

# Hercules and the umpire.

THE ROLE OF THE FEDERAL TRIAL JUDGE. PLEASE NOTE THAT THIS BLOG ENDED FOREVER ON JULY 9, 2015

## Judge Edith Jones and the dismissal of the ethics complaint

OCTOBER 18, 2014 *By* RGK *in* UNCATEGORIZED *Tags:* CODE OF CONDUCT FOR UNITED STATES JUDGES, CONTROVERSIAL JUDICIAL SPEECH, ETHICS COMPLAINT, JEFFREY BELLIN, JUDGE EDITH JONES, JUDGE GARLAND, JUDGE GRIFFITH, JUDGE ROBERTS, JUDICIAL COUNCIL OF THE D.C. CIRCUIT, REPORT OF THE SPECIAL COMMITTEE 22 COMMENTS

I have earlier written (<https://herculesandtheumpire.com/2013/06/05/the-complaint-against-judge-edith-jones-for-her-death-penalty-speech/>) about the ethics complaint filed against Judge Edith Jones (<http://www.fjc.gov/servlet/nGetInfo?jid=1194&cid=999&ctype=na&instate=na>). Judge Jones, who I have only met once, is a tough and “conservative” judge who sits on the Fifth Circuit. She formerly served as the Chief Judge of that court. She is very bright, and very opinionated. Her writing and her speaking styles can be blunt. Frankly, she is far too right-wing for my tastes.

### *Background*

The student-run chapter of the Federalist Society at the University of Pennsylvania Law School invited Judge Jones to speak about the death penalty. The Federalist Society chapter advertised the event within the law school and to the public as a discussion of “federal death penalty review through the perspective of a federal judge.” Judge Jones delivered the lecture, entitled “Federal Death Penalty Review with Judge Edith Jones (5th Cir.),” on February 20, 2013. She spoke for about 45 minutes and then answered questions. There was no recording of her talk or the question and answer session.

Various individuals and public interest groups filed a Complaint of Judicial Misconduct against the judge. The Complaint primarily centered on alleged misconduct arising from remarks Judge Jones made at the lecture on the death penalty at the University of Pennsylvania Law School on February 20, 2013.

The complaining parties did not like what Judge Jones said, so they filed the ethics complaint against her.

The Complaint grouped Judge Jones’ contested comments into the following categories: (1) “Comments on Race”; (2) “Comments on the Intellectually Disabled”; (3) “Comments on [Claims] of Innocence”; (4) “Comments on Foreign Nationals”; (5) “Discussion of Individual Cases”; and (6) “Discussion of Religion as a Justification for the Death Penalty.” It also alleges that the judge: (7) improperly criticized the U.S. Department of Justice; (8) “disparaged” the Supreme Court; and (9) delivered her remarks in an inappropriate tone. In these respects, the Complaint maintains, the judge’s lecture

violated 28 U.S.C. § 351 and Code of Conduct Canons 1, 2, 3, and 4.

Before I first blogged about this matter more than a year ago, I spent a time examining the complaint and the four affidavits that a newspaper had obtained and reprinted. After that, I wrote:

While its only my opinion, even if one takes the facts stated in the affidavits as generally true, the content of Judge Jones' remarks at the law school seem to me to be a very weak basis for claiming that she violated the Code of Conduct. Indeed, I find it more than a little frightening that a serious but plainspoken and outspoken judge like Jones can be forced to defend herself for the content of a law school speech on the death penalty that offended some of the audience members.

Richard G. Kopf, [The complaint against Judge Edith Jones for her death penalty speech](https://herculesandtheumpire.com/2013/06/05/the-complaint-against-judge-edith-jones-for-her-death-penalty-speech/) (<https://herculesandtheumpire.com/2013/06/05/the-complaint-against-judge-edith-jones-for-her-death-penalty-speech/>), Hercules and the umpire (June 5, 2013 (asterisks (footnotes) omitted).

I also noted that: "The rambling complaint does an extremely poor job of tracking the affidavits. That is, the complaint appears to grossly overstate the specific facts recounted in the affidavits."

