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U.S. Courts Pick at a Tangle of Judicial Ethics 17 Years

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By John P. MacKenzie
Washington Post Staff Writer

THIS IS A MATTER which transcends the interests of the parties. The purity of the judicial process is the thing at stake.

Thus did Chief Judge John R. Brown, writing for the Fifth U. S. Circuit Court of Appeals, explain why a litigant who had accused the oil industry and a dozen federal judges of corruption was being given a hearing on his charges.

Two years have passed, the hearing has been held and one more judge has rejected the charges of Clarence W. Kinnear, a 69-year-old oil driller and inventor. The case of Kinnear v. Humble Oil Co., which has been irritating federal judges for 17 years, is back before the court of appeals.

One final oral argument was scheduled for Monday in Houston, but even that was abruptly postponed last week because the appellate judges became uncertain whether they were properly handling the question of their own fitness to decide the case. The integrity of one judge who is dead—and many more who are alive—was never more on the line.

Kinnear has produced the most important case involving the disqualification of a federal judge in years, with the possible exception of conflict of interest charges that helped defeat Supreme Court nominee Clement F. Haynsworth Jr. last year. The Haynsworth and Kinnear controversies have striking parallels and they became intertwined at one point in their histories.

Stock and Leases

THE LEGAL issue is whether a federal judge is qualified to sit in a case in which a patent owner seeks millions from Humble and, potentially, from many other oil producers for allegedly stealing his design for an oil drill when:

• The judge's wife owns $9,000 worth of stock in Humble;
• The judge and his wife lease thousands of acres to Humble and other oil companies, and
• The judge is a one-fourth owner, secretary and general counsel of a company that repairs drilling equipment in the Texas oil fields and whose best customer is Humble.

To compound the problem, the judge whose actions are under attack, Lamar Cecil of Beaumont, Tex., is long since dead—in fact, the conflicts began to appear only when the inventory of his estate was filed for probate—and can't defend himself.

Thus the problem becomes whether the judge's actions can be set aside at this late date or should he be permitted to stand. Either way, by what standards should the matter be judged? By ethics of 1955, when many federal judges thought nothing of taking outside pay for corporate directorships and when Judge Cecil ruled against Kinnear? Or by 1970 standards, after the cases of Abe Fortas and Clement Haynsworth, and while Justice William O. Douglas is still at least technically under investigation for alleged improprieties?

The case is reaching its climax at a time when several Fifth Circuit judges have recently suffered acute embarrassment over stockholdings in the oil and gas industries of the Deep South and Gulf states within their jurisdiction. The American Bar Association and the U.S. Judicial Conference are grappling for a new code of ethical conduct and a fresh start toward a healthy judiciary.

A Driller for Shell

CLARENCE KINNEAR and Lamar Cecil were nodding acquaintances in Beaumont but they were not in the same social set. Kinnear was a driller who hired on with the Shell Oil Co. in 1921 and started searching for oil in South America and Mexico.

Over the years he experimented with oil drills and designed a drill bit which he claimed revolutionized industry practice. (Unless he wins a new trial, it doesn't matter for purposes of the ethical questions whether the claim is correct, but both sides apparently concede that the drill bit design, or something very much like it, is in wide use today.)

Kinnear patented his design and tried to interest Humble engineers. He claimed that after expressing indifference, the giant oil firm then built basically the same device.

As with most patent infringement suits, the claim Kinnear filed in 1953 was highly technical. It fell to Lamar Cecil, shortly after his nomination to the bench, to handle it.

Cecil was a successful lawyer who, at 51, was taking more than a 50 per cent pay cut to become a judge when district judges made $22,000. His wife of 24 years, Mary Reed Cecil, was well to-do—not big rich," a Humble attorney noted at a court hearing, "but well to do." During the years this case was in Judge Cecil's court and in the years following." Her father was a success in the grocery business and, like many Beaumont businessmen with surplus capital, owned some land suitable for oil exploration and passed some of it along to his daughter.

When Judge Cecil learned that he would try the case, he asked his wife to sell her 100 shares of Humble stock. She refused for several months, insisting that it was her personal stock and wondering why her investment had anything to do with the case. By the time she gave in, it was January, 1935, and Judge Cecil had already twice denied Kinnear's requests for a jury trial.

The trial took five weeks in the spring of 1955. When Judge Cecil rendered a 20-page written opinion in September, 1956, he adopted practically verbatim almost every recommendation of Humble's lawyers and dismissed the suit. He denied a new trial in January, 1957.

Judge Cecil died Feb. 14, 1958. The following September, the Fifth Circuit upheld Judge Cecil but noted its regret that he had merely adopted Humble's proposed findings and conclusions.

