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Op-Ed: There must be no 'commending' wayward judges

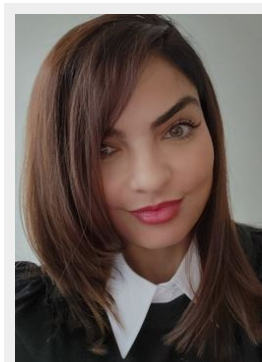
Andi Geloo // November 27, 2023 // 9 Minute Read



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As a criminal defense attorney in Fairfax County, I regularly appeared before substitute judges Michael Cantrell, Mitchell Mutnick and Richard "Butch" Horan while they were on the bench.

What I saw in their courtrooms raised questions with me, and I embarked on a journey, holding these judges accountable for their disturbing courtroom antics. My experience reveals the challenges we still have in Virginia making certain that our judges engage in best practices in the courthouse. One of the judges, Judge Horan, had actually been forced to retire in 2004 but had returned as a substitute judge, presiding in criminal court for an additional 15 years. In early 2022, the other two also had to retire due to improper, abusive, and untoward behavior but they were also allowed to serve as substitute judges.



Geloo

In August 2022, I wrote an op-ed for *Virginia Lawyers Weekly*, "It's time to get 'wayward judges' off courtroom benches." What I learned was that even after holding these judges accountable, there are still stealth ways that they maintain their status in our legal communities, even going so far as one legislative effort earlier this year that attempted to "commend" one of these judges.

I was motivated to write my op-ed because I had witnessed Judge Horan mistreat a young woman, Amanda, in courtroom 1A of the Fairfax County General District Court. She had survived a traumatic upbringing, repeatedly raped by her foster father as a toddler. She continued to face unimaginable abuse until she finally ran away. Sadly, once free from her foster father, she married an abusive man whom she later divorced. At the time of her interaction with Judge Horan, she was struggling as a young single mother of two children. She stood before Judge Horan and explained to him gently that she couldn't afford a lawyer because she had lost her job in the first months of the pandemic. In a disturbing display of unprofessionalism, Judge Horan refused to appoint her a lawyer — denying the young woman her constitutional right — and proceeded to mock her.

"I am so sick and tired of people like you always requesting an attorney," he told her, continuing, "I see 'Help Wanted' signs everywhere." Judge Horan gave her a two-month extension to find a job, warning that she also had to hunt for a lawyer she would have to be able to afford to pay.

In the courtroom, I watched stunned. As a practicing criminal attorney, I had unfortunately seen this kind of judicial disrespect and miscarriage of justice. Immediately, I sent an email expressing my concerns to Chief Judge Lisa Mayne, who oversees judges in the General District Court. Later, I found and contacted Amanda and represented her pro bono. Her case was dismissed.

Judges who steer off track are called "wayward judges." There isn't a lot of documentation about them being held accountable for their behavior but there is some. In 2008, the National Law Journal published a piece, "Little public airing of abusive judges," noting that the 5th U.S. Circuit of Appeals hired two psychiatrists to observe a federal judge who "terrorized lawyers." In 2021, the *ABA Journal* reported that the Arkansas Supreme Court suspended a judge and ordered him to hire a counselor or life coach for "rude and intimidating treatment of public defenders in the courtroom." Then, last year, a state court judge in West Virginia "whipped out his hand gun, waved it in the air and left it on the bench with the barrel pointing directly at the corporate lawyers who had irritated him," according to [an account](#).

It is often only public scrutiny that brings about accountability. In 2004, Washington Post reporter Chris L. Jenkins wrote that Judge Horan had disturbing disapproval ratings among Virginia lawmakers, and Judge

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Horan was forced to retire soon after the Washington Post published its story. However, he retained his ability to preside as a substitute judge in the courtroom for the next 18 years.

