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Public comment on RULES GOVERNING JUDICIAL CONDUCT AND
DISABILITY PROCEEDINGS UNDERTAKEN PURSUANT TO 28 U.S.C. §§ 351-364
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DEPARTMENT OF JUSTICE United States Parole Commission Public Announcement, Pursuant to the Government in the Sunshine Act (Pub. L. 94-409) [5 U.S.C. Section 552b]

Dear Honorable Judicial Conference,

First, a definition: CONSTRUCTIVE FRAUD

> *"Constructive fraud: A contract or act, which, not originating in evil design and contrivance to perpetuate a positive fraud or injury upon other persons, yet, by its necessary tendency to deceive or mislead them,* ***or to violate a public or private confidence, or to impair or injure public interest, is deemed equally reprehensible with positive fraud, and therefore is prohibited by law,*** *... "* Bovier's Law Dictionary - 1856 Edition

Next the STANDARD OF REVEIW: In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated *"Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."*

In sum, the Ninth Amendment simply lends strong support to the view that the *'liberty' protected by the Fifth And Fourteenth Amendments from infringement by the Federal Government or the States is not restricted to rights specifically mentioned in the first eight amendments."* Similarly, in Palko v. Connecticut, 302 U.S. 319, 325, 326 (1937), it was said "*that this category of fundamental rights includes those fundamental liberties that are "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist*
if [they] were sacrificed."

These hearings on judicial conduct stem from the 1980 Judicial Act which originally wasn't intended for, but did manage to immorally and by definition, fraudulently put judges above the law. For 27 years now, those who look to this branch of government for relief have been disappointed time after time again, they have been exacerbated in many instances by judges who threaten the very lives of those who petition their courts for relief. Our own former **U.S. Attorney General John Ashcroft** condemned the judicial branch of government by characterizing this branch as "organized crime".

He writes: *"**Bankruptcy court corruption is not just a matter of bankruptcy trustees in collusion with corrupt bankruptcy judges. The corruption is supported, and justice hindered by high ranking officials in the United States Trustee Program. The corruption has advanced to punishing any and all who mention the criminal acts of trustees and organized crime operating through the United States Bankruptcy Courts. As though greed is not enough, the trustees, in collusion with others, intentionally go forth to destroy lives. Exemptions provided by law are denied debtors. Cases are intentionally, and unreasonably kept open for years. Parties in cases are sanctioned to discourage them from pursuing justice. Contempt of court powers are misused to coerce litigants into agreeing with extortion demands. This does not ensure integrity and restore public confidence. The American public, victimized and held hostage by bankruptcy court corruption, have no where to turn."***

This is just the tip of a very large iceberg which each day gets worse, not better. **Americans simply want the Judicial Conference to do something positive, act responsibly, to remedy the harsh criticisms**

the Judiciary has weathered. The Judicial Conference may have interest that not only has John Ashcroft opined on such judicial crime, but other judicial officials have as well, including but not limited to Chief Judge Edith Jones at the Fifth Circuit Court of Appeals as follows:

"Corruption in the agencies charged with enforcing our laws not only threatens communities by allowing dangerous criminals to roam free, it also undermines the confidence of our citizens in law enforcement and the criminal justice system. The same is true with respect to judicial corruption. We must all, in our own countries, lead the fight to ensure integrity within our police and judicial systems."

Concerning the publication "RULES GOVERNING JUDICIAL CONDUCT AND DISABILITY PROCEEDINGS UNDERTAKEN PURSUANT TO 28 U.S.C. §§ 351-36" many in the public have expressed to me on behalf of my television series ***"In The Interest Of Justice ",*** that this document in itself, shows an appearance of impropriety. Canon 2 implies judges: ***Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.*** That would include Judicial Conference activities concerning complaints against judges. The impropriety exists when judges are judging the judges. People perceive a lack of true oversight when men are the judges of their own causes, and seem to form an illegal nobility. The recommendation from the general public is that a fair and impartial tribunal of citizens should be the judges of misconduct accused of a judicial officer.

"In order for democracy to be effective or meaningful as 'rule by the people,' there must be constitutional limits on government and, ***guarantees of civil and political rights of citizens.*** *This will ensure, or at least encourage freedom of _expression, opinions, and publications, and the free and frequent and informed elections which are necessary for democracy to be other than a formal title. "* ("Liberal Democracy" David Held Model of Democracy, Oxford '87' p. 310.)

