

# Secret Justice:

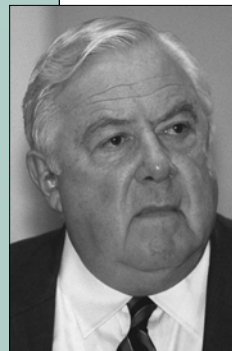
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## Judicial Speech

Judges are often hesitant to talk to reporters. Some, like Supreme



Court Justice **Antonin Scalia**, simply have strict policies concerning media coverage, while the story of federal judge **Thomas Penfield**



**Jackson's** comments on **Bill Gates** and the Microsoft case serves as a cautionary tale. But after gaining an awareness of

the limits placed on judges' speech, reporters should feel comfortable seeking insight from those who are most able to shed light on the judicial system.



Spring 2004

The Reporters Committee  
For Freedom of the Press

## Secret Justice:

### A continuing series

The American judicial system has, historically, been open to the public, and the U.S. Supreme Court has continually affirmed the presumption of openness. However, as technology expands and as the perceived threat of violence grows, individual courts attempt to keep control over proceedings by limiting the flow of information. Courts are reluctant to allow media access to certain cases or to certain proceedings, like jury selection.

Courts routinely impose gag orders to limit public discussion about pending cases, presuming that there is no better way to ensure a fair trial. Many judges fear that having cameras in courtrooms will somehow interfere with the decorum and solemnity of judicial proceedings. Such steps, purportedly taken to ensure fairness, may actually harm the integrity of a trial because court secrecy and limits on information are contrary to the fundamental constitutional guarantee of a public trial.

The public should be the beneficiary of the judicial system. Criminal proceedings are instituted in the name of “the people” for the benefit of the public. Civil proceedings are available for members of the public to obtain justice, either individually or on behalf of a “class” of persons similarly situated. The public, therefore, should be informed — well informed — about trials of public interest. The media, as the public’s representative, need to be aware of threats to openness in court proceedings, and must be prepared to fight to insure continued access to trials.

In this series, the Reporters Committee takes a look at key aspects of court secrecy and how they affect the news-gathering process. We examine trends toward court secrecy, and what can be done to challenge it.

The first article in this “Secret Justice” series, published in Fall 2000, concerned the growing trend of anonymous juries. The second installment, published in Spring 2001, covered gag orders on participants in trials. The third, published in Fall 2001, covered access to alternative dispute resolution procedures. The fourth, published in Winter 2002, covered access to terrorism proceedings. The fifth, published in Summer 2003, concerned sealed court dockets.

*This report was researched and written by James McLaughlin, who is the 2003-2004 McCormick-Tribune Legal Fellow at the Reporters Committee.*



Federal Judge Richard Matsch, who presided over the Oklahoma City bombing trial, was swarmed by reporters at an airport.

AP PHOTO: DAVID LONGSTREATH

# Judge-Speak

## The working relationship between judges and the news media

By James McLaughlin

**F**rom O.J. Simpson to Martha Stewart, courtroom dramas have emerged as a staple of modern news coverage. And with a fresh wave of high-profile trials dominating the headlines in 2004 — Michael Jackson, Kobe Bryant and Scott Peterson, to name a few — the trend is unlikely to die anytime soon.

While lawyers, litigants, analysts and even witnesses provide a running commentary in the news media, the voice of the most authoritative participant — the judge — is usually silent, except for written opinions and the occasional ruling from the bench. Many judges simply choose to avoid talking to the press.

But is that the way it has to be?

Not necessarily, according to some judges and reporters. Robert Pirraglia, a judge in Providence, R.I., for 20 years, argues that a more candid judiciary could improve news coverage and ultimately benefit the public.

“There needs to be more contact between judges and reporters, more exchange of information,” says Pirraglia, who is retiring from the Rhode Island District Court this spring. “The ground rules have to be clear, but if there’s no communication, the chasm between the media and the judiciary will continue.”

More judges are coming around to that point of view, says Gary Hengstler, director of the Donald W. Reynolds National Center for Courts and the Media, located in Reno, Nev. “The old rule of flatly refusing to talk to the press is breaking down.”

Others suggest that judges who talk to reporters do more harm than good.