Last year, I noted in my op-ed:

“Judge Horan was not alone in being rewarded for deplorable courtroom behavior. Fairfax County General District Court Judges Michael Cantrell and Mitchell Mutnick share the same judicious temperament as Judge Horan. Like Horan, both judges have received numerous complaints over many years. In March, the Virginia legislature also censured Fairfax County General District Court Judges Michael Cantrell and Mitchell Mutnick for being abusive toward citizens. They had both received embarrassingly low scores on their Judicial Performance Evaluations and complaints from court staff, citizens, lawyers and lawmakers. The Virginia legislature did not reappoint either Mutnick or Cantrell and, instead, forced them to resign at the end of their respective terms. Based on performance evaluations, Cantrell scored last among 50 Virginia judges, and Mutnick scored especially poor for ‘patience,’ ‘respect,’ and ‘bias and prejudice.’ These privileged ‘good ole’ boys’ enjoyed enormous, unbridled power and advantages throughout their lives and took almost a perverse pleasure in disrespecting the underprivileged and those they viewed as weak and beneath them.”



At the time, Virginia Code § 16.1-69:35(b) allowed the chief judge of the General District Court to designate a retired district judge to sit as a substitute judge and preside over matters, even if serious allegations of unsuitability were raised against that judge. This law was being used to circumvent and undermine the actions of legislators who have ousted disgraced judges. However, there was a way to fix the problem created by this law. Chief Judge Lisa Mayne had the power to prevent wayward judges from sitting as substitute judges — she simply chose not to do so.

While these judges’ courtroom antics and inability to maintain judicial temperament had been widely criticized by lawmakers, lawyers, law enforcement and citizens, Chief Judge Mayne inexplicably continued to permit Judges Horan, Cantrell and Mutnick to sit as substitute judges.

Chief Judge Mayne was not ignorant of the charges that had repeatedly been leveraged against these three judges over the years, even in their roles as substitute judges. However, she chose to ignore them and further continued to protect this privileged group of men and their long standing relationships with her. Unfortunately, the victims of these privileged relationships were innocent citizens like my pro bono client, Amanda.

Thankfully, our elected officials in the Virginia General Assembly thought differently.

This past legislative session of the 2022-2023 Virginia General Assembly, I was proud to help lead a process that enlightened our legislators about the abuse that had been taking place in Fairfax County General District Court under the current leadership, sharing my op-ed and educating lawmakers one-on-one. The session adjourned sine die in March. While I was unsuccessful in my efforts to dismantle relationships on the bench that permitted and rewarded privileged abuse of power by these three judges, I was successful in convincing our delegation that our community deserves better.

In Richmond, I argued that it’s not just privilege but subterfuge at play when judges are forced to retire due to their abominable courtroom behavior but are then given the ability to return through a back door and continue to hold such complete and arbitrary control over our community. And what happens to the victims of this subterfuge — the citizens we serve? Wayward judges are able to make life-altering decisions for people who are invariably at their most vulnerable. Those who appear before these sub-judges are victims of the same dangerous misconduct that led to judges like Judge Horan being relieved of their duties. This is not how justice is served.

If people like Judges Mutnick, Horan and Cantrell are permitted to serve even after being ousted by the very body they now wish to seek recertification from, the process to reappoint or not reappoint becomes nothing more than a vacuous and corrupt process.

Sharing my op-ed, Virginia Delegate Kaye Kory agreed and [publicly noted](#), “Judges we have forced to retire due to unacceptable bench behavior should not be appointed as substitutes. #waywardjudges.” With this public affirmation, it was becoming clear that lawmakers were not going to tolerate the tyranny and nonsense permitted in the Fairfax County General District Court.

In January 2023, in response to my op-ed, Virginia Senator Chap Petersen and I, supported by the chair of the Judiciary Committee, Senator Creigh Deeds, and the entire Senate Judiciary Committee, presented a bill, SB 843, that prevented ousted judges from sitting on the bench at all, bridging the gap between a mere concept and the goal the legislative body sought when it removed these terrible judges from office. The community

agreed unanimously that, once judges are removed, they should not be permitted to get their jobs back because of a loophole. Recognizing that substitute judges are just as powerful as sitting judges in authority, our vision sought to prevent further victimization of community members at the hands of the judges who had previously been justifiably removed.

