

Public Hearing Statement on the Code and Rules: Paul F. Horvitz

I am here as a citizen. I represent no other individual or entity. I am not a lawyer. I have read the Code and Rules. They set a high standard, and I thank you for recognizing the need for constant improvement. We would all like to move forward quickly. Unfortunately, millions of us witnessed a rare set of events this fall, the Kavanaugh confirmation process, that raised disturbing issues of gender relations and judicial conduct. I respectfully urge you to pause and address those issues. Doing so will demonstrate the federal courts' commitment to integrity at a time of intense public scrutiny. Just as credible complaints of misconduct trigger a duty to act within the Code and Rules, your committees have a similar duty to act when you encounter a situation so corrosive to the public's confidence in the judiciary.

The changes I recommended in my previously submitted comments take us a few steps forward. But they do not get to the heart of the problem, which I define as acquiescence. Federal judges nominated for higher courts are being asked to participate in an increasingly base and manipulative confirmation process. They need not enter the fray. Confirmation is between the executive and legislative branches. Judges don't seek approval of their nomination, the President does. The process has reached an intolerably unwholesome state, and judges should not be induced to follow along. Such acquiescence allows the ills of the legislative and executive branches to infect the judicial branch.

Therefore, I urge you to conclude this process and begin consideration of an additional change to the Code and Rules that embodies the intent of the following draft:

"Upon nomination to an appellate or Supreme Court seat, a subject judge shall not take part in any effort at persuasion in the mass media or coordinate confirmation efforts with any political party or any executive or legislative branch official (beyond scheduling and similar logistics), or withhold authorization for the release of any public document relevant to the Senate's fact-finding process."

I recognize that this challenges the inertia of tradition. Yet our current predicament surely requires new approaches, perhaps even bold ones. If a nominated judge requires coaching or counseling on how to act or how to answer questions related to his or her prior opinions, judicial philosophy, public speeches and writings, life experience, personal or religious philosophy, or character, he or she is unfit for an appellate or Supreme Court seat. For some of us, an independent and honorable judiciary is all we have left of integrity in government. If you wish to appear to stand above the fray, you must require judges to in fact do so. This is the heart of the judicial Code of Conduct.

Thank you for the opportunity to speak to you, and I wish you well in your deliberations.