Says Ron Rotunda, a law professor at George Mason University who has written about ethical restrictions on judges’ speech, “I don’t see why judges ever have to talk privately with reporters when they are free to address any topic they want in their opinions.”

## A Tradition of Silence

For the most part, judges and journalists have kept their distance from each other, a separation embodied in the culture and symbolism of the courts themselves.

Dick Carelli, a spokesperson for the Administrative Office of U.S. Courts, frequently participates in seminars and roundtable discussions about the news media's coverage of the courts. At one such event, he says, a reporter pointed out that "the physical architecture of the courtroom, the fact that the judge is sitting on high, the black robes — it all reinforces the divide between the judge and everyone else," says Carelli, who covered the Supreme Court for *The Associated Press* for 24 years.

"It can be daunting" for a reporter to approach a judge, Carelli says.

That reticence works both ways. Hiller Zobel, a retired Massachusetts Superior Court judge who presided over the infamous 1997 trial of British nanny Louise Woodward, says that some judges view talking to reporters as asking for trouble.

"The attitude of some judges is like that of [former Ohio State football] coach Woody Hayes, who said about the forward pass that three things can happen, and two of them are bad," Zobel says.

It doesn't help that when judges do grant interviews, they have frequently been second-guessed or embarrassed. In perhaps the worst-case scenario, U.S. District Court Judge Thomas Penfield Jackson was removed from the biggest case of his career — the government's antitrust suit against Microsoft — for comments he made to journalists.

In a series of "embargoed" interviews with reporters for *The New York Times*, *The Wall Street Journal* and others, Jackson candidly revealed his impressions of what was happening in his courtroom, while proceedings were still pending. Among other things, he called Bill Gates a "smart-mouthed kid," compared imposing a judicial remedy to smacking a mule with

a two-by-four, and likened Microsoft executives to a gang of drug dealers. (See sidebar on page 4)

Although the U.S. Court of Appeals in Washington, D.C., stopped short of finding that Jackson was actually biased against Microsoft, it found that he had to be removed because his comments "created an appearance that he was not acting impartially."

## The Lessons of Microsoft

To some, the Microsoft debacle teaches a simple lesson: Judges shouldn't talk to reporters. Period.

That hard-line view is embraced by David Sentelle, one of the nation's most prominent conservative jurists. Sentelle sits on the D.C. Circuit, the court that disqualified Jackson. A few months after joining the opinion removing Jackson, Sentelle wrote in *The Federal Lawyer*, "No judge in the United States should ever submit to an interview with the media about an ongoing adjudication, or even a recent one."

Rotunda, the George Mason law professor, agrees. "The worst thing judges can do is talk off-the-record," he says. "The next worst is to talk for attribution, but not in open court.

"If a judge wants to explain something, he can say it in court, and reporters can write it down," Rotunda says.

The ethical rules that apply to state and federal judges allow for some room for public commentary about pending cases, but not a lot. The American Bar Association's Model Code of Judicial Conduct, adopted in Washington, D.C., and every state but Montana, instructs judges to refrain from "any public comment that might reasonably be expected to interfere substantially with a fair trial or hearing" while a case is "pending or impending." Montana's Canon of Judicial Ethics contains a similar rule.

Likewise, federal judges are supposed to avoid comment on "the merits of any pending or impending action," according to Canon 3A(6) of the Code of Conduct for United States Judges.

## Hidden High Court

### How media-friendly are Supreme Court justices?

A federal marshal made headlines this spring when she seized and erased the audio recorders of two reporters covering a speech by Justice Antonin Scalia at a high school in Hattiesburg, Miss. She told both journalists that the seizure was in accordance to Scalia's policy against the recording of his speeches.

The April 7 incident drew immediate criticism from the news media, and ultimately resulted in a rare apology from the justice.

It also highlighted the question of the news media's access, or lack thereof, to the justices of the Supreme Court of the United States — who, despite their extraordinary influence, are fairly unknown to the

public at large.

As Nat Hentoff observed in an April 16 column in *The Village Voice*, a 1990 poll found that 59 percent of Americans could not name one Supreme Court justice. There is nothing to suggest that the percentage has changed much over the years. Supreme Court proceedings have never been videotaped, and justices tend to keep a low profile.

