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Appellate Circuit In Light of All the Judicial Misconduct Now Publicly Documented, Will Judicial Immunity Be Repealed?

LIT has said this repeatedly. Judicial Immunity has been abused for decades and it is time to reel in these Outlaws in Dirty Black Robes.

By **justicefortexas**

Posted on October 8, 2021

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Pervasive judicial misconduct raises question: Who's in charge here? OCT 6, 2021 |

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House Democrats announced last Wednesday that they would reform judicial integrity procedures after an investigation found that more than 130 federal judges have been violating laws and ethics rules by participating in cases involving companies in which they or their family members owned stock.

Over the last decade, judges improperly failed to disqualify themselves from 685 cases nationwide, according to the September 28 report by the Wall Street Journal. Sixty-one judges or their families even traded those stocks while the cases were playing out in court.

The findings come on the heels of Reuters' "Teflon Robe" investigation last year, which found that thousands of state and local judges across the country violated ethics rules over the past 12 years, including lying to state officials and making racist statements. At least 5,206 people were directly affected, but most of the offending judges largely escaped punishment or accountability, even for shocking conduct like illegally jailing people and sexual abuse, Reuters found.

In just the last six years, news organizations have revealed similar patterns of slow and lenient discipline for judges who commit misconduct in Illinois, South Carolina and Louisiana, including investigations by Injustice Watch, the Advocate and ProPublica.

In 2017, a major scandal involving multiple accusations of inappropriate sexual conduct by former appeals judge Alex Kozinski led to a review of how the federal courts handle sexual harassment. But just last month, Laura Minor, a former equal employment opportunity officer and secretary at the two administrative bodies that oversee federal courts, told the Washington Post that judges still routinely circle the wagons to protect each other against complaints of misconduct.

Taken together, the revelations hint at systemic ethics violations, a pervasive leniency toward even serious transgressors, and a lack of public accountability among U.S. judges.

Those problems call into question the systems of self-policing for judges, but there's been no serious public engagement with that issue. Although it's unusual for justices to comment publicly, the silence on these revelations of misconduct from the highest-ranking officers of the federal courts – like U.S. Supreme Court Justice John Roberts – comes across as an abdication of responsibility and hinders a necessary public conversation and reform.

The Supreme Court's media relations office didn't respond to my questions for this column. The Administrative Office of the Courts told me it has safeguards against conflicts of interest, and is "looking for ways to improve."

Neither office responded to questions about whether Roberts will publicly address the investigation.

James Alfani, a law professor at South Texas College of Law and co-author of "Judicial Conduct and Ethics," said it's important for the court and chief justice to speak out given the gravity of the findings.

"The revelations in the investigation border on scandalous, and so the question is what role does the court have to play in resurrecting the federal judiciary?" Alfini said. "This would be a good time for the court to step forward and reassure the American public that they're taking this seriously and have some sort of plan. (Roberts) has a responsibility to do so as chief justice of the United States."

Most of the apparent violations the Wall Street Journal found were committed by judges in the United States' 94 federal district courts. The financial conflicts of interest span all 12 multi-state circuits (which oversee the district courts).

The report doesn't include comment from any chief judges of circuit courts. Two district court chiefs – both of whom were personally implicated in misconduct – provided statements. Timothy Batten Sr, chief judge of the U.S. District Court for the Northern District of Georgia, said he wasn't aware of the conflicts because his retirement account was managed by a broker. Rodney Gilstrap, chief judge for the Eastern District of Texas, said that he didn't think recusal was necessary because he was minimally involved in the cases.

Other judges expressed regret and reaffirmed their commitment to comply with the law. Some said they'd been careless or lazy. Others offered explanations that misstated the law and blamed flawed internal procedures or their clerks.

The Administrative Office described the financial conflicts of interest revealed in the Journal report as inadvertent. The findings are "troubling," the office said, adding that it will carefully review the matter.

It's unclear how the Administrative Office ascertained that 131 recently reported instances of misconduct were inadvertent or what its review will accomplish: The office doesn't actually have the power to investigate the misconduct found in the investigation. That's the purview of the individual circuits overseeing those offending judges' districts.

The Administrative Office is led by a director – also a federal judge – and a deputy, both of whom were appointed by Roberts, as mandated by law. It works under the direction of the principal policy-making body of the judiciary – the Judicial Conference – which is also headed by Roberts.

The Judicial Conference's leadership consists of the chief judges of each federal circuit court, and it operates through a network of committees. Roberts has sole authority to summon the conference into session and make committee appointments, as well as broad authority in deciding what matters will be considered.

In other words, an outsized share of the oversight authority for the federal judiciary's operations and policies is vested in the office of the chief justice. This is partly why Roberts' official title is actually "Chief Justice of the United States."

New post: U.S. Supreme Court Won't Intervene in Conflict of Interest Between Chief Judge Janet DiFiore, Greenberg <https://t.co/gP1bylr6CJ>

— LawsInTexas (@lawsintexasusa) **October 4, 2021**

This administrative structure – like the very existence of the Administrative Office or the Judicial Conference – is not well-understood among the public. And it was that faceless, obscure entity that answered, if you will, for the entire U.S. federal court system.

Roberts and other chief justices before him have generally refrained from engaging the public about the courts or their stewardship of the institution, contrary to traditional principles of public office. Roberts' comments and the operational changes made after the 2017 revelations about sexual harassment in the judiciary, for example, were gleaned by the press and public from a staid, annual year-end report.

Democratic lawmakers said last week that they'll re-introduce legislation making judicial financial disclosures publicly available and requiring the Supreme Court to adopt a code of ethics for the justices themselves. Still, its incumbent on federal appeals court judges and especially Roberts to provide answers, directly, to the public.

Credit: Reuters

U.S. Supreme Court Won't Intervene in Conflict of Interest Between Chief Judge Janet DiFiore, Greenberg Traurig and Justice for Homeowners

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