

Judicial Council Opinion(/Order) № 07-18-90014 Annotated

This document, “**JCOpAnn**,” dated May 9 2018, presents the Judicial Council’s Opinion(/Order) “**JCOp**” (dated Mar 28 2018, regarding Judicial Misconduct Complaint №07-18-90014), *reformatted* into a table, together with *annotations* thereto (keyed by annotation numbers, 1, 2, ...). The annotations occur both as (i) *brief side-comments* embedded within the table itself (with arrows attaching each annotation to its associated JCOp text), and as (ii) *expanded remarks* on the pages following the table.

References are made throughout to our website [http://Judicial Misconduct.US](http://JudicialMisconduct.US) (and especially its webpage at [http://judicialmisconduct.us/CaseStudies/RyanvUS\(AlSchulervEasterbrook\)](http://judicialmisconduct.us/CaseStudies/RyanvUS(AlSchulervEasterbrook))), which is **hereby also submitted**, together with our *new* Complaint of Judicial Misconduct (also submitted this day, May 9 2018), as “any information that would help an investigator check the facts,” per the catch-all rule JCDR^α 6(b)(3)). The ***most important single item*** on the website, for the present purposes of Judicial Misconduct in the Seventh Circuit, is the newly added document <http://judicialmisconduct.us/sites/default/files/2018-05/MemoirAnnotated.pdf>, **Memoir Annotated**,^β hereinafter “**MemAnn**,” which is specifically intended for the purposes of both (i) the instant new Judicial Misconduct Complaint, and (ii) the associated **Petition for Review** (of №07-18-0014), also filed this day, May 9 2018.

α • JCDR = **Judicial Conduct and Disability Rules**, see ann. 2 (on ϕiv) *infra*.

β • See the accompanying document, *Notice of Website, and of Annotated Memoir*, for more information about Memoir Annotated.

Judicial Council Opinion(/Order) (JCOp)

Annotations, Brief Comments

Judicial Council Opinion (“JCOp”)	Annotations
ORDER	
<p>For the reasons stated in the accompanying memorandum, this complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) because it is “directly related to the merits of a decision or procedural ruling.” See also Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.</p>	<p><u>1</u> This is “B.S.” (see MemAnn § 7B for definition). See <u>2</u>, <u>5</u>, <u>8</u>.</p> <p><u>2</u> Also B.S. See <u>1</u>, <u>5</u>, <u>8</u>.</p>
MEMORANDUM	
<p>On March 7, 2018, Complainant filed a judicial misconduct against one member of the court of appeals panel that was assigned to resolve an appeal in a particular case. Complainant was not a party to this appeal, which was resolved more than five years ago. Instead, he read an article about the case in a law review, the article was written by counsel for the unsuccessful party on appeal. The author of the article accused the subject judge of misrepresenting the record both in the judge’s written opinions and in the judge’s statements from the bench during oral argument. For example, the article accuses the subject judge of stating that the trial court gave instructions that it actually did not give; that both the defendant and the opposing party made arguments that they did not make; that one or both parties waived or forfeited arguments when that was not the case; that the Supreme Court had said certain things that the Court did not say; and that the defendant’s sentencing record was not accurately reported. Complainant charges that these misrepresentations amount to misconduct for purposes of the Judicial-Conduct and Judicial-Disability Act. Complainant asks that his complaint be transferred to a different circuit for resolution.</p>	<p><u>3</u> Generally, this paragraph is useless, since it’s mostly a watered-down paraphrasing of the Memoir (whereas the Memoir itself should/must be consulted for the real stuff).</p> <p><u>4</u> Gratuitous, pejorative, prejudicial, “throw shade.”</p> <p><u>5</u> “Proved,” not merely “accused!” See also <u>9</u>.</p> <p><u>6</u> <i>Inadvertent/unintentional</i> “misrepresentations” are one species, and are forgivable. <i>Intentional/willful/harmful</i> “misrepresentations” (as claimed here) are a horse of a different color, can be made for a variety of (illicit) purposes, and are not forgivable: these do indeed amount to Judicial Misconduct.</p> <p><u>7</u> For good reasons, stated in the Complaint (not to mention, Wood was on the <i>same complained-of</i> panel with Easterbrook!).</p>

Judicial Council Opinion (“JCOp”)	Annotations
<p>I have conducted the initial review of this complaint required by 28 U.S.C. § 352(a) and Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“the Rules”). I conclude that all of the alleged misconduct is “directly related to the merits of a decision or procedural ruling.” Errors (or alleged errors) in statements made during oral argument or in a final written opinion of the court of appeals occur from time to time, regrettably, but they are subject to correction through the process of petitions for rehearing and rehearing en banc, or through a petition for a writ of certiorari filed in the U.S. Supreme Court. The complaint makes no allegation of problems such as extra-judicial bias, reliance on information that was not properly part of the record, procedural irregularities with respect to the operations of the court of appeals, or anything else identified in either the Rules or the Report of the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980 (“the Breyer Commission Report”). See, e.g., Breyer Commission Report at 54–56. I consider this to be so clear that there is no need to transfer this matter to the Judicial Council of another circuit, and so that motion is denied.</p>	<p>8 Again with the “merits-related thing. See <u>1</u>, <u>2</u>, <u>5</u>. 9 Again with the “alleged” thing, ignoring “proof,” see <u>5</u>. 10 Speaking here of the innocent/harmless types of error (but those have never been in dispute, have they? ...). 11 Oh Come On, we already know about this gauntlet, and we’ve already run it. 12 Wait, what about JCDR 21(a) (the new/now version)? 13 Yes need to transfer.</p>
<p>The judicial-misconduct complaint in this matter is hereby dismissed.</p>	