At the request of the Chief Judge of the Fifth Circuit, this matter was submitted to Chief Justice Roberts for transfer to another Circuit Judicial Council. The Chief Justice referred the complaint to the Judicial Council of the District of Columbia Circuit. In turn, a "Special Committee" was appointed consisting of D.C. Circuit Chief Judge Garland (<http://www.fjc.gov/servlet/nGetInfo?jid=820&cid=999&ctype=na&instate=na>), Circuit Judge Griffith (<http://www.fjc.gov/servlet/nGetInfo?jid=3090&cid=999&ctype=na&instate=na>), and Chief Judge Roberts (<http://www.fjc.gov/servlet/nGetInfo?jid=2777&cid=999&ctype=na&instate=na>) of the United States District Court for the District of Columbia. On August 6, 2013, the Committee appointed Jeffrey Bellin (<http://law2.wm.edu/faculty/bios/fulltime/jbellin.php>), Associate Professor of Law at William and Mary Law School, as Special Counsel to the Committee to investigate the Complaint's factual allegations.

The Special Committee issued a 71-page single spaced opinion recommending that the entire complaint be dismissed. The Judicial Council of the D.C. Circuit ( GARLAND, Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit; KAVANAUGH, SRINIVASAN, MILLETT, and PILLARD, Circuit Judges; ROBERTS, Chief Judge, U.S. District Court for the District of Columbia; A. JACKSON, CONTRERAS, and K. JACKSON, District Judges) followed the recommendations, and the complaint was unanimously dismissed on August 12, 2014.

We now know the identity of the complaining parties as they have "appealed" (called a "Petition for Review" under the relevant rules) and they have made their appeal public. The complaining parties are: League of United Latin American Citizens (LULAC), by Luis Roberto Vera, Jr.; NAACP – Austin Chapter, by Nelson E. Linder; National Bar Association, Dallas Affiliate – J.L. Turner Legal Association, by Tatiana Alexander; Texas Civil Rights Project (TCRP), by James C. Harrington; La Union del Pueblo Entero (LUPE,) by Juanita Valdez-Cox; Charles W. Wolfram, Professor Emeritus, Cornell Law School; Author, Modern Legal Ethics; Renato Ramirez; Professor Robert P. Schuwerk, Co-Author, Handbook of Texas Lawyer and Judicial Ethics; Susan Martyn, Distinguished Professor of Law & Values, University of Toledo College of Law; Ronald Minkoff, Frankfurt Kurnit Klein & Selz; Past President, Association of Professional Responsibility Lawyers; Ellen Yaroshefsky, Clinical Professor and Director, Burns Center for Ethics in the Practice of Law, Cardozo School of Law.

Their "appeal" will go before the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States. *See* (<http://www.uscourts.gov/RulesAndPolicies>

[/ConductAndDisability/JudicialConductDisability.aspx](#)) here (near the bottom of the page, click on Rules for Judicial-Conduct and Judicial-Disability Proceedings and read Rules 21 and 22).

The Order of dismissal, the Report of the Special Committee, the "Appeal" and the supporting affidavits for the "appeal" are reproduced as follows: dismissal

(<https://herculesandtheumpire.files.wordpress.com/2014/10/dismissal.pdf>); appeal

(<https://herculesandtheumpire.files.wordpress.com/2014/10/appeal.pdf>); and affidavits

(<https://herculesandtheumpire.files.wordpress.com/2014/10/affidavits.pdf>). These are PDF

