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Restoring the Public's Faith: Character Education and the Supreme Court

Benjamin Rigney

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ARTICLE

Dr. Benjamin Rigney

Restoring the Public's Faith: Character Education and the Supreme Court

Abstract. The current news cycle is full of reports on the alleged ethical scandals rocking the Supreme Court. A significant result of these ethical failures is rapidly declining public trust in the Supreme Court as an institution, which in turn negatively impacts the public's trust in the entire legal system. The role of judicial ethics is fundamental to the American legal system as illustrated in Charles Geyh's article, *The Architecture of Judicial Ethics*, published in the *University of Pennsylvania Law Review*, and Amanda Frost's article, *Judicial Ethics and Supreme Court Exceptionalism*, published in the *Georgetown Journal of Legal Ethics*. However, those articles fail to address the role that character education can play in reforming the Supreme Court and reviving public trust in the legal system.

This Article illustrates the power of character education as a tool for systemic reform and uses the Supreme Court as a model for applying character education strategies. These character strategies have a broader reach than just the Supreme Court, but this Article uses the Supreme Court to illustrate how to implement character education into the legal context. Legal scholarship currently has a dearth of information regarding the role of character education in the legal industry. This Article outlines a unique solution to the substantial, timely, and important issue of the ethical lapses in the United States Supreme Court.

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Michael Lamb, Kenneth Townsend, Elizabeth Whiting, and Nancy Winfrey.

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“People, for reasons of their own, often fail to do things that would be good for them or good for society. Those failures—joined with the similar failures of others—can readily have a substantial effect”

—Chief Justice John Roberts¹

I. INTRODUCTION

A 2022 Gallup poll revealed that public faith in the Supreme Court of the United States is at an all-time low with only 25% of Americans polled claiming to “have ‘a great deal’ or ‘quite a lot’ of confidence in the U.S. Supreme Court.”² Another poll conducted by Gallup later in 2022 showed that only “[f]orty-seven percent of [United States] adults say they have ‘a great deal’ or ‘a fair amount’ of trust in the judicial branch of the federal government that is headed by the Supreme Court.”³ Since those polls were conducted, the Court has done little to rectify the public’s lack of trust in their institution as evidenced by a series of potential ethical shortcomings,⁴

1. Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 529, 556 (2012) (emphasis added).

2. Jeffrey M. Jones, *Confidence in U.S. Supreme Court Sinks to Historic Low*, GALLUP (June 23, 2022), <https://news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx> [perma.cc/WUH5-7Y8D].

3. Jeffrey M. Jones, *Supreme Court Trust, Job Approval at Historical Lows*, GALLUP (Sept. 29, 2022), <https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx> [perma.cc/42F6-6P5E].

4. See Zoe Tillman, *Clarence Thomas’s Billionaire Friend Did Have Business Before the Supreme Court*, BLOOMBERG (Apr. 24, 2023, 1:02 PM), <https://www.bloomberg.com/news/articles/2023-04-24/clarence-thomas-friend-harlan-crow-had-business-before-the-supreme-court> [https://perma.cc/2KS6-ZCUJ] (“Justice Clarence Thomas said he was advised he didn’t have to disclose private jet flights and luxury vacations paid for by billionaire Harlan Crow because, although a close friend, Crow ‘did not have business before the court.’”); Justin Elliott et al., *Billionaire Harlan Crow Bought Property From Clarence Thomas. The Justice Didn’t Disclose the Deal*, PROPUBLICA (Apr. 13, 2023, 2:30 PM), <https://www.propublica.org/article/clarence-thomas-harlan-crow-real-estate-scotus> [perma.cc/SQ5A-VRJS] (describing an unusual real estate sale that went undisclosed by Justice Thomas); Heidi Przybyla, *Law Firm Head Bought Gorsuch-Owned Property*, POLITICO (Apr. 25, 2023, 4:30 AM), <https://www.politico.com/news/2023/04/25/neil-gorsuch-colorado-property-sale-00093579> [perma.cc/SC6G-KC4V] (“Justice Neil Gorsuch sought a buyer for a 40-acre tract of property he co-owned Nine days after he was confirmed . . . the then-circuit court judge got one: The chief executive of Greenberg Traurig, one of the nation’s biggest law firms with a robust practice before the high court.”); Joshua Kaplan et al., *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> [perma.cc/BMF5-WDRE] (explaining Justice Thomas received compensation from Harlan Crow to cover a relative’s tuition at prestigious boarding school).

possible personal conflicts,⁵ and a public refusal to be held accountable.⁶ These occurrences continue to harm the Court's reputation. The ethical lapses in the Supreme Court have been institution-wide and are not strictly limited to any one Justice or political party.⁷

A lack of public trust in the Supreme Court has very real consequences.⁸ The public's trust in the institution can increase or decrease the

5. See Hailey Fuchs et. al., *Justices Shield Spouses' Work from Potential Conflict of Interest Disclosures*, POLITICO (Sept. 29, 2022, 3:09 PM), <https://www.politico.com/news/2022/09/29/justices-spouses-conflict-of-interest-disclosures-00059549> [perma.cc/V27Z-DRSF] (discussing several instances where Justices forego disclosing spouses' work that may pose potential conflicts of interest); Mattathias Schwartz, *Jane Roberts, Who is Married to Chief Justice John Roberts, Made \$10.3 Million in Commissions from Elite Law Firms, Whistleblower Documents Show*, BUS. INSIDER (Apr. 28, 2023, 1:17 PM), <https://www.businessinsider.com/jane-roberts-chief-justice-wife-10-million-commissions-2023-4> [perma.cc/NY36-3CAR] (sharing information that reveals the extent of Jane Roberts work and raises unsettling ethical questions); Darragh Roche, *Clarence Thomas Failing to Note Wife Ginni's \$680k Side Income Resurfaces*, NEWSWEEK (Sept. 29, 2022, 7:48 AM), <https://www.newsweek.com/clarence-thomas-wife-ginni-680k-side-income-1747449> [perma.cc/YA7W-2ZWS] (reporting on Justice Thomas's failure to report his wife's non-investment income though required to do so); Luke Rosiak, *Liberal SCOTUS Justice Took \$3M from Book Publisher, Didn't Recuse from Its Cases*, THE DAILY WIRE (May 3, 2023), <https://www.dailywire.com/news/liberal-scotus-justice-took-3m-from-book-publisher-didnt-recuse-from-its-cases> [perma.cc/SS8C-7EHW] (describing Justice Sotomayor's failure to recuse herself from a case involving a party she received substantial income from).

6. See Devin Dwyer, *All 9 Supreme Court Justices Push Back on Oversight: 'Raises More Questions,' Senate Chair Says*, ABC NEWS (Apr. 29, 2023, 4:05 AM), <https://abcnews.go.com/Politics/9-supreme-court-justices-push-back-oversight-raises/story?id=98917921> [perma.cc/X3MZ-YU7S] ("All nine justices, in a rare step, on Tuesday released a joint statement reaffirming their voluntary adherence to a general code of conduct but rebutting proposals for independent oversight . . .").

7. See *Code of Ethics*, FIX THE CT., <https://fixthecourt.com/fix/code-of-ethics/> [perma.cc/7FFC-UBD6] (Fix the Court, a nonprofit, nonpartisan, organization dedicated to ethical reform of the Supreme Court notes, "that while none of the justices has committed a removal offense, all nine of them are culpable of various ethical oversights, from leaving assets off their annual financial disclosure reports to speaking at partisan fundraisers to ruling on cases despite credible conflicts of interest"). But see Chris Williams, *Clarence Thomas Thinks He Was Practically Forced to Take All That Under the Table Money*, ABOVE THE LAW (Dec. 18, 2023, 5:02 PM), <https://abovethelaw.com/2023/12/clarence-thomas-thinks-he-was-practically-forced-to-take-all-that-under-the-table-money/> [perma.cc/WF8V-JKMF] ("[A]ll the income disclosure violations and ethical code fights are because [Justice] Thomas needed someone to subsidize his luxury. We're talking decades of unpunished judicial impropriety because someone wanted to keep up with the Joneses. If that doesn't undermine your trust in the institution, I'm not quite sure what will.").

8. Opinion, *The Supreme Court Isn't Listening, and It's No Secret Why*, N.Y. TIMES (Oct. 1, 2022), <https://www.nytimes.com/2022/10/01/opinion/supreme-court-legitimacy.html> [https://perma.cc/L6NE-4P6Q] ("The nine justices have no control over money, as Congress does, or force, as the executive branch does. All they have is their black robes and the public trust. A court that does not keep that trust cannot perform its critical role in American government.").