To summarize: As the behavior of Judges Easterbrook and Wood (and others, in various venues, federal/state/local) demonstrates:

The Federal Judiciary Needs Its Own #MeToo Moment, Right Now^γ

And, oh yes, lest we forget:

Power Tends To Corrupt, And Absolute Power Corrupts Absolutely^δ

γ • https://en.wikipedia.org/wiki/Me_Too_movement. (Though of course we refer to “#MeToo-like” moments/movements, as opposed to the original/strict/literal/generative/sex-based “#MeToo.”)

δ • Lord Acton, *et al.*, <https://www.phrases.org.uk/meanings/absolute-power-corrupts-absolutely.html>.

Annotations, Expanded Remarks

1 • [JCDA = Judicial Conduct and Disability Act, 28 USC §332(d) (1),351-364 (1980)] 28 U.S.C. § 352(b)(1)(A)(ii): “[T]he chief judge ... may dismiss the complaint if the chief judge finds the complaint to be directly related to the merits of a decision or procedural ruling.” For the reason this is B.S., see ann. 5 *infra*.

2 • [JCDR = Judicial Conduct and Disability Rules, to accompany JCDA] Rule 11(c)(1)(B): “A complaint must be dismissed ... to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling.” For the reason this is B.S., see ann. 5 *infra*.

3 • (N/A)

4 • There’s really no reason for Wood to subtly “cast aspersions” on the Complaint/Complainant like this. It serves only as a shameless put-down-the-Complainant shaming mechanism.

5 • **“Proved,” not merely “accused,”** is core to the charge of Judicial Misconduct. For, if all the Memoir’s charges are indeed **true** (i.e., “proved”), then it becomes clear that Easterbrook is indeed guilty of Judicial Misconduct. And they **are proved** — to the satisfaction to anyone willing to check, as mentioned in the Memoir, at the top of ¶12, and as the whole MemAnn is devoted to doing. Besides which, in the standard tradition of according automatic credibility to plaintiffs/nonmovants/complainants (see e.g. Summary Judgment Tenets of Review, SJTOR, at https://en.wikipedia.org/wiki/Summary_judgment), judicial reviewers of Judicial Misconduct Complaints *must*, in the first instance, believe/trust the Complainant. That being said, Wood’s usage of the word “accused” here is *inapropos*, plainly intended to falsely “throw shade” on the Memoir.

5 • **Here’s the reason annotations 1 and 2 are B.S.:** At its root/core, Wood’s reliance on “merits-related” (on which ann. 1 and 2 are based) is (knowingly) false. For, all discussion of “merits-related” (in the context of “Judicial Misconduct”) must always be prefaced/decorated with the concept of **“without-more.”** And, in the present case (*Ryan v. U.S.*), there is **“lots of ‘more’.”** Namely:

On the one hand, Wood (falsely) claims/pretends (in ann. 1 and 2):

(A) **Everything is “merits-related.”**

On the other hand, the Memoir/Complaint (truthfully) claims:

(B) **There's a whole lot of lying going on (by Judge Easterbrook).** Now, (A) and (B) are mutually exclusive: if (A) is true then (B) is false, and *vice versa*. That is: there's no way, under law, that "judicial lying can be merits-related." **Period.** But, **we know that (B) is true** (proof: **provability**, see ann. 5). Therefore, (A) is *false* — meaning that 1 and 2 are B.S. *QED*.

6 • Wood here lists only a washed-out smattering of Easterbrook's "misrepresentations" (for example, it's incomplete). Furthermore, she totally ignores *other/additional* persuasive evidence of "misconduct" (other than "falsehoods," that is) by Easterbrook documented by the Memoir (such as **bullying** for example).^ε So, it's worth giving at least a more fleshed-out listing of the falsehoods here (see the **Annotated Memoir, "MemAnn,"** for full details) — all of these (euphemistically so-called) "misrepresentations"/falsehoods being strongly alleged (and well-proved throughout MemAnn, see ann. 5) to be **intended/harmful lies** (*not* the occasional innocent/innocuous/accidental "brain-fart mis-speak;" the Memoir speaks of Easterbrook's lies as "**outrageous,**" "**howling,**" "**whoppers**"^ζ ... which, however, practitioners before Easterbrook were forestalled to nominate/moniker as such, due to obedient/obesiant/subservient/supplicatory service/fear of "speak[ing] truth to federal judicial power"):

Falsehood #1: Misrepresenting the holdings of *Davis* and *Bousley*.