"The justices tend not to do interviews, period," says Supreme Court spokesperson Kathy Arberg. "There are very rare exceptions, such as when a justice gives an interview relating to a book" that the justice wrote.

*Continued on page 6*



AP PHOTO: GEORGE BRIDGES

Justice Antonin Scalia forbids broadcast reporters from taping his speeches, a policy that has infuriated the news media.

The official commentary to the federal rule makes clear that the prohibition applies to all proceedings in any court, federal or state.

The rules don't foreclose all extrajudicial commentary, however. The Model Code specifically allows judges to explain "for public information the procedures of the court." As Pirraglia puts it, "Judges can provide a 'scorecard' of what's coming up."

Judges are also free to speak generally about the law in scholarly articles or speeches, and to conduct informational briefings for journalists covering a case, provided they don't cross the line and disclose their views on the merits.

Hengstler, of the National Center for Courts and the Media, cites the Mike Tyson rape trial as a case in which a judge made herself available to reporters without getting into trouble. Judge Patricia Gifford of Marion County Superior Court in Indianapolis, Ind., met daily with reporters in informal question-and-answer sessions to help them with procedural and technical points.

A judge is also free to comment on a case after it is over — but, as the Microsoft case illustrates, the judge better be sure that the case is gone for good. Even though Jackson's comments were embargoed until after he ruled, the complex case was still very much alive on appeal, and it would have returned to his courtroom on remand from the appeals court if he had not been disqualified.

The counter-example is Robert Alsdorf, a judge on the King County Superior Court in Seattle, Wash. Alsdorf is widely praised for having given a thoughtful television interview to explain his controversial decision to invalidate a state ballot initiative on car taxes. Notably, he did not make his comments until after the dispute was resolved.

The content of the statement also matters, of course. Alsdorf's measured remarks "enhanced public respect for the judiciary," Hengstler says. By contrast, Jackson's personal attacks on Bill Gates undermined the appearance of impartiality, the appeals court found.

### Costs and Benefits

Critics of judges who speak to the media contend that there is little value in giving private interviews, even if it is technically permitted by the rules.

"Yes, a judge is allowed to talk to reporters about court process, procedure and so forth" Rotunda says. "But there's a slippery slope problem. The easiest way for a judge to explain what's going on is to say it on the record and in open court."

In Rotunda's view, "the problem is when judges talk to the press because they want to become popular. The reason we give [federal judges] lifetime tenure and salary protection is so they don't feel the need to be popular."

Pirraglia, the Rhode Island judge, concedes that judges should tread carefully. "What a judge says about a case can — not necessarily will, but can — influence a reader more than what others might say," he says. "Because the speaker is a judge, his words may carry more weight or authority."

But Pirraglia, and others, argue that there are substantial benefits that can come from a better line of communication between judges and journalists. Access to the judge can greatly enhance the quality and accuracy of a reporter's story, for instance.

There are other means for journalists to get the story when they cover a court proceeding, of course. Reporters

## Speaking out of School

Judge Thomas Penfield Jackson spoke freely to reporters during the Microsoft antitrust trial, and paid a big price

**W**hen legal pundits contend that judges should refuse to talk to reporters, they frequently cite U.S. District Judge Thomas Penfield Jackson as Exhibit A.

In June 2001, Jackson — a 1982 Reagan appointee to the federal bench in Washington, D.C. — was disqualified from the government's antitrust suit against Microsoft Corp. for secretly discussing the case with reporters during the trial.

A closer look at the record, however, suggests that it was the content of Jackson's remarks that got him in trouble, not the mere fact that he spoke to the press.

While the case was pending, Jackson granted lengthy interviews to *The New York Times*, *The Wall Street Journal*, *The New Yorker* and even *The Dartmouth Online*. (Jackson is a 1958 graduate.) Jackson "embargoed" his comments by agreement with reporters, delaying publication until after he had ruled. But when his colorful quotes did appear — while the case was on appeal — they had an explosive impact.

