



## Recent Ethical Lapses by Lower Court Justices

Fix the Court has compiled a handful of recent examples in which non-SCOTUS federal judges have violated the canons of judicial ethics.

This list below, comprising lapses from 2020 to the present in reverse chronological order, is not comprehensive, but it shows that in addition to there being a need for a Supreme Court Code of Conduct (cf., [this list](#) of the justices' ethical lapses), **the lower courts' Code of Conduct for U.S. Judges might need an update, and some judges might need a refresher.**

1. In Aug. 2022, N.D.N.Y. Judge David Hurd informed President Biden that he would rescind his plan to take senior status unless his successor lived and was based in Utica.<sup>1</sup>
2. In July 2022, a Fifth Circuit panel of Chief Judge Priscilla Richman and Judges Kurt Englehardt and James Ho ruled that S.D. Texas Judge Lynn Hughes “abused his discretion in categorically barring [an] AUSA from all future proceedings in his courtroom,” which he did in 2019 due to a grudge that he apparently held against the AUSA from a prior case.<sup>2</sup>
3. In June 2022, it was reported that E.D. Ky. Judge Karen Caldwell had conditioned her taking of senior status to the appointment of a conservative attorney as a successor.<sup>3</sup>
4. In Apr. 2022, it was reported that Ninth Circuit Judge Johnnie Rawlinson had conditioned her taking of senior status to the appointment of a specific successor: Nevada State College General Counsel Berna Rhodes-Ford.<sup>4</sup>
5. In Feb. 2022, Judge Ho gave a speech defending Georgetown University Law Center’s Ilya Shapiro for tweeting that President Biden’s pledge to nominate a Black woman to the Supreme Court would result in a “lesser” nominee who will “always have an asterisk attached.”<sup>5</sup>
6. In Jan. 2022, writing that “The Good Ship Fifth Circuit is on fire,” Judge Smith in a case involving United Airlines’ vaccine mandate for employees lambasted his two colleagues who held the majority in a 2-1 decision, calling it “incoherent reasoning” and “an orgy of jurisprudential violence,” which, had he written it himself, would cause him to “hide [his] head in a bag.”<sup>6</sup>
7. In Jan. 2022, amid the Omicron surge, Fifth Circuit Judge Jerry Smith demanded that an attorney remove his mask during oral argument even though the attorney was plainly audible and made his preference to remain masked clear.<sup>7</sup>

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<sup>1</sup> Robert Gavin, “Biden’s pick for New York federal judgeship in limbo,” *Albany Times-Union*, Aug. 8, 2022 ([link](#)).

<sup>2</sup> *U.S. v. Rodriguez*, 21-20270 (5th Cir., July 26, 2022) ([link](#)).

<sup>3</sup> Andrew Wolfson and Joe Sonka, “Biden backs anti-abortion Republican for Kentucky judgeship in apparent McConnell deal,” *Louisville Courier-Journal*, June 29, 2022 ([link](#)).

<sup>4</sup> Nate Raymond, “9th Circuit judge urges Biden, Nevada senators to pick state AG’s wife as successor,” *Reuters*, Apr. 14, 2022 ([link](#)).

<sup>5</sup> Karen Sloan and Nate Raymond, “‘Go ahead and cancel me too.’ Judge defends embattled Georgetown Law hire,” *Reuters*, Feb. 16, 2022 ([link](#)).

<sup>6</sup> *Sambrano v. United Airlines*, 21-11159 (5th Cir., Feb. 17, 2022).

<sup>7</sup> Nate Raymond, “5th Circuit judge accused of forcing DOJ attorney to remove mask,” *Reuters*, Feb. 3, 2022 ([link](#)).

8. In Jan. 2022, Judge VanDyke wrote a bizarre separate concurrence to his own majority opinion in order to mock his fellow Ninth Circuit judges' jurisprudence on gun cases and demean their integrity.<sup>8</sup> (Several other judges have written strange self-concurrences since.<sup>9</sup>)
9. In Sept. 2021, when confronted about breaking the federal recusal statute by *Wall Street Journal* reporters investigating judges' participation in cases in which they had a financial interest in a party, several judges downplayed the significance of their lawbreaking and their responsibility to have complied with the law. Examples include: E.D. Tex. Judge Rodney Gilstrap pleading ignorance as to what was required by the recusal statute, claiming he had declined to disqualify himself in some cases because he believed they'd require little or no action on his part and in others because he didn't think his wife's holdings fell under the ambit of the law; C.D. Calif. Judge R. Gary Klausner saying he had delegated conflict-screening to his staff; and Senior E.D.N.Y. Judge Leo Glasser and D. Nebraska Judge John Gerrard faulting the judiciary's own financial reporting requirements, claiming that by only requiring the disclosure of stock ownership annually, they did not have motivation to keep themselves informed of their holdings year-round.<sup>10</sup>
10. In Sept. 2021, Ninth Circuit Senior Judge Carlos Bea accepted an award at an event hosted by the Claremont Institute and failed insurrectionist John Eastman.<sup>11</sup>
11. In Aug. 2021, W.D.N.Y. Judge John Sinatra failed to recuse in *Meadors v. Erie County Board of Elections*, a case where supporters of Buffalo Mayor Byron Brown were attempting to add Brown's name to the mayoral race ballot, though Brown lost his primary and missed a filing deadline. Judge Sinatra's brother Nick is a Buffalo real estate developer who has donated to Brown's campaign multiple times, and Brown appears three times in a PR video for Nick's firm. Plus, Judge Sinatra's old law firm, Hodgson Russ, was at one point lead counsel for the City of Buffalo.<sup>12</sup>
12. In Aug. 2021, Ninth Circuit Judge Lawrence VanDyke in his opinion in *Ford v. Peery* compared his colleagues to career criminals, who would feel no "shame" if they had to confront what he called their "rap sheet," i.e., a series of opinions VanDyke described as "habeas dysfunction."<sup>13</sup>
13. In May 2021, a panel of Fifth Circuit judges removed Judge Hughes from a case, *U.S. v. Khan*, due to what the panel called a "fixed and inflexible view of the case" after making several anti-government remarks, including calling Justice Department lawyers "blue-suited thugs" and "retarded" and expressing, per the panel, that government attorneys, are "lazy, useless, unintelligent, or arrogant."<sup>14</sup>
14. In April 2021, D.C. Circuit Senior Judge Laurence Silberman in his opinion in *Tah v. Global Witness Publishing* went far beyond the facts of the case to rail against the purported media "bias against the Republican Party," calling the *New York Times* and *Washington Post* "Democratic Party broadsheets" and adding that "Silicon Valley [...] similarly filters news delivery in ways favorable to the Democratic Party."<sup>15</sup>

