consuming, and politically motivated. ⁶⁷ Additionally, the methods provide only for the extreme penalty of removal from office, which is inappropriate in many cases.⁶⁸ If the judge remains in office, he or she remains unpunished. Consequently, state lawmakers rarely use these methods of judicial removal, which contributes to their ineffectiveness.⁶⁹



Recently, states have addressed the problem of judicial discipline by adopting codes of judicial conduct and creating judicial conduct organizations to enforce them. The **Model Code of Judicial Conduct**, promulgated by the American Bar Association, has been adopted in full or in part by forty seven states, the District of Columbia, and the Federal Judicial Conference.⁷⁰ Thus, virtually all state and federal judges are subject to the Code,⁷¹ which provides that judges must uphold the integrity and independence of the judiciary,⁷² avoid impropriety and the appearance of impropriety,⁷³ and perform their duties impartially and diligently.⁷⁴

Finally, all fifty states and the District of Columbia have established judicial conduct organizations to investigate and adjudicate complaints of judicial misconduct.⁷⁵ These organizations can compel sanctions or recommend sanctions to a higher body that imposes them.⁷⁶ Possible sanctions include censure,⁷⁷ suspension,⁷⁸ and removal from office.⁷⁹ In the federal system, a judicial council in each circuit imposes sanctions for judicial misbehavior⁸⁰ Unlike the state judicial conduct organizations, these councils do not enjoy the power of removal, although they can recommend the initiation of impeachment proceedings.⁸¹ Other sanctions the council can enforce include recommendations to retire, suspending caseloads, and censuring judges privately and publicly.⁸² Commentators consider sanctions the most effective method of disciplining judicial misconduct.⁸³

Society, therefore, holds judges accountable to the public in a number of ways. The legal system is designed to correct itself either through a system of appeals or through the few limited circumstances when litigants can hold a judge liable for his or her conduct through criminal prosecution or disciplinary proceedings. Elected judges are also subject to the political system, where opponents may expose judicial conduct in an effort to prevent his or her re-election. These accountability measures ensure that the legal system supports both individual and societal reliance on the judicial process. Therefore, while the doctrine of judicial immunity greatly protects judges from civil liability, limited practices of judicial accountability help to preserve the integrity and workability of our legal system.

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Footnotes

² For a thorough history of judicial immunity in our legal system and its origins in English law, see J. Randolph Block, *Stump v. Starkman and the History of Judicial Immunity*, 1980 DUKE L.J. 879, 881-96 (1980). See generally Jay M. Feinman & Roy S. Cohen, *Suing Judges: History and Theory*, 31 S.C. L. REV. 201 (1980); Jeffrey M. Shaman, *Judicial Immunity from Civil and Criminal Liability*, 27 SAN DIEGO L. REV. 1 (1990).

³ See Shaman, *supra* note 2, at 3.

⁴ *Floyd v. Barker*, 77 Eng. Rep. 1305, 1306 (K.B. 1907); see also Block, *supra* note 2, at 885-87; Shaman, *supra* note 2, at 3; Michael Robert King, Note, *Judicial Immunity and Judicial Misconduct: A Proposal for Limited Liability*, 20 ARIZ. L. REV. 549, 551-52 (1978).

⁵ 80 U.S. (13 Wall.) 335 (1871). The Supreme Court first addressed the issue of judicial immunity in *Randall v. Brigham*, 74 U.S. (7 Wall.) 523, 537 (1868), where the Court suggested that judges might be liable for judicial acts performed both maliciously or corruptly and in excess of jurisdiction. In *Bradley*, however, the Court clearly rejected this notion. See *Bradley*, 80 U.S. (13 Wall.) at 350-51.

⁶ See *Bradley*, 80 U.S. (13 Wall.) at 347; see also *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978).

⁷ See *Ammons v. Baldwin*, 705 F.2d 1445, 1447 (5th Cir. 1983); *Brewer v. Blackwell*, 692 F.2d 387, 396 (5th Cir. 1982); *Turner v. Raynes*, 611 F.2d 92, 94-97 (5th Cir. 1980).