Kinnear was sure the deck had been stacked against him. Starting with probate data in mid-1958, he alternately investigated and charged corruption. Judges everywhere were guilty of "lowdown common thievery," he wrote the Supreme Court. His lawyers kept trying to calm him down because this tactic was getting him nowhere.

The probate disclosed stock interest in Coastal Tool Co., the oil rig repair firm. It led to evidence that the judge had drawn about $7,000 a year in salary, dividends and director's fees from the company before and during his time on the bench, though his former law firm took over his duties as general counsel. Coastal Tool was on a month-to-month contract and did $238,000 worth of business with Humble between 1952 and 1958.
Probate disclosure of a royalty interest led to evidence that the Cecils owned 80,000 acres of oil land near Beaumont from which they received income from oil and gas industry tenants as high as $35,000 in 1956, including more than $4,600 from Humble.

The case took many twists and turns and went through many courts after 1958, when Kinnear first leveled printed charges in the U.S. Supreme Court. His lawyer, Fred Parks of Houston, has argued that Humble must share at least some of the blame for failing to make fuller investigation and disclosure over the years. Humble's attorney, Garrett R. Tucker Jr., has denied such a duty, saying that from the outset the company rightly "assumed Kinnear's charges to be the reckless, interporate montings of a disgruntled litigant, and nothing more."

In his 1963 opinion stressing the transcendent need for "the purity of the legal process," Chief Judge Brown held that 100-share stock interest insufficient to disqualify the judge, let alone to set aside the judgment more than a decade later. He noted that Humble stock "were an infinitesimal portion of 36 million shares" Humble had outstanding.

"This tiny fractional interest in the equity ownership of this huge industrial enterprise does not amount, either as a matter of fact, or law, or both, to a substantial interest by the trial judge in the case or a prohibited connection with a litigant," Judge Brown ruled.

Just a year ago, Judge Brown cited this pronouncement on Judge Cecil's wife's stock as authority for holding himself qualified to decide a major natural gas case despite $100,000 in personal or trusteeship holdings in the industry. He stepped aside from the case but said he did so voluntarily.

New Rules on Way

Judge Brown's personal pronouncement came at the height of concern over the ethical questions in the Huntsworth confirmation fight. As chief judge of the Fourth Circuit, Huntsworth was part owner and director of a vending machine company that primarily served nonunion textile plants at a time when he presided over the industry's pilot labor dispute. He owned $16,000 worth of stock in a bowling equipment company that had a case before him. Crucial votes against him were cast by senators who considered that he showed insufficient "sensitivity" about conflict of interest questions.

The American Bar Association, with the backing of Chief Justice Warren E. Burger, is drafting new ethical canons under which a single share of stock would disqualify a judge. However, the judge's stock holdings would not be subject to disclosure unless he volunteered them in the course of disqualifying himself from a case, which leaves a gap in the many instances in which the judge fails to recognize his own financial connection to a litigant.

Burger appointed an ethical guidance committee headed by the Fifth Circuit's retired chief judge, Elbert P. Tuttle, whose latest advisory opinion bears closely on the Kinnear case.

Tuttle, whose committee is dubbed the "Dear Abby" committee by judges who seek its counsel, is known to have pressed some of his colleagues to be more careful about their investments. During one hearing on the Kinnear case, he voiced the personal opinion that the 100 shares of Humble stock probably sufficed to disqualify Judge Cecil, an opinion pointedly rejected by Judge Brown.

The advisory opinion called on judges to consider another dimension when deciding whether disqualification is in order. In addition to the technical arguments, he said, "The judge must consider what the parties and the public would regard as a substantial interest as well as what the lawyers think." Many a layman would consider $9,000 worth of Humble stock to be "substantial."

Two New Challenges

Vexing as the case has been, another complication arose as lawyers and judges prepared for the Houston hearing set for Monday. Circuit Judges Walter P. Gewin of Alabama, David W. Dyer of Florida and Charles Clark of Mississippi had been named to hear a number of appeals from lower courts.

To ward off further disqualification problems, the judges disclosed their own stock holdings to counsel on both sides. But the Tuttle committee's advisory opinion recommended against putting such a burden on counsel to move for a judge's disqualification.

Lawyers filed their responses to the stock disclosures but they were intercepted by the court, ordered sealed and, according to one court official, never looked at by the judges themselves.

In a terse notice to the lawyers, the court of appeals said last week that the hearing was postponed until further notice. The lawyers are now awaiting the circuit court's next move.
To ward this end, the judge also \textit{rejected the charges of Clarence Kinnear} in a major case involving the Shell Oil Co., which has been investigatin...