
CHAPTER 6 CONCLUSION

In the last analysis, it is the public we serve, and we do care what the public thinks of us.

— Justice Sandra Day O'Connor¹

Chief Justice Rehnquist opined recently that “the search for greater public trust and confidence in the judiciary must be pursued consistently with the idea of judicial independence.”² He struck precisely the right balance. Judges should act in ways that inspire public trust and confidence, but they should not shy from unpopular decisions in order to court the public’s favor. Conversely, the other branches of government and the public may demand that judges meet the highest standards of integrity, but should refrain from calling, as some have recently, for the impeachment of judges that issue unpopular rulings.

Applied here, the Chief Justice’s standard demands a ban on privately funded judicial seminars. The activist rulings of judges such as Stephen Williams, Loren Smith, and Jay Plager in striking down environmental laws are quite controversial and, in certain circles, extremely unpopular. These opinions alone, however, should not lead to calls for impeachment or attacks on the judiciary by the other branches of government. By combining these opinions with the acceptance of seminars funded by the beneficiaries of this activism, however, the judges and the judiciary fail to uphold their end of the bargain. These trips give the public valid reasons to question whether financial ties have influenced judicial opinions. A judiciary seeking the public’s trust and wanting to preserve judicial independence must avoid this perception at any cost.

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OUTLINES OF A POTENTIAL SOLUTION

Several years ago, Judge Jack Weinstein made the following recommendations concerning reforming the way judges obtain continuing legal education:

- Judges should be encouraged to gain as much general knowledge as possible, preferably from sources not tainted by venal or extreme ideological views;
- Funding for educational programs is critical. It should come from sources that will not benefit from the programs. Where possible, funding through impartial buffering is desirable. Judges' expenses should be paid by neutral government bodies or educational institutions; and
- An independent source for the evaluation of the background of organizations running programs judges expect to attend is desirable.³

Judge Weinstein's recommendations provide the outline of a potential solution to the problems posed by privately funded seminars:

- The judiciary should ban judges from accepting reimbursement for judicial education from private sources;
- Congress should increase appropriations to the Federal Judicial Center, and the Center should pay the expenses judges incur in attending Center-sanctioned education seminars; and
- The Federal Judicial Center should only sanction seminars where the seminar sponsor provides the Center with information about the sponsor and the seminar. The Center should make this information available to judges and the public by posting this information on the internet. The Center should not sanction seminars that are conducted in a manner so as to undermine the public's confidence in an unbiased and fairminded judiciary.

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This solution would be similar to the approach taken by the Executive Branch.⁴ Under the Executive Branch's implementation of the Ethics Reform Act, government employees (such as United States Attorneys and Department of Justice litigators) are prohibited from accepting reimbursement of the costs of private seminars.⁵ To attend such seminars, Executive Branch officials must have the trip approved and paid for by their employer.

The details of any solution are far less important than the need for some meaningful reform. While judicial education on a wide range of topics and viewpoints is undeniably important, it cannot come at the expense of the public's confidence in the impartiality and integrity of the federal judiciary. Nothing is free, and the price judges and the judiciary currently are paying for privately funded seminars is intolerably high.

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ENDNOTES

1 Quoted in James Podgers, *Confidence Game: Bench, Bar Leaders Ponder Strategies to Raise Public Trust in Courts*, ABA JOURNAL 86, July 1999.

2 *Id.*

3 Jack B. Weinstein, *Limits on Judges Learning, Speaking and Acting – Part 1 – Tentative First Thoughts: How May Judges Learn?*, 36 ARIZ. L. REV. 539, 565 (1994).

4 5 C.F.R. § 2635.201-05.

5 *Id.*