"Shocking to the universal sense of Justice.": Judges should not adjudicate hearings on complaints against a judge because it **creates a quid pro quo situation** whereby judges would tend to keep other judges off the hook for accountability. The Judicial Conference must incorporate **"the doctrine of judicial restraint"** and therefore accept restrictions on their conduct that might be viewed as burdensome by ordinary citizens and should do so freely and willingly (Cannon 2). Having the gumption to produce a document as the one above shows the willingness of the Judicial Conference to forego the black letter of judicial ethics in order to maintain control over the rules and keep involvement by the public out of the process. The Constitution, in Article 1, Section 9, Paragraph 3, states, "No Bill Of Attainder or Ex-post Facto Law, shall be passed." The fact is that it is perceivable that the RULES GOVERNING JUDICIAL CONDUCT are, in all practical effect, a Bill Of Attainder or Ex-post Facto Law, by assigning a commission of partial parties to decide in favor of their peers. Due Process rights concerning complaints against governmental agents MUST be fairly decided by an impartial jury of citzens because that is secured by the Constitution.

"Where rights as secured by the Constitution are involved, there can be no rule making or legislation which will abrogate them." Miranda v. Ariz., 384 U.S. 436 at 491 (1966).

A substantive Due Process violation occurs when government conduct violates "fundamental fairness" and is "shocking to the universal sense of Justice." Kinsella v. United States ex rel. Singleton, 361 U.S. 234, 246, 4 L. Ed. 2d 268 , 80 S. Ct. 297 (1960) (citations and internal quotation marks omitted).

In so holding, that court relied on *Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952),* where the Supreme Court applied the Due Process clause, to the *"the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offences." Id. at 169 (citations omitted). See also United States v. Russell, 411 U.S. 423, 36 L. Ed. 2d 366, 93 S. Ct. 1637 (1973). The aforementioned prosecutorial misconduct and official crime certainly offends the "canons of decency and fairness" spoken of by the Second Circuit.*

Given that we are philosophically a trickle-up government, whereby the government is by the people,

Rules 11 onward accomplish just the opposite, a nobility.

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but, in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. " Justice Mathews of the US Supreme Court in the case of Yick Wo v. Hopkins, 118 US 356, 370*

The problem is obvious when 99 percent of all complaints against judges are summarily dismissed. **The public perceives a 99 percent dismissal of all complaints as a system that is broken.** The report: "Implementation of the Judicial Conduct and Disability Act of 1980; A Report to the Chief Justice" by the Breyer Commission concluding that the system works well... is perceived as nothing more than a farce by the American public in light of such a high statistic for dismissal of complaints or ruling against complaints. The American Bar Association has shown through its polls that public confidence in trust is at an all-time low (less than 30%) for the judicial branch of government. There is a problem with the Judiciary in acknowledging its imperfections. Sooner or later a blow-back effect will occur against the Judiciary for suppressing the problem of judicial misconduct. America is demanding constitutionality by all three branches of government. The Judiciary Act of 1801, Section 31 , 6th congress session 2 chapter 4 is a a pre-emptive Congressional Act section that prevents the judiciary from undue rulemaking. It is a legislative Act which PROHIBITS making regulations that are REPUGNANT. *"Provided always that they are not repugnant to the laws of the Untied States".* The Draft Rules of the 1980 Act are repugnant in that they don't afford an impartial hearing concerning complaints against judges.

Citizens ask the Judicial Conference to show them the law and authority which grants them the right to place judges above ordinary men in the application of American justice. There is nothing in the Constitution that puts the misconduct of a judge as something less than the misconduct of any other citizen. The integrity of the judicial system is not benefited by a breed of "Judicial independence" which seeks only to protect judges from the scrutiny of the public. Only a panel of Citizens will make the process fair and impartial. It is clear to the public that the Judiciary abuses the process of oversight.

