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# REVEALED: FEDERAL JUDGES GUILTY OF OWNING STOCK IN CORPORATIONS THEY RULED ON

THU, 5/1/2014 - BY [REITY O'BRIEN](#), [KYTJA WEIR](#), [CHRIS YOUNG](#) (/AUTHOR/REITY-OBRIEN-KYTJA-WEIR-CHRIS-YOUNG)

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When Linda Wolicki-Gables and her husband appealed a lawsuit all the way to the second-highest court in the nation against Johnson & Johnson over a malfunctioning medication pump that had been implanted in her body, the couple had no idea that one of the judges who decided their case had a financial stake in the giant multinational company.

Eleventh U.S. Circuit Court of Appeals Judge James Hill owned as much as \$100,000 in Johnson & Johnson stock when he and two other judges [ruled against the Gables' appeal](#) (<http://www.ca11.uscourts.gov/opinions/ops/200914342.pdf>) in the precedent-setting case.

For the Gables, a different decision in the 2011 appeal could have helped them win a verdict for as much as \$20 million, a sum that would have vastly improved the quality of her care, according to their attorney, T. Patton Youngblood Jr. Today, the Florida woman is a partial paraplegic, he said, largely confined to her home with only her husband to care for her.

The Center also found that Hill ruled on three other appeals involving companies in which he owned stock, violating clear rules governing the federal courts. In all four instances, the court rulings favored his financial interest. In a statement released by the court, Hill said he was not aware of those stock holdings at the time due to the complexity of his family's trusts.

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"You like to think that people will be above board but we all know that's not the case. You can't presume that," said Youngblood, the Gables' attorney. "I don't think it's fair that he was able to preside over this thing. I just don't think that's right. That's why they ask you for disclosures so that you don't end up presiding over cases where you have a financial or other conflict."

The Center for Public Integrity uncovered Hill's conflicts by examining the [three most recent years](https://www.publicintegrity.org/2014/04/22/14615/what-do-your-federal-appellate-judges-own) (<https://www.publicintegrity.org/2014/04/22/14615/what-do-your-federal-appellate-judges-own>) of financial disclosure reports filed by 255 of the 258 judges who sit on the nation's 13 appellate circuits. In all, the Center identified 24 cases where judges owned stock in a company with a case before them. In two other instances, judges had financial ties with law firms working on cases over which they presided, bringing the total to 26 conflicts.

After the Center notified the judges of its findings, 16 judges had letters sent to the parties in all of those cases uncovered by the Center during the months-long investigation. The letters are the first step in possibly reopening the cases.

The violations occurred even though clear rules regarding conflicts of interest exist. Federal judges may not sit on cases in which they have a financial interest, [according to a federal law](http://www.law.cornell.edu/uscode/text/28/455) (<http://www.law.cornell.edu/uscode/text/28/455>). A similar rule is [also in place](http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx) (<http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx>) in the code of conduct established by the court system. Judges have been warned before about participating in such cases. Following [a Washington Post investigation](http://www.washingtonpost.com/wp-dyn/content/article/2006/04/17/AR2006041701296.html) (<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/17/AR2006041701296.html>) in 2006, the courts even added a computerized screening process to help judges avoid conflicts.

Yet the problems continue.

The Center's findings point to a larger issue of accountability — or lack thereof — in the federal court system. Judges face no formal punishment for breaking these rules.

Appellate judges can affect a company's stock price — or even an entire industry sector — with their rulings. They are also far more likely to own stock than the average American, making it all the more important for them to avoid the perception that their holdings could influence their rulings.

Some judges don't own individual stocks at all to avoid the risk of conflicting with their cases. Many judges are extremely careful in reviewing their holdings. Yet the Center's findings show that some judges do not keep track of their own investments, even with the help of computerized databases. Sometimes they have failed to do so repeatedly, like Hill.

"Come on guys, this is your obligation," said Youngblood. "You tell us all the time about ignorance being no excuse."

William G. Ross, a Samford University law professor in Alabama who specializes in judicial ethics, said such failures undermine public confidence in the judiciary.

"Considering the importance of judicial integrity and avoidance of conflicts of interest, I don't think it is asking too much of a judge to expect him or her to know what his or her holdings are," he said. "Even judges with significant portfolios should be familiar with their own holdings."

**Wealthy, Powerful and Unknown**

The Center found that 59 percent of all federal appellate judges reported owning stock, despite the risk that the companies in which they have a financial stake could come before them. By comparison, the proportion of American families who directly own stock is much lower, just 15 percent as of 2010.

That imbalance has grown over the past half-century, according to Ross, the Samford University professor. Like most highly paid professionals in America, federal judges have much larger and more diverse portfolios than they would have had 30 or 40 years ago, he said.



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This week, Kiilu Nyasha takes us into the New Year with some words of wisdom from a woman who's seen decades of what works and what doesn't.