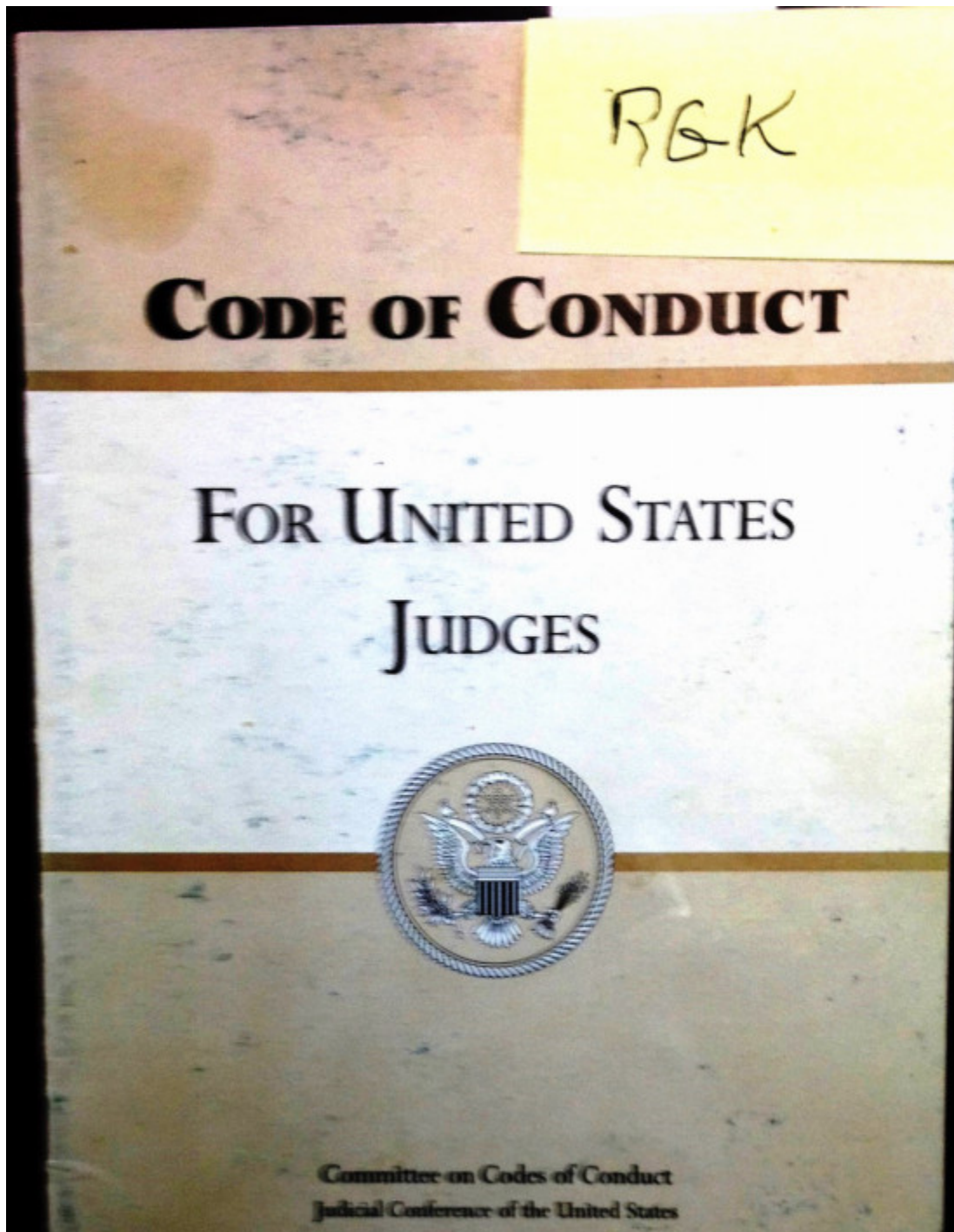
documents, and one must click on the link to view (by download) the document or documents of

interest. Many thanks to Howard Bashman at *How Appealing* for collecting these materials. An

alternative method of accessing these documents is to go to Howard's post which may be found here

(<http://howappealing.abovethelaw.com/101514.html#058479>) ("Federal panel dismisses complaint

against Houston judge").