On his decision to split Microsoft in two, Jackson told two *New York Times* reporters:

*"A man had a trained mule who could do all kinds of wonderful tricks. One day somebody asked him: 'How do you do it? How do you train the mule to do all these amazing things?'"*

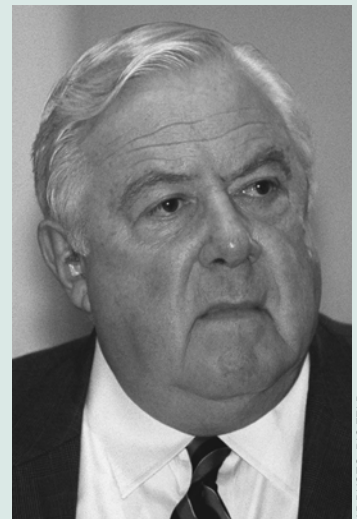
*'Well,' he answered, 'I'll show you.' He took a 2-x-4 and whopped him upside the head. The mule was reeling and fell to his knees, and the trainer said, 'You just have to get his attention.' . . . I hope I've got Microsoft's attention."*

On Microsoft founder Bill Gates, he told Ken Auletta of *The New Yorker*:

*"He's a smart-mouthed young kid who has extraordinary ability and needs a little discipline. I've often said to colleagues that Gates would be better off if he had finished Harvard."*

Jackson even compared Gates to Napoleon, telling Auletta:

*"If I were able to propose a remedy of my devising, I'd require Gates to write a book report [on Napoleon Bonaparte], because I think he has a Napoleonic concept of himself and his*



AP PHOTO, RIC FELD

Judge Jackson wasn't shy about expressing his ill feelings toward Microsoft and Gates.

company, an arrogance that derives from power and unalloyed success, with no leavening hard experience, no reverses.”

He candidly revealed his impression of the credibility of Microsoft’s witnesses, telling *The Wall Street Journal*:

*“Falsus in uno, falsus in omnibus. [Untrue in one thing, untrue in everything.] I don’t subscribe to that as absolutely true. But it does lead one to suspicion. It’s a universal human experience. If someone lies to you once, how much else can you credit as the truth?”*

And, in a strikingly blunt assessment of his own court of appeals, Jackson told Auletta:

*“What I want to do is confront the Court of Appeals with an established factual record which is a fait accompli. And part of the inspiration for doing that is that I take mild offense at their reversal of my preliminary injunction in the consent-decree case, where they went ahead and made up about 90 percent of the facts on their own.”*

Not surprisingly, the appeals court did not take kindly to such remarks. In a blistering opinion, the court said Jackson’s comments “convey the impression of a judge posturing for posterity, trying to please the reporters with colorful analogies and observations bound to wind up in the stories they write.”

The seven-judge panel unanimously disqualified Jackson, who was replaced by

U.S. District Court Judge Colleen Kollar-Kotelly.

Jackson’s disqualification is widely viewed as a cautionary tale for judges who consider speaking to the news media. But, as the appeals court acknowledged, the problem lay in the content of his statements, not the fact that he met with reporters.

In its opinion, the appeals court expressly conceded that Jackson could have spoken about the case in general terms even while it was pending, but found that he had gone too far and “disclosed his views on the factual and legal matters at the heart of the case.”

Stubborn to the end, Jackson stood by his comments. In fact, even when he recused himself from a separate case involving Microsoft in March 2001 — acknowledging an “appearance of personal bias” — he couldn’t resist one last shot at the company.

In his recusal order, he described the software maker as “a company with an institutional disdain for both the truth and the rules of law that lesser entities must respect.” ♦



AP PHOTO: ANDY ROBERTS

With the case still pending, Jackson called Microsoft founder Bill Gates a “smart-mouthed young kid.”

can attend the proceedings, speak to the attorneys, and get the reaction of legal experts who aren’t involved in the case. In addition, courts themselves are becoming more media-friendly. Pleadings and opinions are increasingly available on the Internet, saving reporters a separate trip to the courthouse every time they need a document. Most courts also have press offices with spokespersons and other administrative staff to respond to media inquiries.

Still, access to the judge is irreplaceable. For obvious reasons, judges are far more knowledgeable about what is going on in their courtrooms than an administrative staffer is. Their insight and perspective can help ensure accuracy in the news media’s reporting.

“Reporters, at least the best of them, are taking the language of legal mumbo-jumbo and trying to convert it into plain English,” says Carelli, the federal court spokesman and former AP correspondent. “That can be a difficult task. And judges are starting to recognize that they share the responsibility to facilitate better, more accurate reporting on legal matters.”