⁸ See *Turner*, 611 F.2d at 97. When the Supreme Court first adopted the doctrine of judicial immunity, it distinguished between courts of general and limited jurisdiction. See *Randall*, 74 U.S. (7 Wall.) at 535-36. For an explanation of the abolishment of this distinction, see Block, *supra* note 2, at 892-96.

⁹ See *Forrester v. White*, 484 U.S. 219, 226-27 (1988); *Bradley*, 80 U.S. (13 Wall.) at 347; *Randall*, 74 U.S. (7 Wall.) at 536. Some courts offer the need for finality of judgments as another policy reason justifying the doctrine of judicial immunity. See *Pierson v. Ray*, 386 U.S. 547, 564 & n.4 (1967) (Douglas, J., dissenting); *Holloway v. Walker*, 765 F.2d 517, 522 (5th Cir. 1985); *Harper v. Merckle*, 638 F.2d 848, 856 & n.10 (5th Cir. 1981); see also Shaman, *supra* note 2, at 4.

¹⁰ See *Pierson*, 386 U.S. at 564 & n.4; *Holloway*, 765 F.2d at 522; *Harper*, 638 F.2d at 856 & n.10.

¹¹ See *Forrester*, 484 U.S. at 228; *Stump*, 435 U.S. at 355-56; *Bradley*, 80 U.S. (13 Wall.) at 347.

¹² See *Bradley*, 80 U.S. (13 Wall.) at 349; *Holloway*, 765 F.2d at 522; *O'Neil v. City of Lake Oswego*, 642 F.2d 367, 370 (9th Cir. 1981).

¹³ See Shaman, *supra* note 2, at 4.

¹⁴ See *Pierson*, 386 U.S. at 554; *Bradley*, 80 U.S. (13 Wall.) at 349; *Randall*, 74 U.S. (7 Wall.) at 536.



15. See *Forrester*, 484 U.S. at 227; *Holloway*, 765 F.2d at 522.
16. See *Forrester*, 484 U.S. at 227; *Holloway*, 765 F.2d at 522.
17. See *Stump v. Sparkman*, 435 U.S. 349, 356-57, 360 (1978).
18. See *id.* at 355-57; see also *Bradley*, 80 U.S. (13 Wall.) at 347.
19. See *Stump*, 435 U.S. at 356-57.
20. *Id.* at 362.
21. *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972). This case introduced a four-part test to determine whether:
 - (1) the precise act complained of, use of the contempt power, is a normal judicial function; (2) the events involved occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the confrontation arose directly and immediately out of a visit to the judge in his official capacity.
- Id.* The Ninth and Eleventh Circuits have since used this test as well. See *Ashelman v. Pope*, 793 F.2d 1072, 1075-76 (9th Cir. 1986); *Dykes v. Hosemann*, 776 F.2d 942, 946 (11th Cir. 1985); *Adams v. McIlhenny*, 764 F.2d 294, 297 (5th Cir. 1985); *Brewer v. Blackwell*, 692 F.2d 387, 396-97 (5th Cir. 1982).
22. See *Ashelman*, 793 F.2d at 1076; *Adams*, 764 F.2d at 297; Shaman, *supra* note 2, at 9.
23. See *Harris v. Deveaux*, 780 F.2d 911, 915 (11th Cir. 1986); *Holloway v. Walker*, 765 F.2d 517, 524 (5th Cir. 1985); *Adams*, 764 F.2d at 297; Shaman, *supra* note 2, at 9.
24. See Block, *supra* note 2, at 916-21; Shaman, *supra* note 2, at 8; Joseph Romagnoli, Note, ***What Constitutes a Judicial Act for Purposes of Judicial Immunity?***, 53 FORDHAM L. REV. 1503, 1504 (1985).
25. See Shaman, *supra* note 2, at 8; see also *Forrester v. White*, 484 U.S. 219, 228-29 (1988).
26. See Shaman, *supra* note 2, at 9.
27. See *Forrester*, 484 U.S. at 228-30 (noting that hiring and supervising court personnel is an administrative duty not entitled to the protection of judicial immunity); *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719, 731 (1980) (recognizing that promulgating attorney disciplinary rules is a legislative rather than a judicial act); *Ex Parte Virginia*, 100 U.S. 339, 348 (1879) (concluding that jury selection is a ministerial act); see also Romagnoli, *supra* note 24, at 1508. For a discussion of the distinctions between ministerial, administrative, and judicial acts, see ABIMBOLA A. OLOWOFOYERU, *SUING JUDGES: A STUDY OF JUDICIAL IMMUNITY* 34-38 (1993).
28. *McMillan v. Svetanoff*, 793 F.2d 149, 155 (7th Cir. 1986).