<https://herculesandtheumpire.files.wordpress.com/2014/10/code-21-e1413585973703.jpg>) *My initial reactions*

I may post more about the decision and the appeal. But for now, here are my five initial reactions:

1. The work of the Special Committee and Professor Jeffrey Bellin makes me proud to be a federal judge. The clarity, tone, thoroughness and objectivity which is evident in the Report of the Special Committee is remarkable.
2. Having spent six years as a member of the Codes of Conduct Committee, it is my opinion that the Special Committee's report reflects a sophisticated understanding of the Code of Conduct For United States Judges (<http://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-2-ethics-and-judicial-conduct/part-codes-conduct/ch-2-code-conduct-united-states-judges>).
3. In my opinion, the essential allegations of the complaint lack a credible factual basis. With the aid of Professor Bellin's searching investigation, the Report of the Special Committee, in restrained terms, explains why that is so.
4. I fear that complaints like this one will chill, and may even be intended to chill, judicial speech concerning the law, the legal system, and the administration of justice, particularly when the judge does not share the jurisprudential or ideological views of the listeners, and despite the fact that federal judges are expressly encouraged under the Code to speak about the law and how to improve it. *Id.* Commentary to Canon 4.
5. As distinguished from my fears expressed in the preceding paragraph, the Report of the Special Committee does a skillful job of explaining why controversial speech by a federal judge in the context of a talk on the law does not violate the Code.

### *Conclusion*

I especially urge all federal judges and federal practitioners to read the Report of the Special Committee. It would be good also to read the complainants' "appeal" and the supporting affidavits, although frankly those documents leave me entirely unpersuaded. Finally, the Judicial Council of the D.C. Circuit, and particularly the members of the Special Committee, deserve high praise for teaching us a lot about federal judicial ethics in the real world.

**RGK**

## On being “uncomfortable” and “offended”—the ethics complaint against Judge Jones and the student affiants

OCTOBER 19, 2014 *By* RGK *in* UNCATEGORIZED *Tags:* ETHICS COMPLAINT AGAINST JUDGE JONES, JUDGE EDITH JONES, LAW STUDENTS BEING MADE TO FEEL "UNCOMFORTABLE" OR BEING "OFFENDED", LEGAL EDUCATION, RACE AND THE DEATH PENALTY, STUDENT AFFIDAVITS 43 COMMENTS

**That students have devolved from budd[ing] scholars and statesmen to butthurt babies is, sadly, a trend that's been happening for quite a while now, as higher ed has facilitated, if not encouraged, them to elevate their feelings above all else. But why is there no grown up in the room?**

Scott H. Greenfield, [Sensitive Sally Smacks Special Snowflake Student Silly](http://blog.simplejustice.us/2014/05/24/sensitive-sally-smacks-special-snowflake-student-silly/) (<http://blog.simplejustice.us/2014/05/24/sensitive-sally-smacks-special-snowflake-student-silly/>), *Simple Justice* (May 24, 2014).

I return to the ethics complaint against Judge Jones that I discussed [yesterday](https://herculesandtheumpire.com/2014/10/18/judge-edith-jones-and-the-dismissal-of-the-ethics-complaint/) (<https://herculesandtheumpire.com/2014/10/18/judge-edith-jones-and-the-dismissal-of-the-ethics-complaint/>). Specifically, I write about two affidavits submitted by two students, one of whom was pursuing an advanced degree in criminology (and perhaps a law degree) and the other a law degree. I concentrate on the issue of race, and whether Judge Jones' statements reflected racial bias such that students were justified in being “uncomfortable” or “offended.”

### *Background*

Here is how the [“Appeal](https://herculesandtheumpire.files.wordpress.com/2014/10/appeal.pdf) (<https://herculesandtheumpire.files.wordpress.com/2014/10/appeal.pdf>)” describes two student affidavits:

The affidavits from attendees are categorical that Judge Jones' comments diminished confidence in and respect for the judiciary's integrity and impartiality:

As an African American male, and as someone who is interested in the areas where race and law intersect, I was made uncomfortable by her comments on race and found them offensive.  
Exhibit B, #35.

From speaking with others after the lecture and observing the reactions of others during her remarks, she upset and offended many of the attendees in the room tremendously.  
Exhibit C, #14.

....

*Id.* at p.18. (For all of of the sworn statements, click here: [affidavits](https://herculesandtheumpire.files.wordpress.com/2014/10/affidavits.pdf) (<https://herculesandtheumpire.files.wordpress.com/2014/10/affidavits.pdf>).

