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### FEDERAL JUDGES – SHAPE UP OR GET SCRUTINIZED

Legislators at the state level and members of Congress in Washington are becoming more and more concerned about how appointed judges throughout the country are exempt from basic rules of accountability. In Washington, Congress is seriously considering legislation to establish an Inspector General, who will have the power to investigate federal judges. Simply put, a broad range of lawmakers have little faith in the ability of the judiciary to police its own ethics.

One of the most flagrant abuses are the numerous junkets taken by federal judges that are paid for by corporations and organizations with an interest in their rulings. A recent study by the Community Rights Counsel, a non-profit public-interest law group, concluded that in the last 15 years alone, federal judges have taken more than 1,000 junkets, often with their spouses, at lavish resorts. There have been serious questions raised about such trips even being reported as required by law.

On top of this, there have been allegations of recent financial conflicts in rulings by federal judges. The courts are suppose to police their own, but when was the last time you heard of disciplinary action taken against any federal judge?

Federal judges are the only public officials in America who hold their positions for life. No matter how incompetent their actions on the bench or how outrageous their decisions, they are, for all practical purposes, immune from any review of what they do. Their power comes from Article III of the United States Constitution, which gives all federal judges lifetime appointments. Removal only happens through an elaborate impeachment process, in which the House of Representatives brings the charges and the Senate conducts the trial of the judge. If two-thirds of the Senate votes for removal, then and only then, must the judge step down from the bench.

As Judge Burton Katz wrote in his criticism of lifetime appointments: “In our 200 plus years as a nation, only a few federal judges have been formally impeached. The impeachment process itself, because it is unwieldy, divisive, and time consuming, is rarely invoked. Hence, federal judges are, frankly speaking, judges for life. No one can touch them. They are derisively called Article III Judges because their behavior is frequently autocratic, capricious and grandiose. Horror stories abound from the darkened chambers of the federal courts. When judges become lifetime appointees, it seems that at times they think they are in lockstep with God.”

There are certainly many competent, hardworking judges on the federal bench. But when a defendant is faced with a judge who abuses his authority, there is frankly, little that can be done. The district court judge in the federal system controls the rules of the game. Although juries are

supposed to decide the innocence or guilt of a defendant, they are often constrained from seeing a complete picture of the defendant's case because of the limitations set by the federal judge.

As noted criminal defense attorney Gerry Spence concludes, "In America, trial by jury has become another myth. In the trial itself, the jury is permitted to hear only the evidence the judge will allow."

As I have repeatedly pointed out, the jury in my case was kept from hearing and seeing significant evidence in my favor. The jury received a distorted view of my defense, not because of their actions, but because of limitations set by the federal judge.

How can we make federal judges more accountable for their decisions? Obviously, impeachment does not work. As Thomas Jefferson commented, the impeachment provision of the Constitution "is not even a scarecrow." There have to be more options.

There is growing sentiment in this country in support of term limits or reconfirmation for federal judges. California Attorney General Dan Lungren is pushing for a plan that ends lifetime tenure. He has received support from former Senator Bob Smith of New Hampshire, who would impose a 10-year limit on all federal judges, including Supreme Court justices. Other members of Congress, including former Congressman Henry Hyde of Illinois, have made similar proposals. Several law professors who have clerked for Supreme Court justices have suggested term limits on federal judges. And the *Washington Post* recently stated, "Only one of 50 states copies the federal government's particular brand of unelected life tenure for its highest court and no major democracy abroad does so. Most state and foreign constitutions prescribe a fixed number of years in office or a mandatory retirement age for both."

One plan gaining a fair amount of support would require all federal judges to submit to periodic reconfirmation by the United States Senate. Perhaps it would require a two-thirds vote to actually remove a sitting judge from office. And reconfirmation would take place every 10 years.

There has to be some requirement that judges justify the decisions they make and the procedures with which they run their courtrooms. A decent judge concerned about fairness to both sides should have no problem. Arrogant judges might have a little explaining to do. So be it. Judges will tell you that they already have a procedure with which to police themselves. Under a law passed by Congress in 1980, each judicial circuit in the United States (there are 13) has a committee of judges; the 13 committees form a judicial council that oversees all the judges' conduct. But as Max Boot wrote in his book about incompetence on the bench, "These councils operate largely in secret and, at any rate, don't have the power to do anything beyond scolding recalcitrant judges. Even that power is exercised infrequently—which is no surprise, since this is the fox guarding the henhouse."

As Americans, we assume that judges at all levels will be fair in their interpretation of the law. We assume the same thing about the referees in any pro or college football game in the country—the referees know the rules and will do the right thing. Yet when the leagues are not satisfied with the quality of the refereeing, the officials are replaced. The judge is certainly the most important component in any trial, even more than the composition of the jury.

It comes down to a question of accountability. Any well-qualified federal judge worth his salt should have no objection to a little public scrutiny every 10 years. Reviewing the performances of our federal judges will go a long way in raising the overall standards and quality of our judiciary throughout this country.

As former Chief Justice Warren Burger once observed, “In a country like ours, no public institution, or the people who operate it, can be above public debate.” Max Boot sums it up well, “While we should always retain a high level of respect for the judiciary in principle, we shouldn’t be afraid to treat individual occupants of the office with the contempt and scorn they deserve when they issue bad rulings.”

Simply put, when you evaluate the federal judicial system in place today, we can do a lot better.

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*“There is no happiness, there is no liberty, there is no enjoyment of life, unless a man can say when he rises in the morning, he shall be subject to the decisions of no unjust judge today.”*

—Daniel Webster

Peace and justice.

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Jim Brown’s weekly column appears each Thursday here at Politicsla.com, and in a number of newspapers throughout the State of Louisiana. You can read Jim’s Blog, and take his weekly poll, plus read his columns going back to the fall of 2002 by going to his own website at <http://www.jimbrownla.com>.

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