

## The Federal Courts Have a Transparency Problem. Here's How We Can Fix It.

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By Gabe Roth | March 19, 2021 | <https://bit.ly/31af6sA>

Every odd-numbered year, during the mid-March open government festival called “Sunshine Week,” members of Congress [introduce bills](#) that would require the U.S. Supreme Court and lower federal courts to broadcast their proceedings live to the public. This year has been [no different](#).

It's a worthy endeavor, but it obscures the fact that a lack of live broadcast is not, by a long shot, the most hazardous transparency deficit that faces the federal judiciary today. This is especially true in 2021, when the U.S. Supreme Court and all 13 federal appeals courts [offer](#) live audio access to their hearings.

The black box is not judicial proceedings but what judges and justices do away from the bench. Federal jurists are treated like “[rock stars](#),” receiving all sorts of benefits when they leave the confines of their chambers and step out across the U.S. and the world. They are feted with luxury box football [tickets](#), blocks of hotel [rooms](#), gift [blankets](#) and gift [baskets](#), free hunting [trips](#) and fishing [equipment](#). They fly to [Malta](#) and [New Zealand](#) and [South Africa](#). They accept \$2,000 [prizes](#) and \$1 million [prizes](#). They make [\\$1.5 million](#) and [\\$1.9 million](#) in book royalties and [fail to recuse](#) when their publishers have cases before them.

What's most dispiriting about these details is that they were uncovered months or even years after the fact, long past when they may have been relevant to the work that we, the public, entrusted to them. The third branch says it's the most transparent when it comes to its work (judicial opinions), but it's the least transparent when it comes to the perks. Attempts to detect conflicts of interest in real time rely on conjecture.

This lack of transparency cuts both ways: Greater disclosure can sometimes show justices in a more ethical light. For example, on Jan. 15, 2016, Chief Justice John Roberts [weighed in](#) on a Microsoft petition to the high court, which raised eyebrows, since his last disclosure showed he owned Microsoft shares, and federal law states a judge can't consider a case if he owns stock in a litigant. But by law, Roberts was not required to disclose his early 2016 stock status until June 15, 2017, some 500 days later. (Turns out he [sold](#) his shares on Jan. 5, 2016, allowing him to participate.)

If Roberts were, instead, a member of the U.S. House Committee on Science, Space and Technology and similarly decided to sell his Microsoft stock as he weighed an issue of import to the company, the public would know about the transaction within a couple of weeks.

This raises the critical point: The easiest way to bring sunshine to the third branch would be to hold our judges and justices to the same ethical standards that members of Congress already abide by—the same travel, gift, stock ownership and financial disclosure rules.

Senators and representatives must file, within a month of their return, a disclosure form whenever they travel on a third party's dime. Judges and justices, on the other hand, file travel disclosures once per year and can omit the dollar amounts of their perks—airline tickets, lodging, meals and the like.

Members of Congress have strict rules on accepting gifts and in nearly all circumstances must refuse gifts from lobbyists and foreign agents. Yet these rules by and large do not exist in the judiciary, and judges and justices are free to accept certain gifts from individuals with cases in their courts.

Any time a senator or representative buys or sells a stock, they must report that transaction within 45 days. In the third branch, you only need to report once per year, which, as mentioned earlier, can mean a lag of a year and a half before that information reaches the public.

Finally, all these disclosures—whether travel or stocks or gifts—are posted online if you're a member of Congress. Judicial disclosures, however, are not automatically posted. [Those](#) that are online today got there because a transparency group asked for them, waited in some cases several years and uploaded them themselves.

There were a few bills introduced in the last Congress that would move us in the right direction. The Judicial Travel Accountability [Act](#) would require certain transportation, lodging and meal disclosures, and the 21st Century

Courts [Act](#) would shine a light on judges' and justices' conflicts of interest and automatically post annual financial disclosure reports within 90 days.

But both bills died before enactment, and neither has been reintroduced this year.

At a time when faith in all three branches of government is low, government officials should favor more sunshine. There's no better time than Sunshine Week to enact changes in judiciary policy—shedding light where there's been none for far too long.

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