It is important to stress that the student affidavits are odd in one critical aspect. Instead of reciting what they heard, they frequently adopt by reference what another person heard, that is, the recollections of

Marc Bookman, the Director of the Atlantic Center for Capital Representation. As regards Judge Jones' comments on race, Bookman's affidavit makes clear that Judge Jones did not mean to imply that Blacks or Hispanics were inherently more murderous. Specifically, Bookman stated that Judge Jones said "she did not mean that certain races were 'prone' to such violent behavior – just that, 'sadly,' they happened to engage in it more often. She noted there was no arguing that 'Blacks' and 'Hispanics' far outnumber 'Anglos' on death row and repeated that 'sadly' people from these racial groups do get involved in more violent crime." Bookman Aff. ¶ 28.

Here is what the Special Committee concluded regarding race and Judge Jones statements:

It appears likely that Judge Jones did suggest that, statistically, African-Americans and/or Hispanics are "disproportionately" involved in certain crimes and "disproportionately" present in federal prisons. Needless to say, this topic can be extremely sensitive, and we do not doubt the affiants' and witnesses' repeated statements that they found the remarks offensive. Judge Jones herself recounted that she "was uncomfortable about alluding to such facts." Jones Recollections 20-21. We recognize that, without an explanation or qualification, saying that certain groups are "more involved in" or "commit more of" certain crimes can sound like saying those groups are "prone to commit" such crimes. But we must consider Judge Jones' comments in the context of her express clarification during the question-and-answer period that she did not mean that certain groups are "prone" to criminal behavior. In that context, whether or not her statistical statements are accurate, or accurate only with caveats, they do not by themselves indicate racial bias or an inability to be impartial. Rather, they resemble other, albeit substantially more qualified, statements prominent in contemporary debate regarding the fairness of the justice system.

The evidence also shows that Judge Jones used the term "red herring" to signify her view that a challenge to the death penalty on the ground that it is administered in a racially discriminatory manner is nonviable. When we consider this in the context of a discussion of *McCleskey v. Kemp*, 481 U.S. at 292, we again cannot find that such a view indicates improper bias or misconduct.

[Report of the Special Committee \(https://herculesandtheumpire.files.wordpress.com/2014/10/dismissal.pdf\)](https://herculesandtheumpire.files.wordpress.com/2014/10/dismissal.pdf), at pages 27 and 28 (footnote omitted).

In a footnote to the foregoing conclusion, the Special Committee wrote:

See, e.g., Eric Holder, U.S. Attorney General, Remarks at the 11 Annual Meeting of the American Bar Association's House of Delegates (Aug. 12, 2013) ("[I]t's time to ask tough questions about how we can . . . address the fact that young black and Latino men are disproportionately likely to become involved in our criminal justice system — as victims as well as perpetrators."); Marc Mauer & David Cole, Five Myths About Americans in Prison, WASH. POST (June 17, 2011) ("Yes, African Americans and Latinos disproportionately commit certain crimes. But in a 1996 study of crime rates in Columbus, Ohio, criminologists from Ohio State University concluded that socioeconomic disadvantages 'explain the overwhelming portion of the difference in crime.'"); Charles Ogletree, The Burdens and Benefits of Race in America, 25 HASTINGS CONST. L.Q. 217, 228 (1998) ("African-Americans are grossly over-represented in the criminal justice system. In part, this is due to the fact that, per capita, black people do commit more crimes than whites. However this fact alone does not account for the disparities in the crime statistics. In fact, since the 1970s, rates of black crime have been stable, even though the rates of prosecution have increased exponentially."); id. at 228 n.48 ("A number of studies have documented the unusually high arrest rates for blacks suspected of crime compared to other groups."); id. at 236-37 ("The problem is that the decision-making process at every stage . . . is discriminatory and thus subject to bias (racial or otherwise) in its applications."); see also U.S. SENTENCING COMM'N, 2012 SOURCEBOOK

OF FEDERAL SENTENCING STATISTICS, tbl.4, available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table04.pdf> (providing statistics on race of offenders in each primary offense category).

*Id.* at n. 11.

