

Complaint No. 04-18-90111, similarly, alleges that the judge's "demeanor and comments in the course of the trial clearly makes [sic] a mockery of the Federal judiciary, engenders disrespect and should be . . . embarrassing. Examples include making frequently inappropriate comments in the presence of the jury, which comments were demonstrably intended to embarrass either the witness for the government or the prosecutors in the case. In so doing, he inappropriately tilts the scales of justice against the prosecution and in favor of the defendant in the eyes of the jury." The complaint speculated that either the judge "has early onset dementia or he fails to understand his role as . . . an impartial arbiter."

Along similar lines, Complaint No. 04-18-90112 accused the judge of "a clear pattern of unethical behavior involving a lack of impartiality. In the course of the jury trial . . . , [the judge] has engaged in bullying behavior, disrespectful conduct, partisan rulings and statements, undignified comments, intemperate conduct and other demeaning conduct toward Assistant United States Attorneys responsible for prosecuting the case." The complaint went on to charge that the judge "was more interested in hampering the prosecution with unreasonable demands for a quick and speedy trial than he was with carry[ing] out a fair trial. The most reasonable explanation . . . is that he deliberately put his thumb on the scales of justice for partisan reasons. A less likely, but entirely possible explanation is that he was subject to other improper, corrupt or illegal influences." The complaint urged that the judge's conduct had violated Canons 1, 2, and 3 of the Code of Conduct for United States Judges.

Complaint No. 04-18-90121 alleged violations of these same provisions, and added that perhaps the judge had also violated the mandate of Canon 5 that a judge should refrain from political activity. According to the complaint, the judge “has acted in a manner inconsistent with the civility and the impartiality required of a federal jurist. He has browbeaten without cause in open court members of the Government’s trial team in a highly publicized and watched case. He has taken a demonstrably palpable hostile position against the Government He has given both the public and the members of the jury the impression . . . that the Government has acted unethically and with questionable cause against the . . . [d]efendant . . . , without reason.”

Reviewing the relevant transcripts in the case, and considering the district judge’s remarks in their overall context, the record does not support the conclusion that the district judge engaged in misconduct. One might say that the judge may have been injudicious in his tone or choice of words, but one cannot say that his comments were so discourteous, uncivil, or “bullying” as to “transcend . . . the expected rough-and-tumble of litigation.” Implementation of the Judicial Conduct and Disability Act of 1980, Report to the Chief Justice of the Judicial Conduct and Disability Act Study Committee (Breyer, J., chair), Appendix E (Committee Standards for Assessing Compliance with the Act), at 147. The judge was sometimes strident with counsel, to be sure, and especially with the prosecution. But judges have wide latitude to manage cases in the way that seems best to them. Moreover, pressing the prosecution to move a case along certainly does not necessarily signal that the trial judge believes the prosecution is wrong or has acted

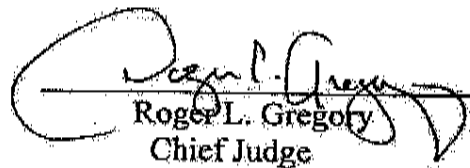
improperly, or that the judge is illicitly attempting to impede the prosecution in the eyes of the jury. These kinds of case-management considerations are directly related to the merits of the judge's handling of the litigation. A judge's approach to them, therefore, is not subject to review through a complaint of judicial misconduct, 28 U.S.C. § 352(b)(1)(A)(ii).

To be sure, especially in a high-profile, politically-charged trial, a judge should take care – with the precepts of Canon 5 of the Code of Conduct for United States Judges in mind – to avoid careless remarks that could foreseeably be interpreted as partisan. In this case, the district judge did not cross the line into partisan political commentary.

The complainants have also failed to present, and the records do not disclose, any evidence of willful indifference to prevailing law or other misconduct. The record does not support the existence of an improper influence upon the judge, mental disability, or “early onset dementia.”

Accordingly, these judicial complaints are dismissed as merits-related and/or lacking in factual support. 28 U.S.C. § 352(b)(1)(A)(ii) & (iii).

IT IS SO ORDERED.


Roger L. Gregory
Chief Judge