The Report: **JUDICIAL INDEPENDENCE, INTERDEPENDENCE, AND JUDICIAL ACCOUNTABILITY: Management Of The Courts From The Judges. Perspective; Institute for Court Management; Court Executive Development Program Phase III Project, May 2006.** says on Pg 11: *A review of the separation of powers doctrine and the interbranch conflicts created will enhance the understanding of judicial independence. Separation of powers does not specifically mean creation of a barrier that positively prevents any connection or contact between the branches. Preferably, it finds expression mainly in the existence of a balance among the branches. powers, in theory and in practice that makes possible independence in the context of specific reciprocal supervision.17 Although the judiciary is an independent coequal branch of government, the constitutional doctrine of separation of powers allows some overlap in the exercise of governmental functions.18 This overlap is sometimes referred to as the doctrine of overlapping functions...**

This means Congressional Oversight must play a role in the continued process by the Judicial Conference, and the Judiciary Committees in the Senate and House must be informed of all Public comments.

When a judge makes a void order and uses fraud to procure it, it becomes an both ethical and legal question for charges of misconduct, and if found guilty a judge's ruling should immediately effect the original case by a ruling from the Judicial Council. Breaking the law must be perceived as unethical and subject to discipline and charges, and never an act of judicial discretion. That is the right way to look at it.

In RE: *"A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court",* Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

ADD TO THE RILES: Complaints are too often ignored by the Judicial Conference and it hardly ever gives notice to the movant. **The citizens demand that once a complaint is filed, an index number must immediately be issued by the ruling authorty, and that an official hearing must be granted within 30 days.** The finding must address each of the specific allegations and be released publically and put on the record. Canon 2: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny.

Rewritten to apply to the Judicial Conference: "Public confidence in the Judicial Conference is eroded by irresponsible or improper sealing, and dismissals of complaints against judges, and that gives the appearance of NOT avoiding all impropriety and appearance of impropriety. the Judicial Conference must expect to be the subject of constant public scrutiny.

EXCERPTS By Geraldine Hawkins; REPORTER: *Chief Judge Edith Jones of the Fifth Circuit Court of Appeals spoke at a Harvard Law School seminar advising attendees that the* ***AMERICAN LEGAL SYSTEM IS CORRUPT BEYOND RECOGNITION***

March 7, 2003 *The American legal system has been corrupted almost beyond recognition, Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, told the Federalist Society of Harvard Law School on February 28. she said that the question of what is morally right is routinely sacrificed to what is politically expedient.* ***The change has come because legal philosophy has descended to nihilism.***

Judge Edith H. Jones of the U.S. Court of Appeals for the Fifth Circuit talks to members of Harvard Law School's Federalist Society. Jones said that the question of what is morally right is routinely sacrificed to what is politically expedient.

"The integrity of law, its religious roots, its transcendent quality are disappearing. I saw the movie 'Chicago' with Richard Gere the other day. That's the way the public thinks about lawyers," she told the students."The first 100 years of American lawyers were trained on Blackstone, who wrote that: 'The law of nature . dictated by God himself . is binding . in all counties and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all force and all their authority . from this original.' The Framers created a government of limited power with this understanding of the rule of law - that it was dependent on transcendent religious obligation," said Jones. She said that the business about all of the Founding Fathers being deists is "just wrong," or "way overblown." She says they believed in "faith and reason," and this did not lead to intolerance. "This is not a prescription for intolerance or narrow sectarianism," she continued, "for unalienable rights were given by God to all our fellow citizens.

Having lost sight of the moral and religious foundations of the rule of law, we are vulnerable to the destruction of our freedom, our equality before the law and our self-respect. It is my fervent hope that this new century will experience a revival of the original understanding of the rule of law and its roots."The answer is a recovery of moral principle, the sine qua non of an orderly society. Post 9/11, many events have been clarified. It is hard to remain a moral relativist when your own people are being killed."According to the judge, the first contemporary threat to the rule of law comes from within the legal system itself. Alexis de Tocqueville, author of Democracy in America and one of the first writers to observe the United States from the outside looking-in, "described lawyers as a natural aristocracy in America," Jones told the students. "The intellectual basis of their profession and the study of law based on venerable precedents bred in them habits of order and a taste for formalities and predictability." As Tocqueville saw it, "These qualities enabled attorneys to stand apart from the passions of the majority. Lawyers were respected by the citizens and able to guide them and moderate the public's whims. Lawyers were essential to tempering the potential tyranny of the majority."Some lawyers may still perceive our profession in this flattering light, but to judge from polls and the tenor of lawyer jokes, I doubt the public shares Tocqueville's view anymore, and it is hard for us to do so."The legal aristocracy have shed their professional independence for the temptations and materialism associated with becoming businessmen.

