

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT  
219 South Dearborn Street  
Chicago, Illinois 60604

October 31, 2008

FRANK H. EASTERBROOK  
Chief Judge

No. 07-08-90100

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant alleges that a federal district judge is mentally incompetent and biased against black litigants.

The evidence offered in support of these serious charges is wholly inadequate to sustain them. Complainant observes that several of the subject judge's decisions have been reversed on appeal, and that black litigants have lost in the district court yet prevailed in the appellate court. These propositions are true of every judge in the circuit (and, I am confident, of every district judge in the country). More than 10% of all appealed cases end in reversal (at least in part). These reversals are an inevitable outcome of legal uncertainty, augmented by the limited time that judges have to study the law and come to a decision. Reversals do not establish any judge's incompetence. (Complainant does not contend that the subject judge's reversal rate is unusually high.) And because a substantial fraction of all litigants belong to minority groups, it is inevitable that some of the district judge's errors concern them.

That decisions adverse to black litigants have been reversed on appeal no more shows that the district judge is biased against blacks than the fact that decisions adverse to white litigants have been reversed on appeal shows that a judge is biased against whites. What would be necessary to raise an inference of bias (in the absence of direct evidence, such as statements characteristic of prejudice) is evidence that the judge's decisions disproportionately favor one class of litigants, by more than the laws of chance allow. See *United States v. Armstrong*, 517 U.S. 456 (1996). Complainant has not subjected the district court's decisions (and reversals) to statistical analysis.

Several passages in the complaint imply that complainant sees bias in even the ordinary performance of the judicial role. Complainant asserts, for example, that it is discriminatory to enforce federal statutes forbidding a felon to possess a firearm that has moved in interstate commerce. The complaint asserts that "the modern federal gun

laws, as any student of history can plainly see, are merely a re-enactment of the infamous 'Black Codes' that existed prior to the Civil Rights Act of 1964." The firearm statutes are no such thing. Black codes explicitly classified by race. The gun laws do not classify by race, which does not play any role in their enforcement. I am not aware of any evidence that these statutes have a disparate impact by race, either, though for reasons given in *Armstrong* a disparate impact is not enough to preclude enforcement. See also *Washington v. Davis*, 426 U.S. 229 (1976). The Supreme Court has rejected constitutional challenges to these statutes, see *Perez v. United States*, 402 U.S. 146 (1971), and it remarked in *District of Columbia v. Heller*, 128 S. Ct. 2783, 2816–17 (2008), that nothing in that opinion cast any doubt on the longstanding prohibition against felons possessing firearms. It is the federal judiciary's duty to enforce valid statutes. A judge's performance of duty cannot be characterized as misconduct in office.

This complaint is dismissed because the evidence it presents is insufficient to raise an inference of improper behavior. See Rule 11(a)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.