Supreme Court's power.⁹ Furthermore, the entire judicial system is weakened or strengthened by the actions of the Supreme Court. As Judge Raymond J. Lohier points out, "I do think that we should pay attention when there's any indication of flagging confidence or support in the judiciary Any loss in confidence in what we do, or what the Supreme Court does, makes the rule of law somewhat more vulnerable and detracts from the legitimacy of what we do."¹⁰ The King County Bar Association further elaborates, "[i]f the legitimacy of the [Supreme] Court is diminished, the legitimacy of all our courts and our entire judicial system is imperiled."¹¹ For the sake of itself and the entire legal system, the Supreme Court needs to regain the public trust it historically enjoyed.¹²

Billionaire investor Warren Buffet reportedly said: "It takes 20 years to build a reputation and five minutes to ruin it."¹³ One could argue the deluge of reports of ethical impropriety in 2022 and 2023 revealed that the Supreme Court "ruined"—or at least substantially harmed—its reputation. The entire legal industry must now do the long work of rebuilding public trust in the nation's highest court. It is here that intentional character development could be a useful tool for aiding the Justices to avoid ethically problematic decisions, rebuilding public trust in the United States Supreme Court, and strengthening the entire legal industry.

More broadly, this Article seeks to illustrate implementation of character education strategies for the United States Supreme Court to show the value of character education for all aspects of the legal industry. Lawyers, like the Supreme Court, are not broadly trusted by the general public.¹⁴ A belief that

9. See *Supreme Court Ethics Reform: Hearing Before Members of the S. Comm. On the Judiciary* 118th Cong. 2 (2023) (statement of Lutting, J.) [hereinafter *Supreme Court Ethics Reform*] ("[T]he Supreme Court's power is greater or lesser as respect for its judgments by the American People waxes and wanes, ebbs and flows. This, too, is by constitutional design.").

10. Raymond J. Lohier Jr. et al., *Losing Faith: Why Public Trust in the Judiciary Matters—And What Judges can do About It*, 106 JUDICATURE 71, 72 (2022).

11. H.D. Res. 400, 118th Cong. (as reported by King Cnty. Bar Ass'n. Jan. 18, 2023).

12. See *Supreme Court*, GALLUP, <https://news.gallup.com/poll/4732/supreme-court.aspx> [perma.cc/Y7K8-TPPL] (showing historical trends from polls conducted on the trustworthiness of the Supreme Court).

13. Marcel Schwantes, *Warren Buffett Says You can Ruin Your Life in 5 Minutes by Making 1 Critical Mistake*, INC.COM. (Nov. 6, 2021), <https://www.inc.com/marcel-schwantes/warren-buffett-says-you-can-ruin-your-life-in-5-minutes-by-making-1-critical-mistake.html> [perma.cc/LCQ3-GNLF].

14. *Are Lawyers Trusted?*, RASMUSSEN REPS. (Aug. 10, 2018), https://www.rasmussenreports.com/public_content/politics/general_politics/july_2018/are_lawyers_trusted [perma.cc/CW4S-U262] ("A new Rasmussen Reports national telephone and online survey finds that

lawyers are dishonest and untrustworthy is problematic for several reasons. Importantly, moral character is historically an occupational credential for lawyers.¹⁵ A belief that lawyers have poor moral character weakens the integrity of the entire legal system. As Bruce Green and Rebecca Roiphe stated:

In law practice, honesty and integrity are not simply a matter of ordinary, garden-variety morality. They are deemed essential to lawyers' role because the effectiveness and efficiency of most aspects of law practice depend on others—for example, judges, clients, colleagues, and other lawyers—being able to trust lawyers and take them at their word.¹⁶

The entire legal industry, from the Supreme Court to law students, must intentionally develop their personal character to restore public trust in legal institutions and to maintain the effectiveness of the American legal system.

II. THE INSUFFICIENCY OF A STATEMENT/CODE OF ETHICS

One of the frequently suggested “fixes” for the Supreme Court is the adoption of a binding ethical code for the Supreme Court Justices.¹⁷ Even before the most recent waves of controversy, *The Strategic Plan for the Federal Judiciary* stated, “[t]he ability of courts to fulfill their mission and perform their functions is based on the public’s trust and confidence in the judiciary.

43% of likely U.S. Likely Voters do not trust lawyers [N]early as many [as] (28%) aren’t sure whether lawyers are trustworthy or not.”); see also *Public Esteem for Military Still High*, PEW RESEARCH CTR. (July 11, 2013), [https://www.pewresearch.org/enter “Public Esteem for Military Still High”](https://www.pewresearch.org/enter%20Public%20Esteem%20for%20Military%20Still%20High%20?ref=twtr) in search bar; then select sixth result, titled “Public Esteem for Military Still High”) [perma.cc/BW29-MFWU (showing only 18% of the United States population perceives that lawyers offer “[a] lot” to society whereas 34% believe that lawyers offer “not very much” or “nothing at all” to society).

15. DEBORAH RHODE, CHARACTER: WHAT IT MEANS AND WHY IT MATTERS 42 (2019) (“Moral character as an occupational credential has an extended history. For lawyers, the requirement dates back sixteen centuries, to a Roman code mandating that legal advocates be of ‘suitable character,’ with praiseworthy lives.”).

16. Bruce A. Green & Rebecca Roiphe, *Lanymers and the Lies They Tell*, 69 WASH. U.J.L. & POL’Y 37, 70 (2022).

17. H.D. Res. 400; see also Editorial, *U.S. Supreme Court Needs Ethics Rules to Restore Public Trust*, SEATTLE TIMES (Apr. 13, 2023, 1:15 PM), <https://www.seattletimes.com/opinion/editorials/u-s-supreme-court-needs-ethics-rules-to-restore-public-trust/> [perma.cc/CW3H-CB66] (“The association was calling for an enforceable code of ethics at the Supreme Court . . .”).

In large part, the judiciary earns that trust and confidence by . . . adhering to ethical standards”¹⁸ Proponents of a judicial code of ethics suggest:

Codes of judicial conduct promote judicial independence as an instrumental good and exhort judges to avoid sources of influence on their [decision making] that could compromise their independent judgment. Those same codes describe bad judicial conduct, which is the target of accountability mechanisms generally and disciplinary processes in particular.¹⁹

From this one can see two elements are necessary for successful judicial ethics: guidance and accountability. Guidance describes the ethical actions a judge should take, and accountability provides measures for ensuring the appropriate actions are taken.

In May 2023, as a response to the recent controversies and calls for accountability, all nine Justices in the current United State Supreme Court have unanimously decided to self-police and eschew any outside accountability.²⁰ The Justices unanimously agreed to a *Statement of Ethics Principles and Practices*.²¹ However, the statement adopted in May 2023 failed to determine any real consequences for violations or mechanisms for holding the Justices accountable to others.²² The Supreme Court’s *Statement on Ethics Principles and Practices* in May 2023 failed to adequately assure the public of the trustworthiness of the Court because, while it did provide some guidance, it lacked any meaningful accountability measures.²³

18. JAMES C. DUFF, ADMIN OFF. OF THE U.S. COURTS, STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 9 (2020).

19. Charles Geyh, *The Architecture of Judicial Ethics*, 169 PENN. L. REV. 2351, 2353 (2021).

20. See Tonja Jacobi, *Justices Sign on to Loosened Ethics In and Out of the Courtroom*, BLOOMBERG L. (May 17, 2023, 3:00 AM), <https://news.bloomberglaw.com/us-law-week/justices-sign-on-to-loosened-ethics-in-and-out-of-the-courtroom> [<https://perma.cc/5BP5-JECZ>] (reporting all Justices have signed a letter that they should not be held to the same standards as other judges).

21. Letter from John Roberts, C.J. of the U.S. Supreme Court, to Hon. Richard Durbin, Chairman, S. Comm. on the Judiciary (Apr. 25, 2023) (on file with author) [hereinafter *Letter from Chief Justice Roberts*].

22. Steven Lubet, *SCOTUS: A ‘Statement Principles’ is Not a Code of Conduct*, THE HILL (May 1, 2023, 11:03 AM), <https://thehill.com/opinion/judiciary/3980623-scotus-a-statement-of-principles-is-not-a-code-of-conduct/> [<https://perma.cc/ND62-5SHC>] (“In other regards, the Statement of Principles is simply baffling. Concerning disqualification, for example, the statement defends the [C]ourt’s long-standing practice in which ‘individual Justices, rather than the Court, decide recusal issues.’”).