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<sup>8</sup> *McDougall v. County of Ventura*, 20-56220 (5th Cir., Jan. 20, 2022).

<sup>9</sup> Avalon Zoppo, "Showing Off or Making a Point? Spate of Self-Concurrences Catch Eye of Legal Community," *National Law Journal*, July 21, 2022 ([link](#)).

<sup>10</sup> Coulter Jones, Joe Palazzolo and James V. Grimaldi, "Federal Judges With Financial Conflicts," *Wall Street Journal*, Sept. 28, 2021 ([link](#)).

<sup>11</sup> Richard L. Hasen, "Ninth Circuit Judge Carlos Bea Despicably Agrees to Be Honored by John Eastman's Claremont Institute, at Event with Orwellian Panel on 'Election Integrity,'" *Election Law Blog*, Sept. 1, 2021 ([link](#)).

<sup>12</sup> *Meadors v. Erie County Board of Elections* (W.D.N.Y., 21-982). The Sinatra & Company Real Estate video is at this [link](#).

<sup>13</sup> *Ford v. Peery*, 9 F.4th 1086, 1097 (2021).

<sup>14</sup> *U.S. v. Khan*, 997 F.3d 242 (2021).

<sup>15</sup> *Tah v. Global Witness Publishing, Inc.*, 991 F.3d 231 (2021).

15. In Dec. 2020, Senior Southern District of Iowa Judge Robert Pratt insulted then-President Trump and those he had recently pardoned in an Associated Press interview, saying, “It’s not surprising that a criminal like Trump pardons other criminals. [...] Apparently to get a pardon, one has to be either a Republican, a convicted child murderer or a turkey.”<sup>16</sup>
16. In Nov. and Dec. 2020, Third Circuit Judge Thomas Hardiman and several of his colleagues lobbied their members of the House of Representatives to vote against the Open Courts Act, a bill that would have overhauled the branch’s outdated case management and electronic filings system. Judges are permitted to lobby but only to the extent that “it would generally be perceived that [their] judicial experience provides special expertise in the area,<sup>17</sup>” and managing a billion court records is not within any of the judges’ expertise.
17. In June 2020, Judge Silberman sent an email to every judge in his court and all D.C. District judges, plus other courthouse staff, in which he criticized a Senate proposal to rename U.S. military bases named after Confederate officers as “madness” and downplayed slavery being a cause of the Civil War.<sup>18</sup>
18. In Mar. 2020, then-W.D. Ky. Judge Justin Walker at his investiture ceremony disparaged the Chief Justice of the United States, talked about his appearances on Fox News and in so many words (e.g., “We will not surrender”) spoke as if he were separating himself from half the country — and half people whose litigation he’d soon be ruling on.<sup>19</sup>
19. In Mar. 2020, Judge Lynn Adelman wrote a law review article in which he called then-Judge John Roberts’ 2005 Senate Judiciary Committee testimony “a masterpiece of disingenuousness” and disparaged the Republican Party and its supporters.<sup>20</sup>
20. In Jan. 2020, Fifth Circuit Judge Kyle Duncan deliberately misgendered the respondent, a transgender woman, more than two dozen times in his opinion in *U.S. v. Varner*.<sup>21</sup>

Of the judges listed above, only Adelman, Silberman (in the all-court email instance) and Pratt to our knowledge have apologized for their intemperance.

It’s also worth mentioning that, in a category of its own, D. Kan. Judge Carlos Murguia announced his resignation<sup>22</sup> in Feb. 2020 after a panel of his peers found him culpable of a years-long pattern of sexual harassment.<sup>23</sup>

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<sup>16</sup> Ryan J. Foley, “Federal judge in Iowa ridicules Trump’s pardons,” *Associated Press*, Dec. 29, 2020 ([link](#)).

<sup>17</sup> See Code of Conduct for United States Judges, Canon 4(A)(2) ([link](#)).

<sup>18</sup> Ann E. Marimow, “A judge’s all-courthouse email sparks debate over removal of Confederate symbols,” *Washington Post*, June 16, 2020 ([link](#)).

<sup>19</sup> See Judge Walker’s speech at this [link](#).

<sup>20</sup> Lynn Adelman, “The Roberts Court’s Assault on Democracy.” *14 Harv. Law & Policy Rev.* 131 ([link](#)).

<sup>21</sup> *U.S. v. Varner*, 948 F.3d 250 (2020).

<sup>22</sup> See Judge Murguia’s letter to President Trump at this [link](#).

<sup>23</sup> See the Sept. 30, 2019, order from the Judicial Council of the Tenth Circuit order In Re: Complaint under the Judicial Conduct and Disability Act, 10-18-90022 ([link](#)) and the Mar. 3, 2020, order from the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States, C.C.D. No. 19-02 ([link](#)).