Toward that end, small groups of judges and reporters have been gathering in a series of seminars co-sponsored by the Committee on the Judicial Branch of the Judicial Conference of the United States and the Freedom Forum’s First Amendment Center. The objective of the informal, off-the-record meetings is to discuss ways of improving the media’s coverage of the courts.

“We lock a small number of judges and an equal number of reporters up in a room for a few hours and see what happens,” Carelli jokes. To date, six such seminars have been held, with the first taking place in 1999.

Some judges have even tried their hand at writing a mock news story about a case, to experience the challenge of translating legalese into accurate but readable copy, he says.

Productive communication with the news media also can protect the independence of the judiciary, Pirraglia believes. “The media need the courts to protect the First Amendment, and judges need the media to inform the public about what goes on in the courts,” he says. “To a certain extent, we need each other to protect our respective rights and obligations.”

Carelli agrees. “The independence of the judiciary is tied very closely to public perception — whether people believe they can get a square deal [in the courts],” he says. “Journalists are surrogates for the public.”

### Improving Access, One Step at a Time

The media and the judiciary are vastly different institutions with distinct and sometimes adversarial roles, as well as ethical restrictions that prevent judges from speaking freely. Thus, it is doubtful that reporters will ever have the same access to judges as they do to politicians, celebrities and other newsmakers.

Nevertheless, there are steps a reporter can take to open a line of communication with a judge. Carelli, who covered the courts for years, offers surprisingly simple advice: “Introduce yourself,” he says. “The judges are just human beings.”

While covering the Supreme Court, Carelli often encouraged reporters new to the beat to send letters of introduction to all nine justices. Most justices were receptive, he said, and some invited journalists to stop by chambers and say hello.

More simple advice from Carelli: Be physically present at the courthouse. "It's very difficult for a reporter to have any kind of relationship with a judge if the reporter is going to be at the courthouse twice a year, and write a story on a federal court case five times a year," he says.

Judges, too, can take steps to improve dialogue with reporters. According to Pirraglia, some judges have experimented with letting the media devise the guidelines under which they cover a proceeding, subject to the judge's approval.

Reporters have proven worthy of that responsibility, he says. "Often, the reporters have come up with guidelines that are more strict than what the judge himself might have done."

Such developments appear to be contributing to a trend in favor of greater media access to judges. While no official data

is kept, Hengstler says fewer judges are adhering to a rigid rule against talking to reporters.

To accelerate that trend, the National Center for Courts and the Media trains judges on how to handle media requests, give interviews and deal with the pressures of a high-profile trial.

Perhaps the most ambitious suggestion comes from Pirraglia. "I'd like to see a journalist follow a judge around for a day, and vice versa, so that each can be educated about the other's function," he says. "I realize it would be expensive, but it's worth it.

"Judges can have relationships with the press and still fulfill their institutional obligations — and in the process, better educate the public." ♦

## Hidden High Court

*Continued from page 3*

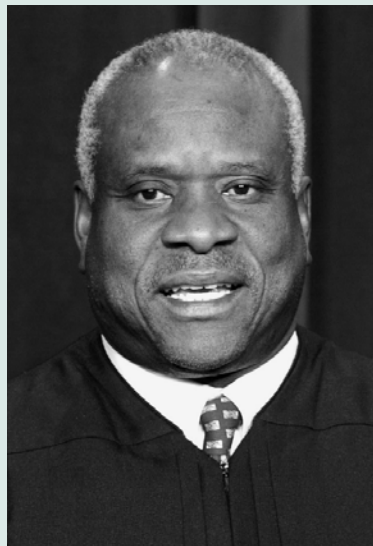
Justice Sandra Day O'Connor, for instance, gave interviews to *The New York Times*, CNN and others to promote her 2003 book, "The Majesty of the Law." Chief Justice William Rehnquist has also given interviews in connection with his books.

In addition, all nine of the current justices give speeches in public, some more often than others. Rehnquist frequently addresses audiences on such topics as the state of the legal profession, judicial administration and legal history. Justice Ruth Bader Ginsburg is well known for promoting women's issues, while Stephen Breyer, a former Harvard law professor, tends toward more scholarly topics, such as administrative law and judicial rule-making.