23. Mere weeks after the adoption of the Statement of Ethics Principles, Justice Samuel Alito failed to follow the guidelines with no negative repercussions. Mark Joseph Stern, *It Took Alito Barely a Month to Violate the Supreme Court’s New Ethics Rules*, SLATE MAG. (May 30, 2023, 12:47 PM),

Similarly, in November 2023, the Supreme Court once again sought to quell mounting public criticisms by adopting the *Code of Conduct for Justices of the Supreme Court of the United States* (Code of Conduct).²⁴ Much like the aforementioned *Statement on Ethics Principles and Practices*, the Code of Conduct adopted by the Supreme Court did little to create actual safeguards against corruption.²⁵ The Justices admitted the Code of Conduct “largely represents a codification of principles that we have long regarded as governing our conduct.”²⁶ Unfortunately, simply codifying ineffective principles does little to correct the issues the Supreme Court is facing and the deterioration of public trust.²⁷

Like the May 2023 *Statement on Ethics*, the November 2023 Code of Conduct fails to regain the public’s trust in the Supreme Court primarily because its lack of enforcement mechanisms means there is no actual accountability for the justices.²⁸ Critics point out the November 2023 Code of Conduct

<https://slate.com/news-and-politics/2023/05/alito-violates-supreme-court-ethics-rules.html> [perma.cc/D4MW-2QTR].

24. See SUP. CT. CODE OF CONDUCT (2023) (codifying general historical principles of the Court).

25. See 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://perma.cc/C5TZ-RCRP] (“The new Supreme Court ethics code released on Monday looks good on paper, experts in legal ethics said. But only on paper.”).

26. SUP. CT. CODE OF CONDUCT (2023); see also, Bloomberg Law Podcast, *Bloomberg Law: Supreme Court Adopts Ethics Code*, BLOOMBERG L., at 1:19 (Nov. 13, 2023), <https://www.bloomberg.com/news/audio/2023-11-14/bloomberg-law-supreme-court-adopts-ethics-code-podcast> [https://perma.cc/6WVA-KAUH] (recording Professor Carl Tobias on the Code of Ethics: “[I] think it pretty much applies the same ethics rules to the Supreme Court with some limited exceptions, and basically adopts 28 USC § 455, which applies to all lower federal court judges, magistrate judges, district judges, appeals court judges”).

27. Danelle Kalil, *The Supreme Court’s Code of Ethics and the Road Ahead*, IAALS BLOG (Dec. 14, 2023), <https://iaals.du.edu/blog/supreme-courts-code-ethics-and-road-ahead> [perma.cc/D7B5-WBDN] (“The Court stated that the [C]ode largely reflects its longstanding practices, which some critics may view as insufficiently safeguarding against ethical breaches. This suggests the [C]ode might not significantly change the [J]ustices’ conduct but rather formalizes existing norms that many members of the public view as failing to hold Justices accountable to important ethical standards.”).

28. See Press Release, Sen. Sheldon Whitehouse, *Whitehouse Statement on Supreme Court Releasing a Code of Conduct* (Nov. 13, 2023), <https://www.whitehouse.senate.gov/news/release/whitehouse-statement-on-supreme-court-releasing-a-code-of-conduct> [perma.cc/BKT2-PEH6] (“This is a long-overdue step by the justices, but a [C]ode of ethics is not binding unless there is a mechanism to investigate possible violations and enforce the rules. The honor system has not worked for members of the Roberts Court.”); Greg Stohr & Zoe Tillman, *Supreme Court Adopts Code of Conduct Amid Ethics Revelations*, BLOOMBERG L. (Nov. 13, 2023, 2:45 PM), <https://news.bloomberglaw.com/us-law-week/supreme-court-adopts-code-of->

“[is] not accountability—it’s the appearance of accountability. The Supreme Court has been the only court in the country without a binding ethics code. Now it has one of the country’s weakest. These new rules are more loophole than law.”²⁹ *Accountability* is a fundamental part of ethics in legal industry as lawyers have operated under “binding disciplinary rules” since 1969.³⁰ The ability to discipline members is a fundamental part of the legal industry’s ability to self-regulate.³¹ Ultimately, the Supreme Court Justices fail to create any actual accountability for themselves because there is no enforcement mechanism in their Code of Ethics.³²

In addition to eschewing internal accountability, the Supreme Court also resisted attempts at external accountability from the legislative branch.³³ Efforts by legislators, such as the *Supreme Court Ethics, Recusal, & Transparency Act*, have been unsuccessful to date.³⁴ Notably, Congress’s efforts to hold the Supreme Court accountable are not impossible or inherently unconstitutional.³⁵ However, Chief Justice Roberts disregarded any attempts at

conduct-amid-ethics-controversies [https://perma.cc/B4GT-9QSP] (“[T]he high court opted not to adopt the type of complaint system that applies to other judges. Allegations of misconduct against federal district and circuit court judges can go through several layers of review by panels of other judges.”).

29. Michael Waldman, *New Supreme Court Ethics Code Is Designed to Fail*, BRENNAN CTR. FOR JUST. (Nov. 14, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/new-supreme-court-ethics-code-designed-fail> [perma.cc/7TZS-XK8Q].

30. DEBORAH L. RHODE, *ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, AND REGULATION 3* (Deborah Rhode, ed., 2000).

31. See Fredrick Elliston, *Ethics, Professionalism, and the Practice of Law*, 16 LOY. U. CHI. L. J. 529, 532 (1985) (“Most professions enjoy a significant measure of autonomy, protected through a mechanism for *self-regulation*. Lawyers, for example, have an ethical standard, the Model Code of Professional Responsibility . . . whereby the profession itself may discipline its members.”).

32. See Waldman, *supra* note 29 (“The idea behind an ethics code is simple: nobody is wise enough to be the judge in their own case.”); see also Liptak, *supra* note 25 (quoting Professor Amanda Frost as saying, “[t]he primary problem is how to give these rules teeth, especially in light of the fact that there have been repeated violations of these very rules.”).

33. Mary Jalonick & Mark Sherman, *Chief Justice Roberts Declines to Testify at Senate’s Supreme Court Ethics Hearing*, THE ASSOCIATED PRESS (Apr. 25, 2023, 7:49 PM), <https://apnews.com/article/supreme-court-roberts-thomas-durbin-testify-senate-aafe418c680c7a0a7ebdbceef82baa75> [https://perma.cc/4WCZ-JSFG].

34. Press Release, Sen. Sheldon Whitehouse, Sens. Whitehouse and Blumenthal and Reps. Johnson, Nadler, Quigley, and Cicilline Introduce New Version of Supreme Court Ethics, Recusal, & Transparency Act (Feb. 9, 2023), <https://www.whitehouse.senate.gov/news/release/new-version-of-supreme-court-ethics-recusal-and-transparency-act> [perma.cc/A9CV-H8Z3].

35. *But see* Amanda Frost, *Judicial Ethics and Supreme Court Exceptionalism*, 26 GEO. J. OF LEGAL ETHICS 443, 479 (2013) (“Ethics legislation is part and parcel of Congress’s power to establish and administer the federal court system. Congress’ authority over the Supreme Court is cabined, however,

external control by parties outside of the Supreme Court.³⁶ Accountability is a necessary, constitutional, and conventional part of enforcing judicial ethics. Without accountability or an enforcement mechanism, other avenues for addressing the behavior of the Supreme Court and fixing its reputation must be explored.

III. CHARACTER EDUCATION AS A MEANS OF ETHICAL REFORM OF THE UNITED STATES SUPREME COURT

“Character education” is likely an unfamiliar concept to many in the legal profession.³⁷ As of 2023, few law schools have a dedicated program designed to equip law students with the tools to develop their personal character.³⁸ Although underutilized in legal education, character education can be a powerful tool for helping individuals live flourishing and ethically sound lives.³⁹

But what is “character” and how does it fit within a discussion of the purported ethical failings of the Supreme Court? A clear definition of both character and “ethics” is necessary as it is insufficient to treat these words the way Justice Potter Stewart treated “obscenity”—that there is no formal definition and a belief that one will intuitively “know it when [they] see it.”⁴⁰ Dr. Michael Lamb, a preeminent expert on character development, defines *character* as “a set of dispositions and habits that define how we think, feel,

by the judiciary’s constitutionally enshrined judicial independence and by the need to preserve the Supreme Court’s role at the head of the third branch of government. That said, Congress has considerable leeway to regulate the Justices’ ethics, just as it has long exercised authority to decide other vital administrative matters for the Court.”).

36. *Letter from Chief Justice Roberts*, *supra* note 21.

37. See Heather D. Baum, *Inward Bound: An Exploration of Character Development in Law School*, 39 U. ARK. LITTLE ROCK L. REV. 25, 65 (2016) (“While many individual professors are developing character traits in students, it appears law schools as a whole are not deliberately teaching character traits essential for success in law school and practice.”).

38. See, e.g., *The Program for Leadership and Character: Professional Schools*, WAKE FOREST UNIV., <https://leadershipandcharacter.wfu.edu/what-we-do/professional-schools/> [perma.cc/6ER7-QX85] (providing an example of a school implementing character education).