²⁹. See *Forrester*, 484 U.S. at 229; *Ex Parte Virginia*, 100 U.S. at 348.

³⁰. See *McMillan*, 793 F.2d at 155.

³¹. See *id.*

³². See *Shaman*, *supra* note 2, at 9-10; see also *Brewer v. Blackwell*, 692 F.2d 387, 396-98 (5th Cir. 1982) (finding that a justice of the peace's alleged arrest of four men at a garbage dump, who then engaged in an automobile chase with one of the men and conducted a summary trial was not a judicial act); *Harper v. Merckle*, 638 F.2d 848, 859 (5th Cir. 1981) (concluding that a judge's jailing of a man for contempt when he entered the judge's chambers to make an alimony payment to a court employee was not a judicial act); *Lopez v. Vanderwater*, 620 F.2d 1229, 1235 (7th Cir. 1980) (determining that a judge's prosecutorial conduct in determining the charges against an arrested man was not a judicial act); *Zarcone v. Perry*, 572 F.2d 52, 53 (2d Cir. 1978) (describing how a traffic judge had a coffee vendor brought to his chambers handcuffed, and then interrogated and harassed the vendor about coffee the judge considered "putrid"); *Krueger v. Miller*, 489 F. Supp. 321, 329 (E.D. Tenn. 1977) (holding that a justice of the peace acted outside the limits of his lawful authority when he displayed a false badge and arrested a woman).

³³. See *King v. Love*, 766 F.2d 962, 968 (6th Cir. 1985).

³⁴. See *Gregory v. Thompson*, 500 F.2d 59, 64 (9th Cir. 1974).

³⁵. See *Harris v. Harvey*, 605 F.2d 330, 336 (7th Cir. 1979).

³⁶. See *King*, 766 F.2d at 968 (finding that judge deliberately misled police into believing the man named on an arrest warrant was a man who had filed a complaint against the judge); *Harris*, 605 F.2d at 333-36 (reporting that judge made repeated derogatory and racially-based comments about police lieutenant to the press and city officials).

³⁷. See *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) (holding that a conspiracy does not pierce judicial immunity); *Dykes v. Hosemann*, 776 F.2d 942, 946 (11th Cir. 1985) (concluding that judges who conspire are immune if performing a judicial act); *Holloway v. Walker*, 765 F.2d 517, 523 (5th Cir. 1985) (finding complaint alleging that harm was inflicted by judicial acts to which absolute immunity would apply, although caused by bribe or conspiracy, was insufficient to avoid judicial immunity); *Sparks v. Duval County Ranch Co.*, 604 F.2d 976, 980-81 (5th Cir. 1979) (determining that the advantages of punishing those who subvert the judiciary outweigh any good conferred by a derivative judicial immunity rule).

³⁸. See *Ashelman*, 793 F.2d at 1077-78.

³⁹. See *id.* at 1076; *Dykes*, 776 F.2d at 948; *Green v. Maraio*, 722 F.2d 1013, 1017 (2d Cir. 1983). But see *Rankin v. Howard*, 633 F.2d 844, 849 (9th Cir. 1980) (holding that acts taken in the absence of personal jurisdiction are not protected by judicial immunity). 20001 **Judicial Immunity and Judicial Liability**

⁴⁰. See *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 351-52 (1872); see also *Stump v. Sparkman*, 435 U.S. 349, 356 n.6 (1978) (quoting *Bradley*, 80 U.S. (13 Wall.) at 351-52).



^{41.} 80 U.S. (13 Wall.) 335 (1872).

^{42.} See *id.* at 352.