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**FOR NATIVE AMERICANS, A "HISTORIC MOMENT" ON THE PATH TO POWER AT THE BALLOT BOX**

All told, 150 of the judges on the appellate court invested between \$76 million and \$226 million in more than 1,000 corporations in 2012, according to the Center's analysis. Disclosure rules require holdings to be reported in a range.

Among the most commonly held stocks owned by appellate judges were General Electric Co. (at least \$2.5 million), tech giants Intel Corp. (at least \$495,000), Microsoft Corp. (at least \$630,000) and IBM Corp. (\$1.5 million), plus energy heavyweight ExxonMobil Corp. (at least \$3.8 million) — a list that generally dovetails with most commonly held stocks among all investors.

The Center examined the finances of 161 active and 94 senior judges, who also try cases in semi-retirement. The judges must disclose their holdings annually, plus those of their spouses and any dependent children.

Forty-one percent of the judges the Center reviewed have eschewed individual stocks altogether, in some cases to deliberately avoid what one judge called the “mousetrap” of corporate stock ownership, opting instead for generally safer, if potentially less lucrative, investments such as mutual funds, bonds or real estate. Such investments are also less likely to interfere with a judge's day job.

Unsurprisingly, judges who did not report owning individual stocks were less wealthy, on average, than their stock-owning counterparts.

The median value of a non-stockholding judge's investments was between \$498,000 and \$1.3 million compared with stock-holding judges, who reported between \$1.4 million and \$4.2 million.

Total reported assets, including stock and other investments, for all the judges were between \$585 million and \$1.8 billion, according to the Center's calculations.

The easiest fix to the conflict of interest problem would be to ban judges from owning stock, but that would be “an overreaction,” [said Stephen Gillers](https://its.law.nyu.edu/facultyprofiles/profile.cfm?section=bio&personID=19943) (<https://its.law.nyu.edu/facultyprofiles/profile.cfm?section=bio&personID=19943>), a New York University law professor who specializes in legal ethics.

“It would be a high price to demand of people who go on to the bench that they limit their investments to government securities and mutual funds,” he said.

For their work in the courts, federal appellate judges earn \$211,200 a year, even in retirement, a salary far greater than the average American family, which pulls in roughly \$52,000 a year. Still, that's relatively low compared to what a top-notch lawyer can make in the private sector.

Appellate judges' wealth is matched by their power. Appointed for life, federal judges are an elite population removed from the general public by demographics, academic achievement and professional status. They are mostly male, mostly white and mostly 65 or older. Roughly one in five federal appellate judges graduated from Ivy League law schools, according to the Center's analysis of Federal Judicial Center data.

That says nothing of their influence on the bench. Appeals court judges can uphold or strike down a president's signature health care law, determine [how universities admit students](http://www.nytimes.com/2013/11/14/us/texas-universitys-race-admissions-policy-is-debated-before-a-federal-court.html) (<http://www.nytimes.com/2013/11/14/us/texas-universitys-race-admissions-policy-is-debated-before-a-federal-court.html>) and even [change the way the Internet works](http://www.washingtonpost.com/blogs/the-switch/wp/2014/01/14/d-c-circuit-court-strikes-down-net-neutrality-rules/) (<http://www.washingtonpost.com/blogs/the-switch/wp/2014/01/14/d-c-circuit-court-strikes-down-net-neutrality-rules/>). In the coming months, they will likely play a major role in determining whether same-sex marriage becomes legal nationwide.

“They are the final arbiters in all but the tiny handful of cases that the Supreme Court takes,” said Arthur Hellman, a University of Pittsburgh law professor and an expert on the federal court system.

They're also on deck to fill vacancies on the U.S. Supreme Court.

But despite their considerable influence, appeals court judges are largely anonymous to the American people — even to many lawyers. News stories sometimes neglect to name the judges who participate in panels that strike down or uphold multimillion-dollar verdicts.

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"They are largely unknown," said Hellman, noting that most Americans couldn't identify which circuit their state is in. "And even a pretty savvy lawyer would be hard-pressed to identify more than two or three of the judges."

Still, even their less-influential decisions that never make headlines can mean the world to the parties involved.

### Clean Hands?

To save his home, Mountaga Bah needed to win a legal battle with a banking giant.

Faced with the threat of foreclosure, Bah and his wife sued Wells Fargo Bank beginning in 2008, claiming that the bank engaged in predatory lending when it added a second mortgage to the Bowie, Md., house where they live with their three daughters.

Wells Fargo, his original complaint alleged, "took advantage" of Bah — a native of the West African nation of Guinea, who was not fluent in English — by failing to ensure that he would be able to afford the monthly mortgage payments. The complaint alleged the bank's lax underwriting meant it lacked "clean hands."

In 2010, a three-judge federal appellate panel confirmed a district court order in favor of Wells Fargo, dismissing Bah's claims.