39. Baum, *supra* note 37, at 25 (“Law schools should explore providing greater emphasis on character development in their curriculum given the importance placed on character as an indicator of success”); see generally, Jessica Lahey, *The Benefits of Character Education*, THE ATL. (May 6, 2013), <https://www.theatlantic.com/national/archive/2013/05/the-benefits-of-character-education/275585/> [https://perma.cc/BPR7-TTVW] (“Character is the ‘X factor’ that experts in parenting and education have deemed integral to success.”).

40. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

and act as part of our moral identity.”⁴¹ Meanwhile, ethics is more commonly defined as what someone should or should not do as a member of society.⁴² The difference between the two is summed up well by Chris Dardis: “[e]thics are defined as moral principles that govern a person’s behavior, while character refers to the mental and moral qualities distinctive to an individual. In other words, your character determines what kind of person you are and what types of relationships you form in life.”⁴³

A person’s character, their dispositions and habits that act as part of their moral identity, is not set in stone but is developable. Deborah Rhode wrote, “[m]oral character can be cultivated, and its potential for change should make us wary about permanent pronouncements that individuals have it or they don’t.”⁴⁴ Furthermore, based on this understanding of “character” one can see how a person, such as a Supreme Court Justice, could benefit from intentionally strengthening their character to avoid ethical lapses.

Because character is developable, institutions such as The United States Military Academy at West Point have prioritized character education as part of their curricular and co-curricular programming.⁴⁵ Character education is defined as “the conscious process of cultivating worthwhile and positive dispositions—these positive dispositions are referred to . . . as *character virtues* or *character strengths*.”⁴⁶ Studies have shown that character education efforts do have a significant positive impact on the behavior of students.⁴⁷

41. *Character, Virtue, & Leadership with Michael Lamb*, THE TRINITY FORUM (Feb. 17, 2023), <https://www.ttf.org/?portfolio=online-conversation-character-virtue-leadership-michael-lamb> [<https://perma.cc/42E3-YZYY>].

42. Manuel Velazquez et al., *What is Ethics?*, MARKKULA CTR. FOR APPLIED ETHICS AT SANTA CLARA UNIV. (Jan. 1, 2010), <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics/> [perma.cc/7DZK-RWQV] (defining ethics as “well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues”).

43. Chris Dardis, *Ethics or Character: Which Determines Your Success?*, ST. THOMAS UNIV. (June 2, 2016), <https://news.stthomas.edu/ethics-character-determines-success/> [perma.cc/Z3HA-A5J5].

44. RHODE, *supra* note 15, at 9.

45. RAYMOND T. ODIERO, CHIEF STAFF ATT’Y OF THE ARMY, U.S. MIL. ACAD. WEST POINT, CHARACTER DEVELOPMENT STRATEGY: LIVE HONORABLY AND BUILD TRUST 2 (2014).

46. PAUL WATTS ET AL., UNDERSTANDING CHARACTER EDUCATION: APPROACHES, APPLICATIONS AND ISSUES 6 (Open Int’l Pub’g, Ltd 1st ed. 2021).

47. William Jeynes, *A Meta-Analysis on the Relationship Between Character Education and Student Achievement and Behavioral Outcomes*, 51 EDUC. AND URBAN SOCIETY 33, 33 (2019); William Thompson, *The Effects of Character Education on Student Behavior* (Dec. 2002) (Ph.D dissertation, East Tennessee State University) (on file with Digital Commons on East Tennessee State University); Katie

Character education addresses the individual and is a powerful tool for creating systemic reforms as a result.

The character of a Supreme Court Justice is not often at the forefront of discussions regarding their jurisprudence. However, as Richard Reeves wrote, “[c]haracter, like oxygen, is most noticeable when it is missing.”⁴⁸ The discussion of the character of the Supreme Court Justices is primarily, if not exclusively, fueled by their seeming lack of virtuous character as evidenced by their actions and inactions.

Character education creates positive behaviors in individuals. Though its demonstrated impact may not seem beneficial to systemic reforms, because those reforms need to start by affecting individual judge’s behaviors. Efforts to change judicial conduct towards a more ethical response begin by changing the individual. Judge Alex Kozinski writes:

I know there is a growing tendency to distrust judges—to craft more elaborate ethical rules and restrictions; to expand the scope of what is encompassed within the appearance of impropriety standard; to adopt more and better methods of intruding into judges’ private lives—all in a misguided effort to promote ethical judicial behavior. But the hard truth is that none of these things really matters. Judicial ethics, where it counts, is hidden from view, and no rule can possibly ensure ethical judicial conduct.⁴⁹

As evidenced by some of the scandals that emerged in 2023, unenforceable rules—written or unwritten—are insufficient in and of themselves to promote ethical conduct.⁵⁰ Rather, it seems one must inspire and equip individuals within the system to live ethical lives to change the system as a whole. Character education, for both current judges and law students who will eventually make up the judiciary, must be emphasized to cultivate positive dispositions towards virtuous actions with or without external accountability. Importantly, character education does not entirely remove

Ferrara, *The Effectiveness of Character Education on Student Behavior* (May 8, 2019) (M.A. thesis Rowan University) (on file with Rowan Digital Works).

48. Richard Reeves, *The New Politics of Character*, 20 NAT’L AFFS. 111, 112 (2014).

49. Alex Kozinski, *The Real Issues of Judicial Ethics*, 32 HOFSTRA L. REV. 1095, 1106 (2004).

50. See Destinee Adams, *Why it’s Unlikely Ethics Rules on Supreme Court Gift Disclosures will Work: Interview with Professor Steven Lubert*, NPR (Apr. 10, 2023, 10:03 AM) <https://www.npr.org/2023/04/10/1168931282/ethics-rules-on-supreme-court-gift-disclosures-may-be-ineffective-law-professor> [perma.cc/NG9E-PPJ9] (asserting gift disclosures are lip service to the intended purpose because they lack an “enforcement mechanism”).

the need for any external accountability, but character education can equip individuals to engage in more virtuous behaviors without need for the threat of punishment.

Additionally, the Justices have a responsibility to the American people to conduct themselves, both publicly and privately, in a manner that generates trust. Judge L. Michael Luttig, testifying before the United States Senate, stated:

The respect in which the Supreme Court is held by the American People is a function of both the respect that the Court's judgments command and the respect that the Court earns by virtue of the manner in which it comports itself publicly and privately in the course of discharging its solemn judicial duties. . . . It is also the duty of each and every man and woman upon whom is conferred the privilege to serve on the Supreme Court to conduct themselves in their non-judicial conduct and activities in such a manner that they are individually deserving of respect—indeed, beyond reproach, not only in fact, but also in appearance. This, at all times and places, in both public and in private.⁵¹

The “conscious process of cultivating worthwhile and positive . . . character virtues or character strengths” would be a significant and worthwhile endeavor for Supreme Court Justices to ensure their professional and private conduct is deserving of respect.⁵² Developing and enhancing their personal character is not merely a nice idea for the Supreme Court Justices' own benefit; rather, it ought to also be a priority to enhance the fledgling credibility of the Court as an institution.

IV. THE IMPLEMENTATION OF CHARACTER EDUCATION

A. *In Law Schools*

The Supreme Court's decision to eschew any oversight coupled with today's general legislative gridlock will likely prevent any substantial change to the current ethical systems of the Supreme Court. While such a realization can feel discouraging and perhaps even hopeless, it is important to remember the lack of a tool for immediate reform does not prevent the possibility of creating long-term change. As former United States Congressman

51. *Supreme Court Ethics Reform*, *supra* note 9, at 3.

52. WATTIS ET AL., *supra* note 46, at 6.

Benjamin Blackburn once stated: “the best time to plant a tree was thirty years ago, the second best time is today.”⁵³ American society desires the “shade” produced by ethical Supreme Court Justices, but finding no such resource, society must begin by “planting” character-development at the law school level that will produce the next generation of Supreme Court Justices imbued with ethical conduct. Law school is the most relevant point to implement these strategies because all Supreme Court Justices must attend law school, but not all judges or justices are required to share a single undergraduate major or extracurricular activity.

Law professors, as the primary influencers of law students, ought to intentionally pursue character education as part of their curriculum. Alejandro M. Gozon echoed this thought when he wrote, “[t]he development of the mind and the heart of future lawyers is a solemn duty of every legal educator worth [their] salt The influence of the law professors to their students are indelible because of the respect they repose on their mentors.”⁵⁴ While much of the general population is resigned to complaining, protesting, and fretting over the future of the Supreme Court, law professors have the unique opportunity to change it for the better through character education.

Both formal classes focused on character education and incorporating character lessons into existing curricula are for teaching character in the professional school context.⁵⁵ Researchers in the field of character education have found “the most common implementation strategies in effective character education programs are professional development for the implementers, peer interactive strategies (e.g., cooperative learning, class meetings, peer tutoring), direct teaching about character (e.g., reading about character, didactic presentations, videos), family and community participation, and adult modeling and mentoring.”⁵⁶ Law faculty, once trained, can

53. 115 CONG. REC. 35706 (daily ed. Nov. 25, 1969) (statement of Rep. Benjamin Blackburn).