Falsehood #2: Misrepresenting the holdings of *Frady* and *Engle*.

Falsehood #3: Misrepresenting the interpretation of timeliness in 28 USC §2255.

Falsehood #4: Misrepresentation of this case (*Ryan*) *vis-à-vis* *Skilling*,

ε • It is true that only the Memoir's so-called "*falsehoods*" are the *direct* subject of our Complaint against Easterbrook. However, it is *incumbent-upon* (and even *required-of*) the ethical responsibility/integrity/stewardship of the Judicial Council and Chief Judge to conduct a *sua sponte* investigation into *any/indirect* reasonably reliable report of *other* (*non-"falsehood"*) misconduct arising in this case, coming from *any* source — *such as*, all the other allegations made in the Memoir. Judges shouldn't be looking for the minimum they can get away with; they should be searching for the maximum they can achieve. *Viz*:

(i) JCDR 5(a) (emphasis added): "When a chief judge **has information** constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may [should!] conduct an inquiry, as he or she deems appropriate, into the accuracy of the information **even if no related complaint has been filed.**"

(ii) JCDR 11(a) (emphasis added): "If a complaint contains **information constituting evidence of misconduct** or disability, but the complainant **does not claim it as such**, the chief judge **must** treat the complaint **as if** it did allege misconduct or disability ..."

ζ • Noting, always, that Easterbrook's "falsehoods/misrepresentations" were (so we claim, and so does the Memoir) **not** "mere/incidental/one-off extemporaneous 'passive' errors/mistakes" (as one might reasonably expect to encounter at oral arguments) — instead, they **were** "well-planned/premeditated/pre-prepared 'active' ambushes/attacks." See annotation at MemAnn ¶44.

Bloom, and Black.

Falsehood #5: Misrepresentation of (both) counsel positions on “direct appeal” vs. “collateral review” (under 28 USC §2255).

Falsehood #6: Misrepresentation of the time Ryan spent in prison.

Falsehood #7: Misrepresentation that jury “must” have found bribery because it convicted of tax count.

Falsehood #8: Misrepresentation of the understanding of “*quid pro quo*.”

Falsehood #9: Misrepresenting that Ryan unintentionally forfeited (he didn’t), and that government didn’t intentionally waive (it did).

(The original Memoir listed only Eight Falsehoods; the Ninth has been added by us in MemAnn; it is already explicitly present in the Memoir, however non-named/numbered.)

7 • Namely, the risk that Seventh Circuit judges are too beholden to Easterbrook’s good graces. Especially in light of the **bullying** charges of the Memoir. If he bullies lawyers/litigants so freely, it stands to reason he bullies court personnel the same way, including other judges (who must strive to keep on his “good side,” to avoid negative consequences).

8 • This (false) “merits-related” stuff has already been spoken to, in 1, 2, 5.

9 • The “proven” stuff has already been spoken to, in 5.

10 • (N/A)

11 • Yes, yes, of course we know all about the hierarchy-of-appeals/petitions. But we’ve already “been around that block” (“exhausted those appeals/petitions”), without satisfaction (because the courts failed their job miserably/systematically), so now we’re moving-on to the *next* logical/structured/mandated stage: Judicial Misconduct proceedings, before the Judicial Council and Conference. And if *these* judicial avenues fail? Well then, it’s time to leave the judicial branch, and move on to the executive branch — because the courts are in fact committing **crimes** (see the Twilight Zone essay, http://judicialmisconduct.us/sites/default/files/2017-04/08_JudicialTwilightZone_0.pdf): DoJ, FBI, PIN (Public Integrity Section, <https://www.justice.gov/criminal/pin>, https://en.wikipedia.org/wiki/Public_Integrity_Section).

12 • Wood here pretends that the JCDR harbors a loop-hole that corrupt/evil judges can slip through, namely the loop-hole that says: “When you get to the Judicial Council/Conference stage, judges can **forget/ignore** the whole District/Appellate/Supreme process, and ‘start over,’ using whatever standards/rules they now want to invent/‘make-up’.” You know, such minor

things as Truth, Justice, and the American Way. And, incredibly, that was indeed the case (or at least it was so interpreted) with the **original** JCDR Rules (2008). But, guess what, somebody wised-up and noticed that little loop-hole, so they corrected it (in the revised edition, 2016), by adding-in this quiet little clause to JCDR 21(a): “**... errors of law, clear errors of fact, or abuse of discretion.**” Bingo! All of a sudden, what that means is that: “Whatever ‘errors’ existed at District/Appellate/Supreme levels, are **still on the table (reviewable at misconduct level, but cannot change the courts’ verdicts/mandates)** at Judicial Council/Conference levels.” So, Shazam, lady! You can stuff your “extra-judicial bias/procedural/operations/else” stuff. It is indeed all covered (contrary to your false ann. 12 insinuation), under the aegis of the *new/now* JCDR Rule 21(a) fail-safe back-stop.

13 • If the preceding arguments *supra* (noting particularly ann. 7) don’t constitute a “need to transfer” this matter outside the Seventh Circuit in general (and esp. away from Wood in particular), then I don’t know what does.