

No. 22636 -- In the Matter of: Ira W. Atkinson, Jr.
Magistrate for Wood County

Neely, C. J., dissenting:

Serving in elected public office these days is a high risk undertaking. Indeed, the ability of President Bill Clinton to govern has been substantially undermined because of allegations concerning land deals in Arkansas and sexual overtures to women.

In general, the old rule that where there's smoke, there's fire has a certain empirical validity, but increasingly the criminal process is being used for vengeance or as a substitute for the elective process and the number of fireless smokings is going up accordingly.

I have no idea whether Magistrate Atkinson is guilty of the offenses as alleged; however, I do know that the likelihood of totally groundless, frivolous charges being leveled against him exclusively because he is an elected official clothed with substantial power at the local level is a great deal higher than it is with ordinary citizens.

Magistrate Atkinson is innocent until proven guilty. When carpenters, garage mechanics, short order cooks, doctors, or even lawyers are indicted, they are not required to stop doing their daily work pending the glacial pace of the judicial process. There is some risk that if we suspend Magistrate Atkinson as we must, and he is convicted, that the State will then be out whatever money we may have paid him for a year. However, the risk of loss is much greater on Magistrate Atkinson's side: if Magistrate Atkinson is innocent and we deprive him of his livelihood for between six months and a year, he may be destitute! But the only reason that Magistrate Atkinson can't work pending his trial is that higher standards of propriety are demanded of the judiciary than are demanded of carpenters, short order cooks, etc. That's a perennial judicial problem, but whatever loss might attend our suspension of judicial employees with pay rather than without pay ought to be a routine cost of doing business. I do not believe that this Court should be party to possible schemes to destroy elected officials until there is a jury conviction.

¹It is appropriate to ask what abject poverty does to the plea bargaining process. Are we placing extraordinary pressure on Magistrate Atkinson to plead to something?

The provision for allowing a magistrate to be suspended without pay was inserted into the Code of Judicial Conduct in 1980 when I was first Chief Justice. The purpose of my proposal of that amendment was to allow this Court greater leverage with regard to magistrates who refused to follow the direction of higher courts.

Indeed, when a magistrate fails to follow the direction of either this Court or his or her supervising circuit judge, I would NEVER be reluctant to suspend without pay. Indeed, the availability of that remedy in an administrative context allows us the luxury of never needing to use the remedy.

Perhaps when a magistrate or circuit judge is caught so much in flagrante delicto that his or her guilt is immediately beyond doubt that suspension without pay is warranted. However, short of such circumstances, it does not enhance the independence or integrity of the judiciary to allow the judiciary's enemies and detractors one more weapon that invites abuse.

I am authorized to say that Justice Cleckley joins this dissent.

²As, for example, a magistrate caught with a ski mask and a double barrel shotgun standing with two garbage bags full of money in the middle of the lobby of WesBanco Fairmont.