54. Alejandro M. Gozon, *Legal and Judicial Ethics, Its Relevance Revisited*, 10 ARELLANO L. & POL'Y REV. 1, 14 (2009).

55. See Mary Crossan et al., *Developing Leadership Character in Business Programs*, 12 ACAD. MGMT. LEARNING & EDUC. 285, 292 (2013) (“In spite of the promise held forth in developing character across all courses, there is also the opportunity for dedicated courses that focus on the role of leadership character and its development.”).

56. Marvin W. Berkowitz, *Moral and Character Education*, in 2 APA EDUCATION PSYCHOLOGY HANDBOOK: INDIVIDUAL DIFFERENCES AND CULTURAL AND CONTEXTUAL FACTORS 256 (Karen R. Harris, et al. eds., 2012).

use these methods to weave character education lessons into the traditional law school curriculum in addition to formal character classes for lawyers.

If law schools—including, but not limited to, law faculty—emphasize the character education, they can aid in the creation of a generation of graduates who are lawyers of character. The changes made to law school curriculum now, especially if adopted industry wide, will eventually ensure there are Supreme Court Justices who cultivated strong personal character. Justices with a strong personal character are more likely to avoid the ethical quandaries plaguing the current Supreme Court which will help rebuild the public trust in an incredibly important institution.

B. *Character Development Strategies*

One's character does not exist in a fixed state, but rather it is developable both by an individual or an institutional process.⁵⁷ Michael Lamb, Jonathan Brant, and Edward Brooks identified seven strategies for character development:

- (1) habituation through practice, (2) reflection on personal experience, (3) engagement with virtuous exemplars, (4) dialogue that increases virtue literacy, (5) awareness of situational variables, (6) moral reminders, and (7) friendships of mutual accountability.⁵⁸

While these were developed, tested, and validated in undergraduate institutions, the principles are still readily applicable to the professional development of lawyers and judges. Furthermore, these strategies were designed as tools for institutional use, but are adapted and applied here as a personal approach to character development.

57. MARY CROSSAN ET AL., DEVELOPING LEADERSHIP CHARACTER 183 (2016) (“There are some who believe that character cannot be developed—that you either have it or you don’t. This is simply wrong. Character can be developed, and there is ample research to prove that point. There is a great deal that people can do to develop their own character strengths; parents, teachers, coaches, and others can develop character in those whose lives they can influence; and organizations can further develop character among their current and future leaders.”).

58. Michael Lamb et al., *How is Virtue Cultivated? Seven Strategies for Postgraduate Character Development*, 17 J. CHARACTER EDUC. 81, 81 (2021).

1. Habituation Through Practice⁵⁹

The first strategy examined here asks participants to focus on the cultivation of virtuous character regularly and intentionally. Character is acquired “through practice—by repeating appropriate thoughts, feelings, and actions over and over again until we gradually become disposed to think, feel, and act in the right ways at the right places at the right times, as if by second nature.”⁶⁰ Lawyers and judges regularly face instances where their character is tested.⁶¹ In those instances, a lawyer or judge should intentionally practice virtuous character strengths so that in time the ethical choice becomes the natural choice. Without intentionality, lawyers can quickly fall prey to the trap described by Matt Damon’s character in the 1997 film *The Rainmaker*: “Every lawyer, at least once in every case, feels himself crossing a line that he doesn’t really mean to cross. It just happens. And if you cross it enough times, it disappears forever. And then you’re nothing but another lawyer joke. Just another shark in the dirty water.”⁶² Habituation through practice, as a tool, is a way for a lawyer to be conscious of and prioritize their character development.

Here, this would require the Supreme Court justices to intentionally, and purposefully act with virtue to build up habits of strong personal character. For example, justices could intentionally practice integrity by disclosing more than the bare minimum; practice empathy by listening to the viewpoint of people with ideological differences; or practice humility by allowing outside accountability. Small actions when done with intentionality create a habit of virtuous personal character.

2. Reflection on Personal Experience⁶³

Reflection on past actions, moral or immoral, equips a person to develop stronger personal character because “virtue requires knowledge of why and how we act in particular circumstances, and if this knowledge comes

59. *Id.* at 84.

60. *Id.* at 85.

61. *See, e.g.*, Green & Roiphe, *supra* note 16, at 38–39 (“The justice system, often described as a truth-seeking process, is one of the central ways in which we uncover facts in a democratic system. It seems natural then that lawyers, as officers of the court, should have a heightened obligation to tell the truth. . . . But lawyers are also masters of rhetoric. As advocates and fiduciaries, they regularly spin truth on behalf of clients.”).

62. *THE RAINMAKER* (American Zoetrope 1997).

63. Lamb et al., *supra* note 58, at 87.

through reflection on repeated actions, then reflection on experience will be central to character development.”⁶⁴ Such reflection can be either a personal or communal reflection. Fortunately, the Supreme Court Justices all have a rich personal history as lawyers and judges from which to draw their personal experiences (including, regularly sharing “war stories” with one another over lunch according to Justice Brett Kavanaugh).⁶⁵

Personal reflections allow the individual to “process information and make connections more readily [because] they can draw on prior experience and connect what they are learning to real-life situations.”⁶⁶ Thinking back to one’s personal experience is a robust way to develop as a person, including developing personal character.⁶⁷ Any lawyer, including the Supreme Court justices, should have the mental and analytical capability to be self-reflective and determine what personal actions are “good” or “bad.”

Additionally, “sharing personal reflections helps to build community, which . . . is a constitutive component of character formation.”⁶⁸ The furthering ideological and political divide amongst the Supreme Court means that the differences amongst the justices are far more pronounced than previous iterations of the Court.⁶⁹ Despite their stark political differences, the justices still need to respect one another as they work together with different viewpoints. Sharing personal stories helps people “make connections, form relationships, and create community with others.”⁷⁰ Furthermore, storytelling is a proven way to create a healthier, more engaged,

64. *Id.*

65. Notre Dame Law School, *Supreme Court Justice Brett Kavanaugh: 2023 Notre Dame Law Review Federal Courts Symposium*, YOUTUBE, at 25:55-26:05 (Jan. 23, 2023), <https://www.youtube.com/watch?v=b8w9xtTLwc> [<https://perma.cc/829S-83C4>].

66. Lamb et al., *supra* note 58, at 87.

67. See José Ruiz-Alba et al., *Experiential Learning in Virtue Ethics Through a Case Study: The “St. Albans Family Enterprises,”* 14 J. BUS. ETHICS ED. 229, 230 (2017) (describing a case study where students were assigned to formulate judgments and then analyze and reflect upon them).

68. Lamb et al., *supra* note 58, at 88.

69. See Neal Devins & Lawrence Baum, *Split Definitive: How Party Polarization Turned the Supreme Court Into a Partisan Court*, 2016 SUP. CT. REV. 301, 301 (2016) (“Before 2010, the Court never had clear ideological blocs that coincided with party lines. Today’s partisan split, while unprecedented, is likely enduring.”); see also Amelia Thomson-DeVeaux & Laura Bronner, *The Supreme Court’s Partisan Divide Hasn’t Been This Sharp in Generations*, FIVETHIRTYEIGHT (Jul. 5, 2022, 1:08 PM) <https://fivethirtyeight.com/features/the-supreme-courts-partisan-divide-hasnt-been-this-sharp-in-generations/> [<https://perma.cc/DY7Y-4BNM>] (asserting the ideological “divide between the [C]ourt’s Republican and Democratic appointees” seemingly surpasses previous eras).

70. Kathy G. Short, *Story as World Making*, 90 LANGUAGE ARTS 9, 9 (2012).

and connected workplace culture.⁷¹ The sharing of personal reflections within amongst the nine Supreme Court justices may help strengthen the relationships among the justices while simultaneously facilitating the development of the justices' personal character.

Sharing personal examples also creates a space for the justices to model virtuous behavior to each other. In *The Leadership Challenge* Barry Posner and James Kouzes identify “modell[ing] the way” as one of the keyways to influence other people's behaviors regardless of positional authority.⁷² Sharing personal reflections would equip Justices to clarify what is important and how they live into those ideals. For example, Justice Elena Kagan turned down a gift of bagels and lox from high school friends due to ethical concerns.⁷³ Meanwhile, Justice Clarence Thomas accepted lavish gifts due to his alleged ignorance of an issue.⁷⁴ Shared personal reflection would have allowed Justice Kagan to model her virtuous behaviors of temperance and integrity with her peers while simultaneously reducing any confusion around best practices.