^{43.} See *id.*

^{44.} See *Rankin*, 633 F.2d at 849; *Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir. 1980). In *Turner*, the Fifth Circuit stated that one possible interpretation of *Stump* is that a judge is only liable if he exercised unconferrred jurisdiction in such a crass manner as to indicate he did so either knowingly or recklessly. See *Turner*, 611 F.2d at 95. In the same year, the Ninth Circuit, in *Rankin*, clearly stated a judge was immune unless he was aware he lacked jurisdiction, or he acted in the face of a clearly valid law depriving him of it. See *Rankin*, 633 F.2d at 849. The Sixth and Eleventh Circuits also adopted this position. See *Mills v. Killebrew*, 765 F.2d 69, 71 (6th Cir. 1985); *Dykes v. Hosemann*, 743 F.2d 1488, 1497 (11th Cir. 1984).

^{45.} See *O'Neil v. City of Lake Oswego*, 642 F.2d 367, 370 (9th Cir. 1981). In *O'Neil*, the Ninth Circuit contradicted its holding in *Rankin* by holding that a judge's intent does not factor into the jurisdictional analysis. See *id.* The court reasoned that the *Stump* court neither stated nor implied that a judge's knowledge of his jurisdiction affected his immunity. See *id.*

^{46.} See *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986).

^{47.} See *Stump v. Sparkman*, 435 U.S. 349, 359 (1978); *Bradley*, 80 U.S. (13 Wall.) at 357; *King v. Myers*, 973 F.2d 354, 359 (4th Cir. 1992) (describing how judge ordered warrantless arrest); *King v. Love*, 766 F.2d 962, 965 (6th Cir. 1985) (explaining that judge jailed party for contempt when he was only authorized to impose fine); *Lopez v. Vanderwater*, 620 F.2d 1229, 1234 (7th Cir. 1980) (noting that judge conducted a trial in a police station that fell outside his jurisdiction); *King v. Thornburg*, 762 F. Supp. 336, 338 (S.D. Ga. 1991) (discussing how magistrate ordered the arrest of an attorney who failed to appear in court); *Ross v Arnold*, 575 F. Supp. 1494, 1495 (E.D. Wis. 1983) (detailing how judge in a divorce proceeding ordered the husband to vacate the couple's residence, and the husband's refusal to vacate, ordered him incarcerated).

^{48.} See *Stump*, 435 U.S. at 358.

^{49.} But see *Maestri v. Jutkofsky*, 860 F.2d 50, 53 (2d Cir. 1988) (denying judicial immunity when town judge issued an arrest warrant for persons who committed offenses outside his territorial jurisdiction); *Hoppe v. Klapperich*, 28 N.W.2d 780, 789 (Minn. 1947) (explaining that judge acted wholly without jurisdiction by issuing an arrest warrant when no written complaint had been made); *State ex rel. Little v. United States Fidelity & Guar. Co.*, 64 So. 2d 697, 702-03 (Miss. 1953) (finding judge liable where he knowingly drafted an affidavit to state that an offense occurred within his jurisdiction when it clearly had not); *Vickrey v. Dunivan*, 279 P.2d 853, 855-56 (N.M. 1955) (detailing how judge tried person for an act performed outside the judge's territorial jurisdiction and which was not even an offense); *Utley v. City of Independence*, 402 P.2d 91, 94 (Or. 1965) (describing how judge completely lacked jurisdiction when he issued an arrest warrant without a written complaint).

^{50.} See *Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984).



