

Legal Ethics Roundup

LER No. 26 - Ineffective Assistance at SCOTUS, AI + Lawyers on NPR, TX + A2J, Willis Remains (For Now), SCOTUS Ethics (In)Action, Kenyan Lawyers Protest, MR 5.5 Reform, Events, Jobs & More (01.22.24)

The Legal Ethics Roundup - your Monday morning tour of all things related to lawyer and judicial ethics with University of Houston law professor Renee Knake Jefferson



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This week we will explore the work of Lawyers Defending American Democracy (LDAD). Three members of the organization contributed collectively to my questions, co-founder and board member **Gary Ratner**; board member **Cheryl Niro**; and executive director and board member **Lauren Stiller Rikleen**.

Here's a bit about each of their backgrounds before we dive into the questions about LDAD's work.

In response to former Massachusetts Attorney General **Scott Harshbarger's** call at their Harvard Law School (HLS) Reunion in 2018 for lawyers to speak out collectively against then president Trump's threats, Ratner proposed creating a grass-roots organization of individual lawyers nationwide, with an organizing strategy based on networking, what soon became LDAD. With deep roots in bar association leadership, Niro has served as President of the Illinois State Bar Association, on the Executive Committee of the ABA Board of Governors, the Inaugural Executive Director of the Illinois Supreme Court Commission on Professionalism, and served on the Review Board (appellate level) of the Illinois Attorney Registration and Disciplinary Commission. [Side note - I was delighted to reconnect with Niro, with whom I worked on a special project related to child support enforcement as a second year law student at the University of Chicago 25 years ago.] A year after joining the LDAD board in August, 2020, Rikleen was asked to assume the role of part-time executive director, effective September, 2021. Her roles as a bar leader include serving as a former president of the Boston Bar Association.

RKJ: Please share one “success” in efforts to reform ethics and/or professional conduct rules governing lawyers and/or judges?

LDAD: LDAD’s principal effort to reform ethics rules for lawyers and/or judges has been the proposed ethics rules for Supreme Court justices it prepared and published in partnership with the Project on Government Oversight. We developed this draft to help advance the public debate from focusing on the *need* for a Supreme Court code of conduct to crafting a specific code for discussion. We believe that the widespread dissemination of this draft, including within the bar association community, has had an influence in helping to focus attention on the importance of a code of conduct that builds on the rules applicable to the federal courts. Our proposal adds clear and more stringent guidelines for recusal, prohibitions against conduct that creates an appearance of partiality, rigorous obligations for disclosure, and standards for transparent decision-making.

RKJ: What is the most important action that Congress could take immediately to address reforms proposed by your organization?

LDAD: LDAD is aware that members of Congress are working on legislation to require the Supreme Court to adhere to a binding code of ethics, although LDAD is not involved in this legislative process. We understand that the draft code of conduct developed by LDAD and POGO has been provided to the U.S. Senate Judiciary Committee.

RKJ: What is the most important action that state or local government body could take immediately to address reforms proposed by your organization?

LDAD: Over the past several years, we have seen numerous instances of lawyers appearing to violate both their oath to protect the Constitution and ethical rules. Unlike ethics complaints filed by private clients against their attorneys, complaints filed against those whose alleged ethical violations occur in the public eye must rest on information available in the public sector, including, for example, court records and Congressional testimony. Accordingly, attorney disciplinary agencies and State Bars possessing authority for responding to lawyer ethics complaints, particularly California and the District of Columbia, should cease their practice of refusing to accept otherwise valid ethics complaints for filing (or docketing) an investigation because they are based on

“public information” rather than “personal knowledge.” Disciplinary authorities need to adapt to the changing times and threats to the profession’s integrity by ensuring that all sources of information be reasonably evaluated in determining whether an ethics violation has occurred.

RKJ: What is the most serious problem facing the legal profession today? How does your organization address this (if it does)?

LDAD: The legal profession has been too slow in speaking out against and otherwise responding to threats to American democracy and the rule of law. Bar associations, law school administrators, and law firm leaders should be issuing public statements and otherwise engaging their local communities about threats to the justice system and the rule of law. LDAD works to facilitate such actions by addressing by speaking out forcefully against such threats and urging other lawyers, legal institutions and concerned citizens to do likewise. LDAD does this by filing ethics complaints against lawyers who violated their ethical duties in seeking to overturn the results of the 2020 presidential election; submitting *amicus* briefs - in the Supreme Court and other courts; and publishing calls-to-action signed by lawyers nationwide, and statements signed by LDAD’s Board, repudiating unfounded attacks on our democracy and the rule of law, and urging other lawyers and legal institutions to speak out against such attacks.

RKJ: What’s the most influential book you’ve read, podcast you’ve heard, etc. that’s inspired you in your work?

LDAD: Our work is inspired by many authors and historians who have been sounding the alarm about the threats to our democracy. These include, for example, two critical books, *How Democracies Die* and *Tyranny of the Minority*, by **Steven Levitsky** and **Daniel Ziblatt**. In addition, **Timothy Snyder’s** *On Tyranny: Twenty Lessons from the Twentieth Century* should be a must-read for all lawyers. We also think it is important for lawyers to understand what is happening to our court system and, in particular, the Supreme Court, for example, **Stephen Vladeck’s** *The Shadow Docket*. Finally, we appreciate those books that give us hope about our justice system, including **Dahlia Lithwick’s** *Lady Justice*, and the recent book edited by our own executive director, Lauren Stiller Rikleen, *Her Honor – Stories of Challenge and Triumph*

from Women Judges. [RKJ side note: Check out [Roundup No. 20](#) for more on Rikleen's book.]

RKJ: Anything else you think LER readers should know?

LDAD: Lawyers have a unique opportunity to use their skills and talents to respond to this dangerous time in our democracy. LDAD intends to work constructively with the legal profession to identify a myriad of ways to speak out in the protection of the rule of law and our democratic institutions. To encourage lawyers to act, we have created [the Democracy Commitment](#), which offers a blueprint for lawyers throughout the country to become involved in these efforts.