3. Engagement with Virtuous Exemplars⁷⁵

The goal of this strategy is to look to “an exemplar whose character enables others to determine which action is virtuous and how to perform it.”⁷⁶ Looking at the real life of a real person—whether alive or dead—allows the observer to see how to respond to certain stimuli or circumstances.⁷⁷

71. STEPHANIE J. CREARY ET AL., WHARTON SCHOOL OF BUS, AT THE UNIV. OF PENN., IMPROVING WORKPLACE CULTURE THROUGH EVIDENCE-BASED DIVERSITY, EQUITY AND INCLUSION PRACTICES 10 (2021) (“When managers share their own personal stories, including stories about their career paths, that encourages direct reports to talk about their own personal experiences as well Being able to share more of oneself at work can help some employees feel a positive connection to their workplace.”).

72. BARRY POSNER & JAMES KOUZES, *THE LEADERSHIP CHALLENGE* 14 (John Wiley & Sons, Inc. 4th ed., 2007) (“Exemplary leaders know that if they want to gain commitment and achieve the highest standards, they must be models of the behavior they expect of others.”).

73. Jordan Rubin, *Kagan Worried About Bagels While Clarence Thomas Lived Large with Harlan Crow*, MSNBC (May 10, 2023, 12:26 PM) <https://www.msnbc.com/deadline-white-house/deadline-legal-blog/kagan-bagels-clarence-thomas-rcna83707> [<https://perma.cc/3MEY-3ZPA>].

74. Martin Pengelly, *Clarence Thomas Defends Himself After Undisclosed Gifts Revelation*, THE GUARDIAN (Apr. 7, 2023, 3:24 PM) <https://www.theguardian.com/law/2023/apr/07/clarence-thomas-statement-undisclosed-gifts-supreme-court> [<https://perma.cc/GK5K-MJT6>].

75. Lamb et al., *supra* note 58, at 88.

76. *Id.*

77. Dennis Moberg, *Role Models and Moral Exemplars: How Do Employees Acquire Virtues by Observing Others?*, 10 BUS. ETHICS Q. 675, 677 (2000) (“Here the learner attempts to acquire mastery by

Importantly, when utilizing moral exemplars for character development, researchers found that “[a]ttainable and [r]elevant [m]oral [e]xemplars [a]re [m]ore [e]ffective than [e]xtraordinary” and heroic exemplars.⁷⁸

Abe Fortas, former Supreme Court Justice, is a particularly interesting moral exemplar for the members of the Supreme Court in 2023. Fortas achieved incredible professional successes including teaching at Yale Law School, representing Clarence Gideon in *Gideon v. Wainwright*,⁷⁹ and establishing the firm now known as Arnold & Porter.⁸⁰ However, Fortas is arguably most well known for being the only Supreme Court justice to resign from the Supreme Court due to accusations of impropriety.⁸¹

Fortas is not a moral exemplar for his successes or failures, but rather for the humility he displayed in leaving the Supreme Court for the benefit of the Court. In a letter addressed to then-Chief Justice Warren, Fortas wrote: “There has been no wrongdoing on my part [However] I should resign in order that the [C]ourt may not continue to be subjected to extraneous stress which may adversely affect the performance of its important functions.”⁸² Fortas’s decision to resign as a means of limiting harm to the Supreme Court’s reputation was applauded both at the time of his resignation in 1969⁸³ and in 2023.⁸⁴ Fortas’s resignation provides an attainable example to the current Supreme Court members of an individual placing the

watching others who have already acquired it Learning can take the form of the imitation of new behaviors or the inhibition/disinhibition of existing behaviors.” (citations omitted).

78. Hyemin Han et al., *Attainable and Relevant Moral Exemplars are More Effective than Extraordinary Exemplars in Promoting Voluntary Service Engagement*, 8 FRONTIERS IN PSYCH. 1, 1 (2017).

79. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

80. See *Our History*, Arnold & Porter, <https://www.arnoldporter.com/en/about/history> [<https://perma.cc/JNZ7-7TY3>] (indicating Fortas as one of firm’s four founders).

81. See Andrew Glass, *Abe Fortas Resigns from Supreme Court, May 15, 1969*, POLITICO (May 17, 2017) <https://www.politico.com/story/2017/05/14/abe-fortas-resigns-from-supreme-court-may-15-1969-238228> [<https://perma.cc/KZ5P-RA7Q>] (noting Justice Abe Fortas violations included taking a secret retainer from a foundation).

82. *Lifetime Pay Deal Admitted*, NEW ORLEANS STATES-ITEM, May 15, 1969, at 5 (internal quotation marks omitted).

83. *Justice’s Resignation First Under Impeachment Threat*, CONG. Q. ALMANAC (1969), <http://library.cqpress.com/cqalmanac/cqal69-1247815> [<https://perma.cc/7HH3-7JRY>] (“Senate Majority Leader Mike Mansfield said of Fortas’ resignation, ‘I think that he’s done the best thing.’ Other Members of Congress made similar comments, complimenting Fortas for stepping down to remove the Supreme Court from criticism.”).

84. MSNBC, *Lawrence O’Donnell: Clarence Thomas Should Follow Abe Fortas’ Example and Resign from the Supreme Court*, YOUTUBE (Apr. 20, 2023), <https://www.youtube.com/watch?v=v40gHxd-Dec> [<https://perma.cc/C6GP-747L>].

societal reputation of the Supreme Court over their own self-interests. Engaging with Fortas as a moral exemplar—at least in this one area—is a way for the current Supreme Court Justices to develop their own character as they navigate their current slew of controversies.

4. Dialogue that Increases Virtue Literacy⁸⁵

Dialogue is one of the foundational aspects of legal practice and legal education. The Socratic Method, both ubiquitous and daunting for first-year law students, employs dialogue as an instructional tool.⁸⁶ The Supreme Court itself regularly uses dialogue in the form of oral arguments.⁸⁷ Rather than helping decide the constitutionality of a law, “dialogue” in the context of character education can “provide[] opportunities to discuss complex moral issues, share practical experiences, test theoretical ideas, and learn from others’ perspectives. In particular, dialogue can help us understand why specific virtues are important and how they can be developed, practiced, or applied in diverse contexts.”⁸⁸ This particular strategy is best done with a facilitator, so if used, the Supreme Court would need to employ an outside voice to help facilitate the dialogue (similar to the way an attorney is brought in to aid dialogue during oral arguments).

Dialogue can be facilitated through group discussions, but dialogue can also happen in mentorship relationships.⁸⁹ Mentors help the growth of others by facilitating these dialogues but also help themselves because “being required to teach or lead a discussion about a topic increases knowledge and familiarity, which, in this case, could aid virtue literacy.”⁹⁰ The Justices could

85. Lamb et al., *supra* note 58, at 91.

86. See generally *The Socratic Method: Why It's Important to the Study of Law*, WASH. UNI. SCH. OF L. (May 29, 2013), <https://onlinelaw.wustl.edu/blog/the-socratic-method-why-its-important-to-the-study-of-law/> [<https://perma.cc/4UAF-SCAX>] (comparing the Socratic Method to client conferences or corporate negotiations and asserting it helps law students “learn that there are two or more sides to almost any issue, and a competent lawyer is able to persuasively articulate all of them”).

87. See *U.S. Supreme Court Oral Arguments*, CORNELL L. LIBR., <https://guides.library.cornell.edu/SupCourtOralArguments> [<https://perma.cc/JFF8-AM3R>] (describing oral arguments as a “dialogue between the justices and the attorneys in an individual case to gain insight into the issues presented in the case”); RYAN C. BLACK ET AL., *ORAL ARGUMENTS AND COALITION FORMATION ON THE U.S. SUPREME COURT: A DELIBERATE DIALOGUE 5* (Univ. of Mich. Press 2014) (noting oral arguments “can play a key role in the Court’s decision-making process”).

88. Lamb et al., *supra* note 58, at 91.

89. *Id.* at app. 108.

90. *Id.* at 92.

aid their own character development by engaging in dialogues about virtue as both the mentor and the mentee.

Supreme Court Justices have historically been mentors for others, so the concept of mentorship is very likely familiar.⁹¹ Particularly, since the early twentieth century when Justice Wendell Holmes Jr. who oversaw “the transformation of law clerking . . . into what can be termed a ‘noble nursery of humanity,’ wherein a young lawyer’s intellectual curiosities could be awakened and valuable social and professional skills could be acquired.”⁹² In this context, the Justices could enhance their own character growth by facilitating character-focused dialogues with their clerks. Furthermore, although the Supreme Court is the highest legal office in the country, so it seems unlikely for mentors to exist for the Justices, in 2023 there are presently three living retired Supreme Court Justices who could be recruited as mentors for the current Justices.⁹³ Being both mentor and mentee would allow the Justices to fully engage in dialogue about character formation, which would ultimately aid their own character formation.

