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# A portrait of injustice: Why a judge's misdeeds shouldn't be memorialized

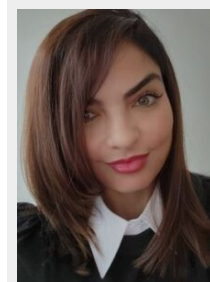
Andi Geloo // November 4, 2024 // 6 Minute Read



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Recently, the Fairfax Bar Association sent Fairfax County attorneys a special invitation: to attend a "portrait presentation and ceremony" at the Fairfax County Courthouse on Nov. 14, to honor a former local judge, Mitchell Mutnick.

The planned "portrait presentation" has left many local attorneys stunned because this isn't just about recognizing a judge. It's about honoring a figure whom Virginia state legislators even criticized for alleged courtroom harassment and misconduct. Such recognition sends a troubling message, highlighting the deep-seated issues within the judicial system, where the influence of entrenched networks often overshadow accountability. By celebrating a judge with a controversial record, this ceremony symbolizes the persistent "good old boy" culture that perpetuates injustice and undermines efforts to reform the judiciary.



Geloo

As a defense attorney in Fairfax County for almost two decades, I had long heard about Judge Mutnick's steamroller approach to managing the courtroom, often targeting some of our community's most vulnerable. During the 2022-2023 legislative session of the Virginia General Assembly, I was proud to help lead a process that enlightened our legislators about alleged judicial abuse that had been taking place in Fairfax County General District Court under the leadership of another Fairfax County judge, Lisa Mayne, with three judges: Mutnick, Michael Cantrell, and Richard "Butch" Horan. Along with educating lawmakers one-on-one, I wrote an op-ed for Virginia Lawyer's Weekly, read around the state, headlined, "It's Time to Get 'Wayward Judges' off Courtroom Benches." Then, in mid-February 2023, the Virginia Senate Courts of Justice Committee, known then as Senate Judiciary Committee, unanimously voted to decertify the three judges whose concerning actions were highlighted in the op-ed. Four days later, Delegate Marcus Simon led a similar vote in the House.

Legislators "de-certified" Judges Mutnick, Cantrell and Horan. Going beyond a forced "retirement," being decertified meant, as Del. Marcus Simon, vice chair of Courts of Justice, confirmed to me, they could no longer sit as judges in any capacity.

However, days earlier, on Jan. 23, 2023, a Virginia senator and practicing attorney introduced Senate Joint Resolution No. 279, which "commended" one of the unseated judges, Judge Mutnick, who was a constituent of the lawmaker, and the lawmaker had appeared before the judge.

Mutnick's rise to the position of judge in 2004 was allegedly thanks to a close family connection with a former state senator. However, the Fairfax Bar Association judicial screening committee didn't highly recommend or even recommend him to the General Assembly, merely "qualifying" him while other judicial candidates scored higher on their bar votes. The commendation was done through a block vote; other than the one Virginia senator who introduced the resolution, very few people read the commending resolution. The chair of the Senate Judiciary, Sen. Creigh Deeds, was unaware that Judge Mutnick was to receive a commendation. Even members of the Fairfax Delegation, including Virginia Del. Simon, told me they knew nothing of this commendation.

When other lawmakers and community leaders asked why a judge who had been removed and forced to retire due to bad behavior — a judge who ranked fifth from the last on the Judicial Performance Evaluation and scored especially poor for "patience," "respect" and "bias and prejudice" was receiving a commendation, the introducing senator's response was not that he deserved it, but instead flippant. The senator's tradition of indiscriminately awarding commendations without regard for the recipient's character or actions is a troubling habit that warrants reevaluation.

Ultimately, then-state Sen. Chap Petersen chose not to follow the policy of the one senator and did not commend Cantrell, also his constituent. Other senators referred to Mutnick's commendation as a "meaningless affirmation."

Since Mutnick is no longer a judge, some local lawyers wonder why he should be honored with a portrait.

Sen. Deeds, a senior member of the Senate Courts of Justice, remarked, "No one who holds a position of public trust is guaranteed reelection. You must earn the job every day."

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Addressing criticism of both the commendation and commission of portraits of wayward judges, Sen. Deeds emphasized the significance of my perspective on judges, stating on social media that “Andi Geloo articulates an important position on judges. Her voice needs to be heard.”

The issue of Mutnick’s portrait remains unresolved, with Steve Briglia, president-elect of the Fairfax Bar Association, reporting that a meeting has been scheduled to discuss the matter.