### *My concerns about the student affidavits*

The practice of law is a tough business. It is particularly tough business when the death penalty is involved. As law students who are about to become lawyers, one would hope that they develop very tough skins. They will not be able to survive in the real world if they don't. More importantly, they will do their clients a huge disservice if they hold themselves out as advocates while at the same time being oversensitive about their personal views. Frankly, that law students are made to feel "uncomfortable" or "offended" while they study to become legal professionals is a good thing. As I have said in another context (that subjected me to howls of criticism), they ought to "get over it." Law students must learn that taking on the representation of a real live human being means that the task is *never* about them. We don't need "butthurt babies." We need tough-minded lawyers.

**RGK**

## 22 responses

CORNHEAD says:

October 18, 2014 at 8:42 AM

Let me expand on your point four. This action is a typical left wing political tactic undertaken by well-off people with too much time on their hands and for whom politics is 24/7. Moreover they want to accomplish by other means what they can't do constitutionally. Judge Jones has a lifetime appointment and they don't like it. So they harass her under the guise of an "ethics" complaint with zero downside for them. It kind of reminds of the shameful Justice Clarence Thomas confirmation hearing. No video or audio tapes there either.

I won't even bother to read the affidavits and complaint as I am sure they are filled with lies, distortions, misrepresentations and half-truths. Because that's the way the Left rolls.

Chilling? Try on the fact she will probably never make such a speech again. Why bother? Just go play golf with Obama.

REPENTINGLAWYER says:

October 18, 2014 at 10:25 AM

I doubt very much that Jones will be deterred. Am a little bothered by very ideological speeches from judge on either side, since they do contribute to the perception that division within courts are merely partisan. However Cornhead's view that this is left only is totally inaccurate. Particularly in the academia, the right has spent a good deal of time inciting criticism, and there are some ugly stories in law schools about conservative student groups and evaluations. Hearsay but all the best gossip is. The notion that half truths are the way of the left is both unfair and unfounded, both sides are capable of inappropriate conduct. If the judge does not like death threats, he should have taken death

threats over the phone at 12 from some of the good Republicans of NE.

RGK says:

October 18, 2014 at 11:32 AM

Dear repenting lawyer,

I agree that being nasty and intollerant goes both ways. All the best.

RGK

ROBERT says:

October 18, 2014 at 11:52 AM

Judghe:

Would all this have happened had Judge Jones not been a noted conservative jurist with opinions contrary to those held by the groups complaining about her? I doubt it. You are likely correct that this complaint was a "shot across the bow" intended to intimidate future (conservative?) judges from engaging in judicial speech. What's worse is that perhaps it is an intimidation tactic intended to prevent judges from holding certain positions in their judicial capacities which are contrary to those espoused in the academy and in Left-leaning circles. Such conduct must be met with the strongest opposition by the Bench and Bar when it is shown, as here, to be entirely bogus. And, BTW, despite my own Right-of-center political leanings, I would be just as outraged if this sort of thing happened to a "liberal" jurist by "conservative" groups.

Robert

REPENTINGLAWYER says:

October 18, 2014 at 12:14 PM

I agree that the practice of trying to silence those with whom you disagree is generally reprehensible, early treatment of Justice Thomas was exemplary. If you doubt only conservatives are treated this way by academics you are living in a dream world. Each side has its share of meanies.

ROBERT says:

October 18, 2014 at 12:51 PM

Dear repenting lawyer:

My residence is of no moment. In fact, it is one side—I'll let you take a wild guess which one it is—which holds sway, with some small exceptions, amongst what I call the "Big Three": 1) Hollywood; 2) the media; 3) academia (not surprisingly, this incident arose out of a speech in an academic setting). Given that premise as correct, your suggestion of equivalence by those on both sides of the political spectrum rings rather hollow.

Robert

REPENTINGLAWYER says:

October 18, 2014 at 1:14 PM

I do not see enough movies to comment, media talk is nonsense, largely comes from listening to Fox denounce MSNBC and visa versa, I watch neither, if your talking about economics most American economists are conservative to middle of the road, if your talking about the legal academy you are many years out of date, and nobody listens to the humanities, I do not know enough about the politics of the sciences to comment. I have moved you from dream land to cloud cuckoo land, but you may respond that I am as monotonous as the frogs.

