

United States Senate
WASHINGTON, DC 20510

March 21, 2019

James C. Duff
Director
Administrative Office of the U.S. Courts
One Columbus Circle N.E.
Washington, D.C. 20544

Dear Director Duff,

Thank you for your response to our letters on judicial ethics for training programs run by organizations with particular political or ideological affiliations. We appreciate the seriousness with which you considered this issue and your quick action issuing guidance on the topic. As you may know, the Heritage Foundation held an incoming judicial law clerk training program in February prior to the new guidance being issued. We ask that you review this and any similar programs to determine whether participation complies with codes of conduct for judges and judicial employees.

Opinion No. 116: Participation in Educational Seminars Sponsored by Organizations Engaged in Public Policy Debates expands on a number of previously issued advisory opinions. It also describes particular situations when participating in an extrajudicial event risks violating the Code of Conduct for United States Judges and Judicial Employees. For example, it states that “concerns are raised when the [event] sponsor is regularly engaged in contentious public policy debates.” Where participation “could suggest that a proposed decision may be influenced by the relationship with the advocacy group, participation is likely inappropriate.” And with regard to funding, “where the funding sources are unknown or likely to be from sources engaged in litigation or public advocacy, judges and judicial employees should not participate.”

Heritage’s mission is to advance conservative policies based on limited government and “traditional American values” in the political arena and the courts. It has been heavily involved in contentious public policy debates. Among other things, it has advocated for repealing reproductive rights; dismantling affirmative action policies; limiting voting rights; and restrictive immigration policies.

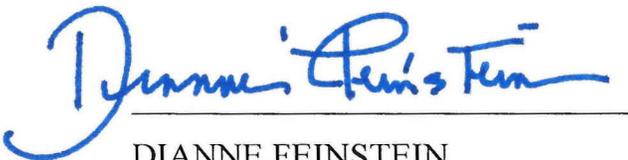
We seriously question this organization’s decision to hold a training program which:

- Originally required participants to pledge secrecy and promise not to use their training “for any purpose contrary to the mission or interest of the Heritage Foundation” (*New York Times*, Oct. 18, 2018);
- Offered sessions entitled “Making Originalism Empirical” and “Textualism & Canons of Statutory Construction,” both suggestive of particular methods of constitutional and statutory interpretation;
- Held a session discussing immigration law *on the very same day* that the Heritage Foundation released a report entitled “An Agenda for American Immigration Reform”;
- Targeted employees of the federal judiciary, who should be committed to impartiality and nonpartisan application of the law; and
- Was funded by unknown “generous donors” who paid for participants’ travel, accommodations, meals, and tuition.

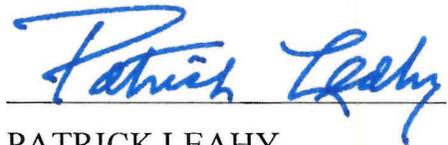
We write today to ask whether any judge or judicial employee (either current or future) sought advice on attending that program and, if so, what conclusion you reached. To the extent you have not evaluated this program and others like it, please do so and advise us of the results of your investigation.

Thank you for your attention to this important matter.

Sincerely,



DIANNE FEINSTEIN
Ranking Member



PATRICK LEAHY
United States Senator



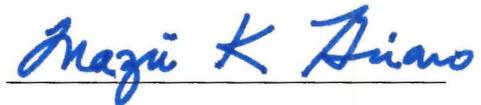
RICHARD J. DURBIN
United States Senator



SHELDON WHITEHOUSE
United States Senator



RICHARD BLUMENTHAL
United States Senator



MAZIE K. HIRONO
United States Senator

cc: The Honorable Lindsey O. Graham, Chairman
The Honorable John G. Roberts Jr., Chief Justice of the United States