Thanks to this vision, there is momentum for the idea, as voiced by Senator Deeds, that there should be greater scrutiny of retired judges who have failed to be reelected before those judges are allowed to do substitute work. To that end, these lawmakers now require that every judge be scrutinized for their actions before they are permitted to sit as a substitute judge.

Shockingly, it was during this same session in Richmond that I witnessed three ousted waywards (Judges Mutnick, Cantrell and Horan) appear with the audacious intent of becoming certified as substitute judges under the new law. Having clearly demonstrated a disrespect for citizens with their tyranny, they still sought reappointment. The idea was preposterous to me. Thankfully, now without protection from the chief judge, these three judges failed miserably.

With a few calls and texts from my cell phone, I harnessed critical bipartisan support from important community leaders and lawmakers for the effort. Then, on Feb. 13, Senator Petersen got a unanimous vote in the Senate Judiciary Committee in favor of uncertifying all three judges. On Feb. 17, Delegate Marcus Simon did the same in the House, sending a strong message that privileged relationships were no longer going to be protected – that Virginia will no longer be ruled by wayward judges whose fitness to sit on the bench has already been clearly shown by our legislature to be lacking. The reign of terror that had existed in Fairfax County for decades ended. Judges Michael Cantrell, Mitchell Mutnick and Richard “Butch” Horan will never sit as judges again.

Sadly, days earlier, in a stealth move on Jan. 23, 2023, a Virginia senator introduced [Senate Joint Resolution No. 279](#) “commending” Judge Mutnick, one of the ousted judges. He had become a judge in 2004 through an alleged close family connection he had with former State Senator Joseph V. Gartlan Jr., when he was neither “highly recommended” or even “recommended” by the Fairfax Bar Association judicial screening committee and was outvoted by other judicial candidates the year he ran for judge. This commendation was done through a block vote and other than the one Virginia senator who introduced the resolution very few people read the commending resolution. In fact, the chair of the Senate Judiciary, Senator Deeds, was not even aware that Judge Mutnick was being given a commendation. Even members of the Fairfax Delegation, including Virginia Delegate Marcus Simon, said that they were not aware of this commendation.

Former member of the House of Delegates Mark Levine told me, “... apparently no one noticed this particular commendation. Unless someone brings a bad commendation to our attention, we rarely touch them I remember why we didn’t renew Cantrell and Mutnick’s terms as judges, and had I been in the legislature at the time and noticed Mutnick’s commendation, I would have asked to remove them from the bloc for a separate vote. I think that had that happened, he would have been rejected.”

When other lawmakers and flabbergasted community leaders asked why a commendation had been given to a judge who was removed and forced to retire due to bad behavior – a judge ranked fifth from the last – the introducing senator’s response was not that he deserved it, but that, “I don’t care. I give them to every single judge that retires in a circuit I represent. I have been doing it for years.”

Thankfully, Senator Petersen showed integrity by not following the policy of this one commending senator and chose to not commend Cantrell, also his constituent. Other senators referred to Mutnick’s commendation as a “meaningless affirmation.”

I disagree. Any affirmation of wayward judges is very meaningful and sends a message to the community that we cannot hold our own accountable when they become irresponsible and wayward in the court of law. There is still work to be done to rid our system of these well connected, privileged “wayward judges,” but we are fortunate to have lawmakers and attorneys in our community who are willing to take an important and morally courageous stand for justice.

Andaleeb “Andi” Geloo is a first-generation immigrant Muslim, lawyer and author of “Andi’s Law,” which expanded the rights of citizens seeking protection from defamation. She earned her law degree from George Washington Law School with high honors and practices law in Fairfax County. She also covers pro bono matters for underprivileged families throughout Virginia and can be reached at Andigeloolaw@gmail.com.

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