ROBERT says:



October 18, 2014 at 1:37 PM

Dear repenting lawyer:

I can assure you of the following: 1) my residence is of no moment; 2) you need to get out more.

Robert

REPENTINGLAWYER says:

October 18, 2014 at 1:44 PM

Robert, I cannot hear you sir, your surrebutter is defective. Baron Parke

PDGPA says:

October 18, 2014 at 7:13 PM

If the complaint had been directed at Judge Jones's point of view, Judge, some of your comments would be warranted. But it was not. Your summary statement – "The complaining parties did not like what Judge Jones said, so they filed the ethics complaint against her." – seems quite misleading to me. The complaining parties relied on affidavits from University of Pennsylvania law students, mostly, who had attended an open meeting of a campus group. The affiants quoted Judge Jones's comments as best they could, much of it from contemporaneous notes they had taken and texts they sent to friends while listening to the speech. The remarks they quoted (please, read the affidavits) were objectively racist, express a clear pre-judgment against categories of legitimate legal claims, and expressed her personal religious beliefs in a way that strongly suggested she believes these should and do influence her rulings as a judge. The affidavits were signed under penalty of perjury. How is this not credible evidence to support a serious complaint of judicial misconduct? (The complainants are no doubt opponents of the death penalty, but to their credit, they had attended the meeting in order to hear an articulate and prominent speaker with an opposing viewpoint. This was in the best tradition of education for future lawyers.) Although the Federalist Society organizers of the event solicited counter-affidavits, it is my understanding that they found no one who had attended and was willing to swear the quoted remarks were not made. Criticism of the drafting or editing of the complaint itself is a red herring.

RGK says:

October 18, 2014 at 7:48 PM

pdgba,

The decision of the Special Committee makes it clear that the members did not find credible evidence to support the factual claims. If you want to argue about the factual claims, then I suggest we talk about a specific claim and why the Special Committee's factual analysis is flawed. By the way, the make up of the Special Committee was far more "liberal" than Judge Jones. There is no reason to think that they were "in the bag" for Jones.

All the best.

RGK

PDGPA says:

October 18, 2014 at 8:13 PM

I never suggested that the Special Committee was politically biased. I don't know where you got that impression. Unlike some of your commenters, I do not engage in that brand of *ad hominem* argument or name-calling. I read the affidavits, which were filed by Penn law students who attended the talk and quoted the speaker's remarks. I also read the report. The committee's assertion that there was no credible evidence baffles me. The complaint, the report, and the petition for review are each dozens

of pages long. There is no way we can — or should try to — debate or reargue the merits here. My comment was directed as fleshing out what your characterization obscured, that the complaint was not about whether anyone “liked” what Judge Jones had to say.

REPENTINGLAWYER says:

October 18, 2014 at 11:27 PM

pdga First most people are not good listeners, and law students are worse than most. Second we hear what we expect to hear as much or more than what is said. Third people who went to make notes were there expecting what they reported given her reputation. Given that she denies saying it how would you resolve this he said she said. More frightening is the idea that politically committed students think it is their job to spy on lecturers and teachers with whom they disagree looking to make a complaint. I do not worry about federal judges, not a timid lot, but non tenured faculty are likely to trim their sails, particularly because of the tendency of students to get sucked into faculty politics. Students should hear different voices, even diva judges..

RGK says:

October 19, 2014 at 7:11 AM

pdgpa,

Fair enough. I agree that the one sentence that you keyed on in my post could have been written better, that is, more nuanced. All the best.

RGK

Pingback: [On being “uncomfortable” and “offended”—the ethics complaint against Judge Jones and the student affiants « Hercules and the umpire.](#)

GOV'T IP LAWYER says:

October 20, 2014 at 9:43 AM

Every time this case has appeared or re-appeared in the news, one of the main things that pops up in my head is surprise that there is no recording of an organized, formal legal event like this. Is that unusual? Relatedly, do judges typically (or not infrequently) insist that their extra-judicial speeches at events such as these not be recorded?

