

How to get rid of a bad judge?

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Logically, Congress cannot impeach district judge Tom Porteous, and he will spend two years on full pay before returning to the bench.

Now, don't get all purple in the face and start frothing at the mouth. There are weightier issues involved than the fate of one squalid judge.

You probably still want Porteous gone. Look on the bright side, and remember that Congress is by no means always constrained by logic.

Any more than the Judicial Council of the Fifth Circuit is always constrained by the Constitution. The trial and appellate judges who make up the council last week imposed the severest penalty at their disposal, ordering Porteous suspended and issuing a public reprimand.

But that does not satisfy. A large majority on the council is urging Congress to give Porteous the permanent heave-ho. The impeachment call is a big overreach.

Porteous, of course, is a foul excrescence on the federal bench and would, if he had any shame, resign forthwith. But he is merely a liar and sponger with no apparent grasp of judicial ethics. He is small potatoes, and not worth impeachment, which the framers, in order to guarantee judicial independence, reserved for cases of "Treason, Bribery, or other high Crimes and Misdemeanors."

The Judicial Council zeroed in on Porteous after receiving a report from the Department of Justice documenting a long list of misdeeds. The Justice Department had all the goods, because it had just spent five years investigating Porteous. That investigation yielded no indictment.

Since there is no suggestion that Porteous committed treason or bribery, the rationale for impeachment must be a high crime or misdemeanor. The logical question becomes, if the FBI could not find any kind of crime after five years, how come the council can pick up the report and instantly find proof of high ones?

Chief Judge Edith Jones of the Appeals Court, in last week's suspension order, breezily asserted that Porteous committed crimes, although she was silent on the question of elevation.

Jones, a conservative even by the standards of her home state, Texas, is inevitably known to the more liberal members of the local bar as "the wicked witch of the west." But nobody doubts her brains, and it is impossible to believe she doesn't know that the grounds for impeachment here are very flimsy. That may be why, when she and most of the Judicial Council recommended it late last year, a dissenting opinion was suppressed.

That dissent, written by Appeals Court Judge James Dennis and concurred in by three other Judicial Council members, remained hidden until it turned up with reams of other exhibits, released when the suspension order was issued last week.

"The constitutional convention proceedings, the ratification history and the congressional precedents demonstrate that finding a high crime or misdemeanor requires a showing that the subject judge abused or violated the constitutional judicial powers entrusted to him," Dennis wrote. He concluded that Porteous did not represent a threat to the Republic and, when, say, making false statements in bankruptcy proceedings, erred as a private citizen. A public reprimand would suffice, according to Dennis.

When Porteous was elevated to the federal bench from the Gretna court, he did not abandon his habit of tapping attorneys for money. That he was a disastrous choice is not to be doubted, and he once presided over a trial in which attorneys on both sides had pitched in to get him out of one of latest financial jam.

The Judicial Council rebuked him for failing to disclose his obligations, to which his attorney last week responded, "Both sides were there, so who's he supposed to tell?" Porteous evidently brought the ethical standards of Gretna to the federal bench. A crooked judge takes money from one side; an honest judge takes money from both sides.

Porteous has forsworn the booze and the gambling and begged the Judicial Council to give him another chance, while still indicating he would be prepared to take a disability retirement, with, of course, full benefits. When the Judicial Council didn't cotton to either idea, Porteous decided to endure continued public humiliation for the sake of his \$170,000-a-year-salary.

The framers set the impeachment bar very high -- its requires two-thirds of the Senate to convict - and Porteous might well be back in the saddle two years hence.

Surely we can't take that chance, and need to negotiate a settlement whereby he can depart right now with enough money to live on. Maybe he doesn't deserve it, but the alternative could be a prolonged embarrassment that nobody can relish.

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