At the other end of the spectrum, Justices David Souter and Clarence Thomas make relatively few speeches. Thus, when Thomas defended his controversial views on race in a 1998 speech to the National Bar Association, an organization of African-American attorneys and judges, it gained national media attention.

Typically, justices speak at such events as commencement ceremonies, bar association meetings or conferences of other judges. By tradition, each justice also speaks at the annual meeting of the judges of the circuit court over which he or she presides.

Media access to speeches by the justices varies, and can be influenced by the setting. If a justice agrees to speak to a private organization, for



AP PHOTO, SCOTT APPLEWHITE

Supreme Court Justice Clarence Thomas rarely speaks in court, let alone to the news media.

example, the organization's own policy may affect press access. "The arrangements are worked out between the inviting organization and the justice," says Arberg.

When it comes to the high court's official business, the news media enjoy considerably better access. Oral arguments are always open to the public and press, although cameras and recording devices are forbidden. In cases of great public interest, the court has recently begun releasing audio recordings after the argument concludes. The court also releases a transcript of every argument — although it does not specify which justices asked which questions, and it typically takes up to three weeks for a transcript to be released.

But nonofficial business is largely the domain of the individual justice. The tape-recording incident involving Scalia, for example, publicized the fact that he has a specific policy against any audio or video recording of his remarks. Arberg says she does not know if any other justices on the court have such policies.

In an April 9 reply to a letter of protest from The Reporters Committee for Freedom of the Press, Scalia wrote he would revise his policy to permit the print media to record his remarks for purposes of ensuring accuracy. However, he added, "The electronic media have in the past respected my First Amendment right not to speak on radio or television when I do not wish to do so, and I am sure that courtesy will continue."

But there are no clear rules governing a judge's ability to enforce such preferences. In response to the Scalia incident, Sens. Charles Schumer (D-N.Y.) and Patrick Leahy (D-Vt.), both of the Senate Judiciary Committee, urged the Administrative Office of U.S. Courts in an April 12 letter to establish "clear guidelines for judges setting the public or private nature of their remarks, and the appropriate remedial steps that may be taken when the judges' requests are not honored."

For the foreseeable future, it appears that media access to Supreme Court justices will remain an *ad hoc* affair, regulated mostly by the justices' individual preferences and the media's willingness to push the issue. ♦

# The Rules

Like all citizens, judges have a First Amendment right of free speech. But that right is tempered by the ethical restrictions that come with judicial office — restrictions that often prevent them from speaking freely about pending cases. This guide presents the text of the rules that bind most judges and summarizes the most significant interpretative decisions.

## The Code of Conduct for United States Judges

Federal judges are subject to Canon 3A(6) of the Code of Conduct for United States Judges, which provides:

“A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge’s direction and control. This proscription does not extend to public statements made in the course of the judge’s official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.”

The most famous case involving Canon 3A(6) is *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir., 2001), discussed on page 4. But other federal courts have offered key interpretations as well.

***In re Boston’s Children First*, 244 F.3d 164 (1<sup>st</sup> Cir. 2001).** After U.S. District Court Judge Nancy Gertner told the *Boston Herald* that a school discrimination case pending in her courtroom was “more complex” than a similar lawsuit before another judge, she was disqualified by a federal court of appeals in Boston. The appeals court said there was no evidence that Gertner was biased, and acknowledged that she gave the interview to refute inaccurate statements made by an attorney. But the court found that her comparison of the complexity of two cases was a comment “on the merits,” in violation of Canon 3A(6).

***In re International Business Machines Corp.*, 45 F.3d 641 (2d Cir. 1995).** In an antitrust case that dwarfed even Microsoft in complexity and scale, IBM forced the recusal of U.S. District Court Judge David N. Edelstein, who had presided over the massive litigation for a staggering 43 years. The U.S. Court

of Appeals in New York cited Edelstein’s 1982 interviews with *The New York Times* and *The Wall Street Journal*, in which he sharply criticized the Justice Department’s handling of a related case against IBM.

