

5-23-1971

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### Recommended Citation

Lyle Denniston, *Proposed Judicial Ethics Code Would Bar Service on Panels* (1971).  
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# Proposed Judicial Ethics Code Would Bar Service on Panels

By LYLE DENNISTON  
Star Staff Writer

A committee writing a new code of judicial ethics suggested yesterday that no judge serve on a government panel such as the "Warren Commission," which investigated President John Kennedy's assassination.

The 11-member American Bar Association committee, which includes Supreme Court Justice Potter Stewart, cited a need to avoid controversy and a need to keep judges at work on "crowded dockets" in court.

Questioning the "appropriateness" of such outside assignments, the committee said a judge—federal or state—should not agree to sit on any government committee or commission "charged with resolving issues of fact or policy" on matters other than the law.

## 47-Year-Old Code

The proposal was included in the first complete draft of a new set of ethical "canons" to replace a code that has been in effect since 1924.

The "tentative draft" is being sent to 15,000 persons for comment, and will be the subject of a public hearing in New York City on Oct. 30. The committee plans to submit a final version to the ABA's policy-making body, the House of Delegates, in August, 1972.

If adopted by the states and the U.S. Judicial Conference, the code would apply to all judges except those in federal courts. It could only be advisory for Supreme Court justices.

The committee was set up by the ABA to write a new code after Justice Abe Fortas resigned from the Supreme Court amid criticism of his financial dealings. It has rewritten the 36 specific "canons" into seven broad categories with many new details.

## Photography Ban

One old canon that is retained, but with one significant alteration, is the ban on taking photographs in courtrooms or broadcasting court proceedings—so-called "Canon 35."

That ban remains, except that a judge may permit filming or recording "appropriate proceedings" for use in teaching courses at "recognized educational institutions."

Sizable parts of the new code deal with the financial and other non-judicial activities of judges. Several specific proposals appear to deal with criticisms of former Justice Fortas, current Justice William O. Douglas, and the two judges whom President Nixon unsuccessfully tried to name to the Supreme Court—Clement F. Haynsworth Jr. and G. Harrold Carswell.

The suggested ban on commission assignments for judges was aimed at the increasing practice—particularly in President Lyndon Johnson's administration—

of putting judges in those posts. Johnson named former Chief Justice Earl Warren, when he still headed the court, to lead the seven-man commission assigned to "satisfy itself that the truth is known as far as it can be discovered" about the murder of President Kennedy in Dallas on Nov. 22, 1963.

Two judges—one federal and one state—were named to the "Eisenhower Commission" on violence, created after the assassination in 1968 of Sen. Robert F. Kennedy. One state judge was appointed to the "Lockhart Commission" which studied laws dealing with obscenity and pornography.

## Earlier Examples

In an earlier era, Justice Robert H. Jackson served as chief prosecutor of the Nuernberg war crimes trials, and Justice Owen J. Roberts was named to the commission which investigated the Japanese attack on Pearl Harbor.

The ABA committee said judges had performed "valuable services" in assignments on non-legal matters, but added that "the appropriateness of conferring these assignments on judges must be reassessed." It concluded that a flat ban on such service was needed to avoid interference with "the effectiveness and independence of the courts."

The draft code makes a number of significant changes from "tentative conclusions" which the committee had made public in June about judges' financial and out-of-court activities. Several of the key changes would relax restrictions suggested at that time.

Among the changes were these:

- A judge who disqualified himself from handling a case because of a legal or financial interest, however small, in the case would not be required to disclose why he had done so. The earlier version made disclosure mandatory.

- A judge's duty to avoid making investments that might be affected by cases in his court would be limited to a general attempt to "minimize" his need to disqualify himself. The earlier version said simply that a judge should hold no investments or interests likely to be affected by cases before him.

- His duty to make a public report on his income from non-judicial sources would come once a year, instead of every six months as under the earlier version.

- A general requirement that the judge report gifts to him worth \$100 or more would not cover complimentary law books supplied by publishers for his official use, and a loan-reporting duty would not cover the judges' borrowing if it came from a lending institution on the same terms as other persons could get.

- The definition of financial interests that could lead to his

disqualification is rewritten to permit him to continue to handle cases involving securities held by a mutual fund in which he was an investor or by a non-profit organization he served as an officer.

- The judge's savings deposits, life insurance policies and government bond investments would not disqualify him from cases unless the value of those assets was "substantially" affected by the outcome.

Some other changes in the committee's proposals would tighten parts of the earlier version.

- His duty to disqualify himself would exist if his or his wife's relatives were directly involved in a case or had an interest in it. The relatives would include a father, father-in-law, grandfather, uncle, or brother, but not cousins. The earlier version was limited to cases in which he or his wife or "household members" had an interest.

- A judge would have to disqualify himself if he had formed "fixed beliefs" about a case, or had personal knowledge of the facts involved. That was not mentioned in the earlier version.

- He would have to disqualify himself if he had been a lawyer in the "matter in controversy" previously. That was not mentioned earlier.

- A judge could never accept an outside post as an arbitrator. The earlier version said he could do so in "extraordinary circumstances."

As in the earlier version, the new draft would require judges to disclose their outside, or non-judicial, compensation and gifts worth more than \$100 from non-family sources, but otherwise he would have no duty to reveal his income, debts or investments.

## Private Affairs

The new draft contains a strong defense of the judge's rights equal to those of "an ordinary citizen" to keep his private financial affairs to himself.

"The ownership of investments and receipt of income therefrom . . . should not be permitted to be the occasion for groundless attacks on his integrity," the committee said.

Under the draft code, the stiffest restriction on a judge would be the requirement that he automatically disqualify himself from any case in which he had any personal interest at all.

If his interest were "substantial," there would be no chance for him to return to the case once he had disqualified himself, even if all lawyers and all parties involved wanted him to come back to it.

If the interest were "insubstantial," he could return, if everyone involved agreed in writing after being told fully what his interest was. That, however, would be up to the judge to initiate, and he would have no duty to disclose his interest if he did not "choose to do so."