51. See *id.* at 536-38. The Court noted that judges have never been held absolutely immune from injunctive relief and that there is no evidence that this policy has chilled judicial independence. See *id.* at 536. Furthermore, the stringent requirements for obtaining equitable relief minimize the risk that judges will be harassed and judicial independence compromised. See *id.* at 537-38.
52. See *id.* at 543-44.
53. See *id.* at 543.
54. See *id.*
55. See *United States v. Chaplin*, 54 F. Supp 926, 930, 933 (S.D. Cal. 1944).
56. See *id.* at 934 (quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 226-27 (1821)).
57. See *Braatlien v. United States*, 147 F.2d 888, 895 (8th Cir. 1945).
58. "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST. art. II, § 4. It has never been disputed that judges are civil officers for purposes of impeachment. See Harry T. Edwards, ***Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges***, 87 MICH. L. REV. 765,773 (1989).
59. See Russell R. Wheeler & A. Leo Levin, ***Judicial Discipline and Removal in the United States*** (July 1979) (paper prepared for the Fed. Jud. Ctr.), available in 1979 WL 24794.
60. For a general discussion of these methods, see Wheeler & Levin, *supra* note 59, and Edward J. Schoenbaum, A Historical Look at Judicial Discipline, 54 CHI.-KENT L. REV. 1 (1977).
61. See Schoenbaum, *supra* note 60, at 4.
62. See Wheeler & Levin, *supra* note 59, at 4-5.
63. See Schoenbaum, *supra* note 60, at 8.
64. See *id.*
65. See Wheeler & Levin, *supra* note 59, at 5.
66. For an evaluation of several of the impeachment and removal methods discussed, see generally Wheeler & Levin, *supra* note 59, and Schoenbaum, *supra* note 60.
67. See Jeffrey M. Shaman, Judicial Ethics, 2 GEO. J. LEGAL ETHICS 1, 10 (1988).
68. See *id.*
69. See *id.*
70. See *id.* at 3; see also Yvette Begue & Candice Goldstein, How Judges Get Into Trouble: What They Need to Know About Development in the Law of Judicial Discipline, 26 JUDGES J. 8, 9 (1987). Montana, Rhode Island, and Wisconsin have not adopted the Model Code. See *id.* The ABA revised the Code in 1990, and since that time, nearly 20 jurisdictions have adopted new codes



of judicial conduct modeled on the 1990 revision. See STEPHEN GILLERS & ROY D. SIMON, *REGULATION OF LAWYERS: STATUTES AND STANDARDS*, 573-75 (2000).

⁷¹. See Shaman, *supra* note 67, at 3.

⁷². See Begue & Goldstein, *supra* note 70, at 9.

⁷³. See *id.*

⁷⁴. See *id.*

⁷⁵. See Shaman, *supra* note 67, at 11.

⁷⁶. See *id.*

⁷⁷. See generally *In re Inquiry Concerning a Judge*, 788 P.2d 716 (Alaska 1990) (privately reprimanding a judge for creating appearance of impropriety by self-validating reduced airline tickets); *Quinn v. State Comm'n on Judicial Conduct*, 430 N.E.2d 879 (N.Y. 1981) (censuring a judge in connection with convictions for public intoxication); *In re Roth*, 645 P.2d 1064 (Or. 1982) (censuring a judge in connection with conduct constituting criminal mischief); *In re Larsen*, 616 A.2d 529 (Pa. 1992) (publicly reprimanding an associate judge for ex parte communications).

⁷⁸. See generally *In re Schenck*, 870 P.2d 185 (Or. 1994) (suspending judge from office for ex parte communications, failure to disqualify himself, and publishing comments on pending cases); *West Virginia Judicial Inquiry Comm'n v. Dostert*, 271 S.E.2d 427 (W. Va. 1980) (censuring and suspending judge for assisting officers with arrests and carrying a weapon without proper license).

⁷⁹. See generally *In re Peck*, 867 P.2d 853 (Ariz. 1994) (removing justice of the peace for ex parte communications and failure to disqualify himself); *In re Callanan*, 355 N.W.2d 69 (Mich. 1984) (removing judge from office in connection with convictions for conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act (RICO), aiding and abetting RICO violations and aiding and abetting mail fraud); *In re Duncan*, 541 S.W.2d 564 (Mo. 1976) (removing judge from office for breaking and entering); *In re Coruzzi*, 472 A.2d 546 (N.J. 1984) (removing judge from office after conviction for four counts of bribery).

⁸⁰. See Shaman, *supra* note 67, at 16. These councils are authorized by the **Judicial Councils Reform and Judicial Conduct and Disability Act of 1980**, Pub. L. No. 96-458, 94 Stat. 2035.

⁸¹. See Shaman, *supra* note 67, at 16-17. Some question exists as to whether impeachment of judges, as provided in the Constitution, is the only constitutional method of removing judges from office. See *id.* at 17.

⁸². See 28 U.S.C. § 372(c)(6)(B) (1994); Shaman, *supra* note 67, at 17.

⁸³. See generally Schoenbaum, *supra* note 60, at 1-2; Shaman, *supra* note 67, at 11.