***United States v. Cooley*, 1 F.3d 985 (10<sup>th</sup> Cir. 1991).** A federal judge in Wichita, Kan., was disqualified for telling the TV program “Nightline” that anti-abortion protestors were “breaking the law” by blocking access to a clinic in violation of the judge’s order. The appeals court found that both the substance of U.S. District Court Judge Patrick Kelly’s comments and his choice of forum conveyed “an uncommon interest and degree of personal involvement in the subject matter.” In an unusually strong remedy, the appeals court ordered new trials for each of the protestors.

***In re Barry*, 946 F.2d 913 (D.C. Cir. 1991).** Nearly a decade before his trouble on the Microsoft case, Judge Thomas Penfield Jackson stirred controversy by criticizing the jury in the drug trial of D.C. Mayor Marion Barry, over which Jackson had presided. Speaking at Harvard Law School, Jackson said he had never seen a stronger government case and scolded jurors for refusing to apply the law. A divided panel of the U.S. Court of Appeals in Washington, D.C., refused to remove Jackson, saying that while his comments “may be” a violation of Canon 3(A)(6), they did not meet statutory criteria for recusal. On remand, Jackson sentenced Barry to six months in prison and a \$5,000 fine.

## The ABA Model Code of Judicial Conduct

Canon 3B(9) of the American Bar Association’s Model Code of Judicial Conduct, which has been adopted in 49 of 50 states and the District of Columbia, provides:

“A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. . . . This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a

litigant in a personal capacity.”

In 2003, the ABA amended the code to impose further restrictions on judicial speech in the contexts of making campaign promises, criticizing juries, and disclosing nonpublic information. But most of the decisions concern Canon 3B(9).

***In re Broadbelt*, 683 A.2d 543 (N.J. 1996).** In a widely cited case, the New Jersey Supreme Court held that Canon 3B(9) applies to proceedings anywhere, not just in the judge’s own courtroom. Thus, a municipal court judge was ordered to stop providing commentary on “Geraldo Live” and other TV programs, even though the cases he discussed had no chance of being decided by him. The case is also notable because the Supreme Court rejected the judge’s claim that his First Amendment rights were violated.

***In re Sheffield*, 465 So.2d 350 (Ala. 1985).** The Alabama Supreme Court upheld a punishment of two months’ suspension without pay for Judge Billy Joe Sheffield of Alabama’s 20th Judicial Circuit, who discussed the merits of a contempt of court proceeding with a newspaper reporter before it took place. The court acknowledged that “not all public discussion by the judiciary of a pending case is an ethical violation,” but said Sheffield crossed the line by saying “the contempt speaks for itself” and suggesting the defendant could be sued for libel.

**Illinois Judicial Ethics Committee, Opinion No. 98-10 (April 8, 1998).** Facing a question similar to that in *Broadbelt*, an Illinois judicial ethics committee reached a slightly different conclusion: Judges may appear on TV or radio shows to discuss legal issues, as long as they don’t comment on the merits of any individual proceeding.

**New York Advisory Committee on Judicial Ethics, Opinion No. 96-145 (Dec. 12, 1996).** A New York judicial ethics committee barred a judge, whose name was not revealed, from sending a letter to a newspaper in response to an editorial critical of the judge’s actions as a county legislator. The committee found that the matters addressed by the letter might be litigated, and could appear before the judge. Moreover, the committee said, the judge’s proposed letter — which would have bluntly criticized the newspaper and various public officials — would undermine the dignity of the judiciary. ♦

# TAPPING OFFICIALS' SECRETS

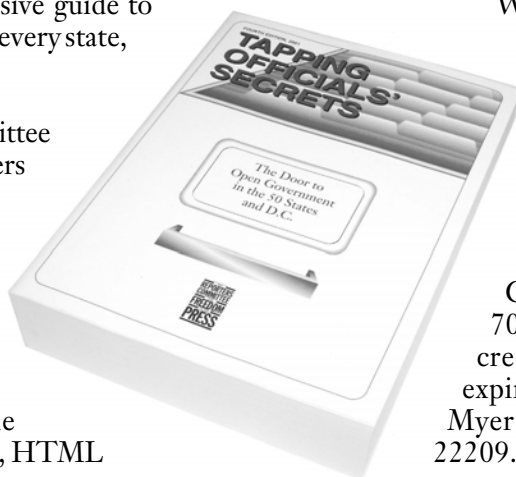
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