Some attorneys say that commending a decertified judge sends a message to the community that the legal association cannot hold its own accountable, particularly when these judges are perceived as well-connected and privileged.

Wayward judges make life-altering decisions for people who are invariably at their most vulnerable. Those who appear before these sub-judges are victims of the same dangerous misconduct that led to judges like Horan, Cantrell, and Mutnick being relieved of their duties.

It can seem like subterfuge when judges are forced to retire only to be given the ability to return through a back door. Thankfully, legislators prevented that from happening and uncertified all three judges. The legislators did the right thing. It now sends mixed messages when those same judges are then commended with portraits and ceremonies at the bar’s expense.

Fairfax Bar Association President Elanna Weinstein cites “tradition” to explain why the Fairfax Bar is using its funds, which include member dues, to pay for a portrait of a man who is no longer a judge due to low rankings and disrespect for citizens and bar members.

But this was not a matter of a judge retiring or one being elevated to other courts. He was forcefully removed as a judge by the legislative body charged with the duty of appointing, reappointing, and removing judges. His shameful attempts to then serve as a substitute judge resulted in him being uncertified as a judge by the same body, making it clear that the General Assembly deemed him unfit. He cannot sit as a judge in any capacity, anywhere. So the Fairfax Bar Association is now going to honor him with a portrait of his image and display it in the halls of justice – with bar funds?

The cost of just one portrait, ceremony aside, is approximately \$1,000. While Mutnick shamelessly accepted the invitation and is expected to appear to seize the recognition, Cantrell, another decertified judge, showed some integrity by declining the invitation and protecting the dignity of the ceremony for other deserving recipients.

Del. Simon, vice chair of the Courts of Justice, emphasized that Mutnick, along with Cantrell and Horan, were forced to retire and not reappointed. All three, including Mutnick, under the new law, were decertified and held “not eligible to sit in any capacity anymore.” They are no longer judges.

I disagree with Fairfax Bar President Weinstein that honoring problematic judges is simply a matter of “tradition.”

Tradition cannot be used to justify or excuse behavior that perpetuates abuse, racism, sexism, or other forms of discrimination. It’s true that some practices have a long history, but that doesn’t make them right. Promoting Jim Crow laws, aristocrats donning white robes to spread hate, and segregating schools are all examples of harmful “traditions” that have no place in our society. Just because something has been done for a long time doesn’t mean it should continue. We must recognize when “tradition” is rooted in oppression, discrimination, or injustice, and work to change it. Blindly following long-standing traditions without questioning their impact can perpetuate harm and hinder progress.

Recognition with a portrait and ceremony should be reserved for those distinguished judges who have earned it through exceptional achievements, not judges like Mutnick, who reportedly had a history of interrupting women in professional meetings, silencing their voices, and appropriating their ideas as his own.

The idea of honoring a decertified judge with a portrait is unsettling, especially since he was forced to “retire” from office for failing to meet the standards of his position – notoriously for not respecting citizens and members of the bar. Commissioning portraits of judges who have demonstrated disrespectful, tyrannical, abusive, and, in some cases, misogynistic and racist behavior is a hindrance to progress. Using bar resources to fund these portraits and ceremonies is particularly egregious, as it unwittingly forces members to condone and perpetuate a legacy of injustice.

Instead, as a bar, we should further prioritize initiatives that promote equity, inclusion, and accountability within our legal system.

It’s our responsibility to ensure that the legal profession is beyond reproach and serves the public with honor and diligence. Practices like these indicate a more systemic problem and must be stamped out before they truly become rooted in “tradition.”


The bar association should prioritize initiatives that expand access to justice for marginalized communities, including those living in poverty, people of color, women, immigrants, the elderly, individuals with disabilities, and LGBT individuals.

Rather than commissioning portraits and hosting ceremonies for judges who have failed to uphold the highest standards, we should reserve such honors for distinguished judges who have demonstrated exceptional

service and dedication to justice. This will help restore trust in our legal system and ensure that we honor, as Sen. Deeds suggested, only those who have earned it, particularly those who have treated all citizens – including women – with respect and dignity.

*“Andi” Andaleeb Geloo is a first-generation immigrant Muslim, lawyer and author of “Andi’s Law,” legislation that expanded the rights of citizens seeking protection from defamation. She earned her law degree from George Washington Law School with high honors and maintains a legal practice in Fairfax County. She can be reached at [andigeloolaw@gmail.com](mailto:andigeloolaw@gmail.com) and <https://www.facebook.com/AndiGeloo>.*

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