5. Awareness of Situational Variables⁹⁴

This strategy is designed to cultivate good character by “fostering awareness of how situational variables, cultural influences, and institutional incentives shape character and behavior.”⁹⁵ Organizational culture can be a powerful force in the shaping of an individual’s character.⁹⁶ Knowing the external and internal forces that shape one’s personal character is important

91. See generally I. Scott Messinger, *The Judge as Mentor: Oliver Wendell Holmes Jr. and His Law Clerks*, 11 YALE J.L. & HUMS. 199, 151 (1999) (“[T]he threat to the survival of the Holmes model of law clerking, based on the hiring and mentoring of a small number of bright, young law students for a finite period of time, is unsettling, and calls for efforts to preserve the essential components of that model.”); see also *Honoring Supreme Court Justice Ruth Bader Ginsburg*, MENTOR NAT’L, <https://www.mentoring.org/blog/press-release/honoring-supreme-court-justice-ruth-bader-ginsburg/> [<https://perma.cc/437L-KX3X>] (noting former Justice Ruth Bader Ginsburg was “both mentor and role model”).

92. Messinger, *supra* note 91, at 120.

93. *Current Members*, SUP. CT. OF THE U.S. <https://www.supremecourt.gov/about/biographies.asp> [<https://perma.cc/F9DX-AG9H>] (listing Sandra Day O’Conner, Anthony Kennedy, David Souter, and Stephen Breyer as living retired Justices).

94. Lamb et al., *supra* note 58, at 92.

95. *Id.*

96. See Charles A. O’Reilly & Jennifer A. Chatman, *Culture as Social Control: Corporations, Cults, and Commitment*, 18 RSCH. ORG. BEHAV. 157, 157 (1996) (“[C]ulture can influence members’ focus of attention, shape interpretations of events, and guide attitudes and behavior.”).

because “behavioral ethics research shows that when presented with a decision with an ethical dimension, we behave differently than our predictions of how we would behave.”⁹⁷ Put simply, one does not inherently realize the power of situational variables that affect one’s conduct and must intentionally be aware of those variables to act virtuously.⁹⁸ *Awareness of situational variables* is important for anyone trying to cultivate more robust personal character as doing so will “prompt increased awareness about how biases and assumptions might affect the understanding and practice of leadership and character in contemporary society.”⁹⁹

The Supreme Court as a whole, while comprised of extremely intelligent individuals, is not immune from the effects of outside forces as experts have determined that “Supreme Court decision making is shaped by social and political forces.”¹⁰⁰ Even as individuals, the members of the Supreme Court are not immune from human frailty and the influence of situational variables. As Lisa McElroy writes, “underneath the Justices’ courtly robes, behind the proverbial curtains, there are real people making critical decisions that affect other real Americans. Far from all-knowing wizards, the Justices are human beings—yes, smart and capable human beings—but human beings nonetheless, imbued with all of the shortcomings ‘ordinary’ people possess.”¹⁰¹ Personal biases, especially when unaccounted for, can not only affect personal character but also professional competency.¹⁰² Justices, and

97. MAX H. BAZERMAN & ANN E. TENBRUNSEL, *BLIND SPOTS: WHY WE FAIL TO DO WHAT’S RIGHT AND WHAT TO DO ABOUT IT* 68.

98. *See id.* (“Why do we predict we will behave one way and then behave another way, over and over again throughout our lives? Social scientists have discovered that we think about a decision quite differently when we are predicting how we will behave than when we have to act, a difference that is driven both by different motivations at these two points in time and by the process of ethical fading. When we think about our future behavior, it is difficult to anticipate the actual situation we will face. General principles and attitudes drive our predictions; we see the forest but not the trees. As the situation approaches, however, we begin to see the trees, and the forest disappears. Our behavior is driven by details, not abstract principles.”).

99. Lamb et al., *supra* note 58, at 95.

100. Laurence Baum & Neal Devins, *Why the Supreme Court Cares About Elites, Not the American People*, 98 GEO. L.J. 1515, 1519 (2010).

101. Lisa T. McElroy, *Cameras at the Supreme Court: A Rhetorical Analysis*, 2012 BYU L. REV. 1837, 1853 (2012).

102. *See, e.g.*, Sarah Anne Mourer, *Believe It or Not: Mitigating the Negative Effects Personal Belief and Bias Have on the Criminal Justice System*, 43 HOFSTRA L. REV. 1087, 1089 (2015) (“When an attorney develops a personal belief in a defendant’s guilt or innocence while investigating the merits of the case, facts and evidence discovered during the investigation will tend to be viewed and interpreted through

lawyers in general, need to be aware of biases and institutional cultures so that they can increase in their own personal character and avoid unintended deficiencies in character.

6. Moral Reminders¹⁰³

As noted previously, institutional culture and internal biases have a profound effect on one's moral character.¹⁰⁴ Awareness of these variables is important and moral reminders can help to combat any negative influences or proclivities. The goal of moral reminders is to “to challenge the effects of situational variables and cultivate good character . . . by providing moral reminders that make particular norms salient.”¹⁰⁵ A *moral reminder* can be as simple as a daily reading, a visual reminder of virtuous character, honor codes, business codes of ethics, or written correspondence.¹⁰⁶ The actual form of the reminder is less important than its purpose, which is “to call our attention to our moral commitments, and . . . make[] it much more difficult in our own mind to justify doing the wrong thing”¹⁰⁷

One of the common proposed fixes for the Supreme Court's ethical shortcomings is a code of ethics.¹⁰⁸ While a code of ethics, as discussed earlier, is not sufficient to correct all the issues plaguing the Supreme Court, it can be a helpful tool as a moral reminder for the Justices. A written, clear, and comprehensive ethics code for the Supreme Court—even without any enforcement mechanism—could be a valuable tool for the Justices by simply reminding them of what conduct is expected from the Justices.¹⁰⁹

the veil of the attorney's personal belief. When a personal belief is held, a preference for that belief is present. As a result, decision-making and investigation may be conducted in a biased manner.”).

103. Lamb et al., *supra* note 58, at 95.

104. See MSNBC, *supra* note 84, at 16:24 (“[Justice Thomas] is the single most outrageous public violator of the ethical norms of the Supreme Court that the country has ever seen.”).

105. Lamb et al., *supra* note 58, at 95.

106. Notre Dame Deloitte Center for Ethical Leadership, *Three Ways to Develop Moral Character*, YouTube, at 2:40–4:05 (Dec. 2, 2021), <https://www.youtube.com/watch?v=gdsYKdUMTn0> [<https://perma.cc/UK5W-QXH3>].

107. CHRISTIAN B. MILLER, *THE CHARACTER GAP* 134 (2018).

108. See, e.g., Bob Bauer, *The Supreme Court Needs an Ethics Code*, *THE ATL.* (May 18, 2022), <https://www.theatlantic.com/ideas/archive/2022/05/supreme-court-roe-leak-ethics-code/629884/> [<https://perma.cc/8WTR-2YK5>] (“The Supreme Court, however, has so far refused to adopt an ethics code.”).

109. BOB BAUER ET AL., *PRESIDENTIAL COMM'N ON THE SUP. CT. OF THE U.S., FINAL REPORT* 216 (2021) (“[E]ven if there were no apparent issue with ethical practices on the Court, the explicit adoption of a code could promote important institutional values.”).

This is because “moral reminders create psychological barriers to self-justification and self-deception. Because we want to see ourselves as virtuous people, being reminded of our values, standards, and commitments makes it psychologically difficult to violate them without updating our ‘self-concept,’ recategorizing the situation, or rationalizing the behavior to avoid cognitive dissonance.”¹¹⁰ A clearly articulated ethical code for the Supreme Court Justices, with or without an enforcement mechanism, would be a powerful moral reminder for the Justices and could make a substantial difference in their conduct.

7. Friendships of Mutual Accountability¹¹¹

The final strategy for cultivating strong character is to develop friendships of mutual accountability. Friends, as any person who has been a teenager can attest, have a powerful influence over a person’s decision making and choices.¹¹² Friendships and social groups can be a positive force for change as “peer pressure can encourage idealistic behavior When a peer sets an example of kindness or idealism, this creates a social norm where such behavior is rewarded. Others join in.”¹¹³ The impact of social groups is not limited to personal development as professional colleagues also have the ability to influence each other.¹¹⁴ Likewise, social groups will have a significant impact on one’s character development because “character development never occurs in isolation. We inevitably shape and are shaped

110. Michael Lamb et al., *supra* note 58, at 95 (citations omitted).

111. *Id.* at 96.

112. See Solomon E. Asch, *Opinions and Social Pressure*, SC. AM., NOV. 1955 at 31 (1955) (“That social influences shape every person’s practices, judgements, and beliefs is a truism to which anyone will readily assent.”); see also Duncan J. Watts & Peter Dodds, *Threshold Models of Social Influence*, in OXFORD HANDBOOK OF ANALYTICAL SOCIOLOGY 475, 476 (Peter Hedström & Peter Bearman eds., 2009) (citations omitted) (“Analogous connections between micro-level social influence and macro-level social change have been made subsequently to account for a wide range of phenomena, including scientific trends . . . business management . . . consumer and cultural fads . . . voting behavior . . . the diffusion of innovations . . . and word-of-mouth marketing.”).