At the time, 4th U.S. Circuit Court of Appeals Judge Barbara Keenan owned stock in the bank.

"I couldn't believe it," Bah told the Center after he learned about the judge's conflict of interest in March. "That's not right."

Bah and his family have been able to stay in the house up until now in part because he filed for bankruptcy in 2009. But he struggles to keep up with mortgage payments to Wells Fargo and now questions the outcome in the case that had been his chance to keep his family home.

"Why she did this?" he said.

Keenan did not comment directly on the Bah foreclosure case, but the clerk of the appeals court, Patricia S. Connor, wrote in a letter that the judge was unaware of the conflict due to a "mistake in the judge's office at the time the case was assigned."

Connor noted that the value of Keenan's holdings in Wells Fargo was \$1,900.

Judges who own even one share of stock in a company that appears before them in court are required to disqualify themselves, according to the law.

Stock ownership accounted for 24 of the 26 conflicts that sparked letters from the courts to the parties in the cases where a conflict arose.

Some of the judges in those cases owned as few shares as Keenan while others may have owned as much as \$100,000, or possibly more because some did not report value ranges for their stocks as required.

Ninth U.S. Circuit Court of Appeals Judge Jay Bybee

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The remaining two conflicts the Center uncovered involved financial ties to law firms that tried cases before them, including the case of 9th U.S. Circuit Court of Appeals Judge Jay Bybee.

After becoming a judge, Bybee received more than \$78,000 worth of legal services from 2009 through 2012 from Davis Polk & Wardwell LLP to defend him for actions in his prior job where he signed the so-

called “torture memos” for the Bush administration’s Justice Department. The memos justified the controversial interrogation method of “waterboarding.”

Despite the help, he did not step aside in a 2010 case of a Guatemalan woman who sought asylum under the Convention Against Torture even though she was represented by a lawyer from the firm. The three-judge panel, including Bybee, affirmed the Justice Department’s denial of asylum, thus ruling against the firm that helped him. He acknowledged his failure to recuse himself in a letter sent to the parties in the case after the Center brought it to the court’s attention.

In addition to the 26 conflicts acknowledged by the judges, the Center found about 20 more cases that raised questions, but did not require automatic disqualification of judges.

Federal judges are required to monitor their financial portfolios so that they know when to recuse themselves from particular cases. But interviews with judges suggest that they aren’t always familiar with the stocks they own and the financial transactions they make.

“I don’t pay much attention to those stocks because it’s handled by a stockbroker,” said 11th U.S. Circuit Court of Appeals Judge Peter Fay, one of the 16 judges the Center found who wrongly participated in a case. “I don’t know what he’s doing. ... I sit down at the end of the year and say, ‘help me fill out this form.’”

For some judges, their list of investments may fill up just a few lines on their annual financial disclosure form. Other judges, however, have much more complicated portfolios.

Sixth U.S. Circuit Court of Appeals Judge Helene White

ca6.uscourts.gov

One appeals court judge, Helene White of the 6th U.S. Circuit Court of Appeals, filed a financial disclosure in 2012 that included 40 pages of financial holdings and transactions.

The Center found five examples in which White’s holdings overlapped with her caseload. The judge ruled in favor of her financial interests in two of them. Through letters to the involved parties, she admitted to failing to recuse herself in all five of the cases.

One letter said that White did not realize she owned up to \$50,000 in Priceline.com stock when she sat on a three-judge panel in 2012 that [affirmed a judgment \(http://www.ca6.uscourts.gov/opinions.pdf/12a0316p-06.pdf\)](http://www.ca6.uscourts.gov/opinions.pdf/12a0316p-06.pdf) in favor of the company and other travel businesses. The suit had accused the travel companies of violating local tax laws by not charging occupancy taxes on customers who book hotel rooms online. The ruling set a precedent that could affect cases from other cities nationwide.

“I’m not sympathetic to their forgetting to check,” said Tom Fitton, president of the conservative-leaning Judicial Watch, an organization that promotes transparency in government. “It’s not that hard to do.”

However small the investment — and however unintentional the errors may have been — conflicted judgments loom large for litigants like the Bahs, whose family home hangs in the balance. And they reflect poorly on a court system that’s expected to uphold the law.

“Clearly it raises questions about impartiality and threatens to damage public perception of judges as fair and impartial,” said Nan Aron, the president of Alliance for Justice, a liberal advocacy group that focuses on the judicial system.

Charles Geyh, an Indiana University law professor who specializes in judicial ethics, agreed that the conflicts present a “perception problem” for the federal courts. But he questions whether a reasonable person would think a judge’s decision on the bench would be swayed because they owned stock in a party — especially if the investment is small.

“It looks bad,” Geyh said. But unless a judge is a repeat offender, “I’m hesitant to refer to it as a significant problem.”

Federal court officials downplayed the Center’s findings.

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