THE ABSINTHE-MINDED PERFESSER says:

October 20, 2014 at 9:50 AM

Cornhead, if you don't mind me saying so, you seem to have a bit of a chip on your shoulder. If you sincerely believe that your side is on the side of the angels and the other enjoys intimate relations with Satan every morning, you have lost your perspective.

The problem is that judges are unaccountable politicians in black robes. The only reason Thomas was elevated to the bench was that he was a young and black conservative, and he has vindicated his critics with his performance on the bench. The only litmus test for the modern federal judge is whether s/he is an ideologue of the proper stripe and that, in turn, has obliterated the rule of law in America. As that flaming lib-uh-rull Antonin Scalia observed:

*“Judicial decisions, like the Constitution itself, are nothing more than ‘parchment barriers.’ Both depend on a judicial culture that understands its constitutionally assigned role, has the courage to persist in that role when it means announcing unpopular decisions, and **has the modesty to persist when it produces results that go against the judges’ policy preferences.** [MI v. Bryant]*

That kind of judicial modesty is almost a dying art. What we are left with is a band of arrogant proxies for political parties like Edith Jones, who have been caught saying that she is too important to decide “minor” appeals like yours. William M. Richman, *Much Ado About the Tip of an Iceberg*, 62 Wash. & Lee L.

Rev. 1723, 1728 (2005). The rule of law has been supplanted by the rule of judges, who have become so self-important that they rarely bother to explain why they rule the way they do any more. Judge Kopf is swimming against a tidal wave.

CH: “I won’t even bother to read the affidavits and complaint as I am sure they are filled with lies, distortions, misrepresentations and half-truths. Because that’s the way the Left rolls.”

If this is the way you “roll,” you are part of the problem. You think nothing of judging without considering the facts, and even boast of it!

I will call Senator Hatch, and recommend you for the federal appellate bench. You will fit right in....

RGK says:

October 20, 2014 at 10:11 AM

Gov’t IP lawyer,

Some Supreme Court Justice ban recordings. I don’t know about other judges. When I speak (and that is infrequent) I don’t care if somebody records what I have to say, but I certainly don’t require that the sponsor record my remarks. All the best.

RGK

THE ABSINTHE-MINDED PERFESSER says:

October 20, 2014 at 7:56 PM

Courts have a nasty habit of finding the facts they need. OTOH, I would have liked to see the Committee just assume the allegations as true and dispense with the chicanery. She said what they said. So what? Jones is an originalist? Why isn’t everyone? She has opinions? BFD, As long as she applies the Constitution without fear or favor — a tall ask for most judges — it doesn’t matter what she says in a speech.

Half the bench moonlights. Should every lecture be recorded and made available for scrutiny? I’m sure we could find a gold mine or two.

THE ABSINTHE-MINDED PERFESSER says:

October 20, 2014 at 7:59 PM

Scalia even had a reporter kicked out — and unceremoniously, by the US Marshals — for the unforgivable sin of recording one of his speeches. Imagine the cheek! Heaven forbid that anyone should actually use that arrogant idiot’s words against him.

Pingback: [October 23 roundup - Overlawyered](#)

TOM CRANE says:

October 27, 2014 at 11:53 AM

No, the groups that have filed this complaint are not, so far as I can tell, “well off.” Texas Civil Rights Project is far from well off – LULAC is the same. They are non-profits, after all.

I assume their complaints were sincere. The local newspaper here in San Antonio reported her to

have said that certain racial groups are “predisposed” toward crime. In reviewing the affidavits, I see two witnesses said she specifically did not say that. A third witness, African-American, said she did indeed say that. When this African-American attendee asked a follow-up question, she backed off that earlier statement. Whatever she said, I am glad to see she walked it back a bit. But, still, as someone who represents victims of discrimination, I certainly hope to avoid appearing in front of her. Frankly, IMO, those are not the sort of things a federal judge ought to be saying – even though they do not violate judicial ethics.

Hercules and the umpire.

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