113. Tina Rosenberg, *Harnessing Positive Peer Pressure to Create Altruism*, 80 SOC. RSCH. 491, 493 (2013).

114. See Alwine Mohen et al., *Transparency, Inequity Aversion, and the Dynamics of Peer Pressure in Teams: Theory and Evidence*, 26 J. OF LABOR ECON. 693, 713 (2008) (asserting subjects in a study “adapted their effort according to the interim information they received about their counterparts’ contribution such that they counterbalanced contributions to increase equity” and subjects “exerted higher effort levels than their team partner and therefore were in a disadvantageous positions strongly decreased their effort in the subsequent period”).

by the culture and community around us, whether we recognize it or not.”¹¹⁵ In order to develop robust personal character, it is extremely helpful to have a social group that encourages virtuous behaviors.

How then should the Justices formulate friendships to pursue moral formation? First, the Justices need to have friendships. Studies have suggested that “relationships with family, colleagues, and friends provide the most common context for ethical decisions and the most common source of moral exemplar;” therefore, “friendship becomes an especially important form of moral development.”¹¹⁶ However, friendships are becoming increasingly rare and shallow.¹¹⁷ Therefore, to have friendships of mutual accountability, the Justices must first be intentional about developing friendships.

Second, the Justices must establish or nourish relationships with virtuous friends.¹¹⁸ An immoral friend group can have significant negative influence on an individual.¹¹⁹ Justice Clarence Thomas is a robust example of the power of friends to influence behavior, albeit in a negative way, as Justice Thomas’s “friends” and “advisors” encouraged or excused his alleged unethical behavior. First, billionaire conservative activist Harlan Crow lavished gifts upon Justice Thomas and his family with little regard given to how it might appear.¹²⁰ Additionally, Justice Thomas’s friends have

115. Lamb et al., *supra* note 58, at 96.

116. *Id.* at 97.

117. Daniel A. Cox, *The State of American Friendship Change, Challenges, and Loss*, SURV. CTR. ON AM. LIFE (June 8, 2021), <https://www.americansurveycenter.org/research/the-state-of-american-friendship-change-challenges-and-loss/> [<https://perma.cc/LF3V-JURR>].

118. Lamb et al., *supra* note 58, at 97 (noting positive character development occurred when an individual was in a relationship with “teachers, exemplars, and peers who share similar values and commitments and whose example can indirectly encourage ethical thought and action. These relationships provided opportunities for support and emulation and helped to make communal norms around leadership and character more salient”).

119. See generally Dana L. Haynie & Danielle C. Payne, *Race, Friendship Networks, and Violent Delinquency*, 44 CRIMINOLOGY 775, 790 (2006) (finding adolescents who are “spending increased time with peers, who have a bad temper, who are more deviant and violent themselves . . . have greater risks of violence”).

120. See Alison Durkee, *Clarence Thomas: Here Are All The Ethics Scandals Involving The Supreme Court Justice Amid Unpaid RV Loan Revelations*, FORBES (Oct. 26, 2023, 4:56 AM), <https://www.forbes.com/sites/alisondurkee/2023/05/05/clarence-thomas-here-are-all-the-ethics-scandals-involving-the-supreme-court-justice-amid-new-revelations/?sh=4b9330dab84a> [<https://perma.cc/5MPZ-MKTC>].

continued to erroneously defend Justice Thomas¹²¹ and were allegedly the ones who misinformed him about disclosures.¹²² Justice Thomas's relationships illustrate how "simply having friends or being a member of a community is not enough to acquire *good* character: the moral quality of these relationships matters."¹²³

Finally, the Justices must be willing to accept and give both accountability and correction to their friend groups. Accountability is a familiar concept to the Justices as they have long been willing to call out flaws in the jurisprudence of their peers in the form of dissenting opinions.¹²⁴ However, Justices must be vulnerable when giving and receiving feedback on their personal character because vulnerability is a key part of "friendships of mutual accountability."¹²⁵ Dr. Brené Brown explains:

There's probably not a single act at work that requires more vulnerability than holding people responsible for ethics and values, especially when you're alone in it or there's a lot of money, power, or influence at stake. People will put you down, question your intentions, hate you, and sometimes try to discredit you in the process of protecting themselves. So if you don't 'do' vulnerability, and/or you have a culture that thinks vulnerability is weakness, then it's no wonder that ethical decision making is a problem.¹²⁶

121. Charlie Savage, *Justice Thomas' Friend Defends Failure to Disclose Tuition Payments by Harlan Crow*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/us/politics/clarence-thomas-harlan-crow-tuition.html> [<https://perma.cc/59YK-XZ35>] ("In his statement, Mark Paoletta, Justice Thomas's friend . . . argued that the justice was not required to report the tuition.").

122. Nina Totenberg, *Justice Thomas Explains Why he Didn't Report Trips Paid for by Billionaire*, NPR (Apr. 7, 2023, 7:38 PM), <https://www.npr.org/2023/04/07/1168649656/justice-thomas-trips> [<https://perma.cc/6CYJ-BW7G>] (Justice Thomas claimed that he "was advised that this sort of personal hospitality from a close personal friend, who did not have business before the Court, was not reportable").

123. Lamb et al., *supra* note 58, at 96.

124. *See, e.g.*, *Sackett v. EPA*, 143 S. Ct. 1322, 1361 (2023) (Kagan, J. concurring) ("A court may, on occasion, apply a clear-statement rule to deal with statutory vagueness or ambiguity. But a court may not rewrite Congress's plain instructions because they go further than preferred. That is what the majority does today . . .").

125. Lamb et al., *supra* note 58, at 96, 97 (noting part of creating friendship of mutual accountability required "enacting vulnerability, inviting questions during discussion, and structuring conversations as dialogues among peers . . . creat[ing] a warm and trusting space that promoted mutual engagement and encouraged openness, vulnerability, and a diversity of perspectives, which challenges participants to reflect on their views in light of others' experiences and adjust their assumptions accordingly").

126. BRENÉ BROWN, *DARE TO LEAD* 28 (2018).

If the Justices embrace vulnerability and continue to practice accountability with their friends, those relationships will be a powerful tool for the moral formation of the Supreme Court Justices.

V. CONCLUSION

Chief Justice John Roberts admitted there is a need for change at the Supreme Court to restore the public's faith in the institution. On May 23, 2023, Chief Justice Roberts gave a speech in which he stated:

I want to assure people that I am committed to making certain that we as a court adhere to the highest standards of conduct We are continuing to look at things we can do to give practical effect to that commitment, and I am confident that there are ways to do that consistent with our status as an independent branch of government and the Constitution's separation of powers.¹²⁷

Perhaps, as discussed here, the best way the Supreme Court could “adhere to the highest standards of conduct” would be to adopt these seven strategies for intentional character development among the Justices or at the very least encourage character development of some kind.¹²⁸

One may find this solution lacking and be inclined to establish harsh penalties, rigid structures, and intense oversight on the ethics of the Supreme Court. Such requests are neither outrageous nor draconian, but they are very unlikely to occur due to the separation of powers and legislative gridlock. Instead, by focusing on personal character rather than institutional rules one can create long-term systemic change without needing external influence. Character development is a bipartisan issue that does not cast either party as being inherently deficient in character but rather emphasizes benefits of character development towards the Nation's collective goals.¹²⁹

Likewise, these same strategies can be useful for judges and lawyers at all levels of the legal system. Revisiting Chief Justice John Roberts' quote from *Sebelius*, “People, for reasons of their own, often fail to do things that would

127. Adam Liptak, *Chief Justice Says Supreme Court Is Working to Address Ethics Questions*, N.Y. TIMES (May 24, 2023), <https://www.nytimes.com/2023/05/24/us/chief-justice-roberts-supreme-court-ethics.html> [<https://perma.cc/7U5V-8TJF>].

128. *Id.*

129. See Reeves, *supra* note 48, at 125 (“Any new emphasis on character will need bipartisan support. This will require liberals to get past their squeamishness about words like ‘character’ and conservatives to get over their hostility to public policy.”).

be good for them or good for society. Those failures—joined with the similar failures of others—can readily have a substantial effect”¹³⁰ Although Justice Roberts was specifically talking about interstate commerce, the broad principle still applies: the collective actions of individuals can have a transformative effect on society. However, individuals must be willing to take “good” actions. The work of character development is an individual action that each member of the legal community can take to have a “substantial effect” on how lawyers act and are perceived by the general public.

130. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 554 (2012).