Because law has become a self-avowed business, pressure mounts to give clients the advice they want to hear, to pander to the clients' goal through deft manipulation of the law. . While the business mentality produces certain benefits, like occasional competition to charge clients lower fees, other adverse effects include advertising and shameless self-promotion. The legal system has also been wounded by lawyers who themselves no longer respect the rule of law," The judge quoted Kenneth Starr as saying, "It is decidedly unchristian to win at any cost," and added that most lawyers agree with him.However, "An increasingly visible and vocal number apparently believe that the strategic use of anger and incivility will achieve their aims. Others seem uninhibited about making misstatements to the court or their opponents or destroying or falsifying evidence," she claimed. "When lawyers cannot be trusted to observe the fair processes essential to maintaining the rule of law, how can we expect the public to respect the process?"Lawsuits Do Not Bring 'Social Justice'

Another pernicious development within the legal system is the misuse of lawsuits, according to her."We see lawsuits wielded as weapons of revenge," she says. "Lawsuits are brought that ultimately line the pockets of lawyers rather than their clients. . The lawsuit is not the best way to achieve social justice, and to think it is, is a seriously flawed hypothesis. There are better ways to achieve social goals than by going into court." Jones said that employment litigation is a particularly fertile field for this kind of abuse. "Seldom are employment discrimination suits in our court supported by direct evidence of race or sex-based animosity. Instead, the courts are asked to revisit petty interoffice disputes and to infer invidious motives from trivial comments or work-performance criticism. Recrimination, second-guessing and suspicion plague the workplace when tenuous discrimination suits are filed . creating an atmosphere in which many corporate defendants are forced into costly settlements because they simply cannot afford to vindicate their positions."While the historical purpose of the common law was to compensate for individual injuries, this new litigation instead purports to achieve redistributive social justice. Scratch the surface of the attorneys' self-serving press releases, however, and one finds how enormously profitable social redistribution is for those lawyers who call themselves 'agents of change.'"Jones wonders, "What social goal is achieved by transferring millions of dollars to the lawyers, while their clients obtain coupons or token rebates.

"The judge quoted George Washington who asked in his Farewell Address, "Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths . in courts of justice?

***"Similarly, asked Jones, how can a system founded on law survive if the administrators of the law daily display their contempt for it?"Lawyers' private morality has definite public consequences," she said. "Their misbehavior feeds on itself, encouraging disrespect and debasement of the rule of law as the public become encouraged to press their own advantage in a system they perceive as manipulatable**.

"The second threat to the rule of law comes from government, which is encumbered with agencies that have made the law so complicated that it is difficult to decipher and often contradicts itself."Agencies have an inherent tendency to expand their mandate," says Jones. "At the same time, their decision-making often becomes parochial and short-sighted. They may be captured by the entities that are ostensibly being regulated, or they may pursue agency self-interest at the expense of the public welfare. Citizens left at the mercy of selective and unpredictable agency action have little recourse."Jones recommends three books by Philip Howard: The Death of Common Sense, The Collapse of the Common Good and The Lost Art of Drawing the Line, which further delineate this problem.

The third and most comprehensive threat to the rule of law arises from contemporary legal philosophy."Throughout my professional life, American legal education has been ruled by theories like positivism, the residue of legal realism, critical legal studies, post-modernism and other philosophical fashions," said Jones. "Each of these theories has a lot to say about the 'is' of law, but none of them addresses the 'ought,' the moral foundation or direction of law."Jones quoted Roger C. Cramton, a law

professor at Cornell University, who wrote in the 1970s that "the ordinary religion of the law school classroom" is "a moral relativism tending toward nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, an individualism tending toward atomism, and a faith in reason and democratic processes tending toward mere credulity and idolatry." No 'Great Awakening' In Law School ClassroomsThe judge said ruefully, "There has been no Great Awakening in the law school classroom since those words were written." She maintained that now it is even worse because faith and democratic processes are breaking down."The problem with legal philosophy today is that it reflects all too well the broader post-Enlightenment problem of philosophy," Jones said.

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