



# AJS NATIONAL CONFERENCE

## Judicial Independence in an Age of Political Polarization

November 21-24, 2021  
Sheraton Waikiki Hotel  
Honolulu, Hawaii

### GENERAL SESSION 3

Confidence in the Courts, Judicial Ethics and Accountability

**Panelist: James Alfini**  
*Professor of Law and Dean Emeritus  
South Texas College of Law Houston*

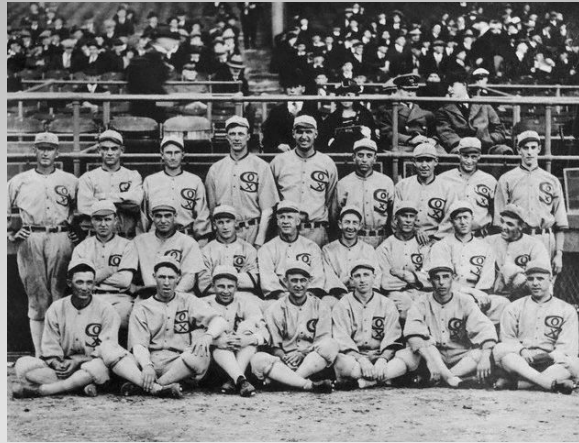
Amidst the prevailing political winds, how can confidence in a fair and impartial judicial system and judicial independence continue or be restored?

# American Judicature Society

Judicial Ethics

- “AJS has long understood that accountability is a critical counterpoint to independence and that it thwarts its abuse. ... The key is to provide a measure of accountability that curbs judicial excesses without curbing independence ... One such measure is to hold judges to standards of conduct that protect and preserve judicial impartiality, integrity, and independence.”

**Charles Gardner Geyh**



**1919 Chicago White Sox**



**Shoeless Joe Jackson**



**Kennesaw Mountain Landis**



**Chief Justice William Howard Taft**

- 1924 ABA Canons of Judicial Ethics -34 Canons
- Couched in aspirational language
- Widespread acceptance
- No enforcement authority

## **Judicial Ethics Standards**

- 1972 ABA Model Code of Judicial Conduct – 7 Canons
- Still couched in non-mandatory language (“should” not “shall”)
- Judicial Conduct Commissions in a Number of States

## **Judicial Ethics Standards**

- California (1961) – First State to Adopt Modern Commission
- Colorado and Texas (1965)
- Half the States and D. C. (1972)
- Hawaii (1979)
- All 50 States and D.C. (1989)

## **Judicial Conduct Commissions**

- Most state commissions have 7 – 9 lawyer, judge and public members
- Balance judicial independence and accountability

## **Judicial Conduct Commissions**

- 1990 Model Code of Judicial Conduct
  - 5 Canons ("shall")
- 2007 Model Code Of Judicial Conduct
  - 4 Canons (appearance of impropriety)

## **Judicial Ethics Standards**

- Encouraged adoption of judicial conduct commissions by convening "citizens conferences" on improvements in the administration of justice
- Created a Center for Judicial Conduct Organizations (1969) to provide informational and technical support to commissions
- Encouraged and supported research and publications on Judicial Ethics

## **AJS Involvement**

- Center for Judicial Ethics
- National Conference on Judicial Conduct and Ethics
- *Judicial Conduct Reporter*
- Publications

### **AJS Involvement (cont.)**

- Website: Directory of Judicial Conduct Organizations (links to websites)
- Indexed compilations of Judicial Discipline Cases and Advisory Opinions
- Constitutional, statutory, and rules provisions
- Codes of Conduct
- Annual Reports, News Stories, and other materials

### **Center for Judicial Ethics**



***"The Minnesota Supreme Court's canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment."***

**Republican Party of Minnesota v White  
536 U.S. 765 (2002)**

12/6/2021

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***Williams-Yulee v. The Florida Bar, 575 U. S. 433 (2015).***

"... Canon 7C(1) [Florida's "solicitation clause"] advances the State's compelling interest in preserving public confidence in the integrity of the judiciary, and it does so through means narrowly tailored to avoid unnecessarily abridging speech. This is therefore one of the rare cases in which a speech restriction withstands strict scrutiny."

Roberts: "Judges are not politicians, even when they come to the bench by way of the ballot. And a State's decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office. A State may assure its people that judges will apply the law without fear or favor—and without having personally asked anyone for money."

***Williams-Yulee v. The Florida Bar***