

Testimony of Kathleen Clark
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before the
House Committee on Oversight and Accountability
on
“Unsuitable Litigation: Oversight of Third-Party Litigation Funding”
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Chairman Comer, Ranking Member Raskin, and Members of the Committee: Thank you for inviting me to testify today.

I am here to talk about ethics. As a law professor and a lawyer, most of my work over the last thirty years has focused on legal and government ethics. I have taught courses on these subjects and written articles about them; conducted ethics trainings; and provided ethics advice to government agencies and officials.

This hearing is about third party litigation funding, a practice that currently affects a small (but growing) portion of court cases. As a matter of legal ethics, third party litigation funding does pose ethical risk, such as conflicts of interest. At the same time, this funding mechanism can benefit clients, particularly those who would not otherwise be able to access our courts.

While ethics issues do arise in this context, in my professional opinion, they are nowhere near the top of the list of significant ethics concerns facing our courts. Instead, I would place at the top of that list the ethics crisis currently facing the U.S. Supreme Court.

According to media reports, certain Supreme Court Justices have repeatedly accepted lavish gifts from wealthy patrons, refused to recuse from cases affecting those patrons, and failed to disclose those gifts and other transactions as required by the Ethics in Government Act. The Court’s refusal to address these revelations -- and its failure to incorporate basic and widely

adopted ethical safeguards – indicate that the Supreme Court has a very significant ethics problem.

Let me provide just a few highlights.

Supreme Court Justice Clarence Thomas accepted extravagant gifts from Harlan Crow, including a

- an Indonesian vacation, valued at hundreds of thousands of dollars, and
- private school tuition (valued at tens of thousands of dollars) for Thomas’s grandnephew, for whom Thomas, as legal guardian, was responsible.

In addition, Justice Thomas allowed Harlan Crow to purchase several properties that Thomas co-owned, including the home where Thomas’s mother lives.

Even more troubling, Thomas failed to disclose these gifts and the property transaction, as he was legally required to do by the Ethics in Government Act. In fact, Justice Thomas has filed inaccurate financial disclosures more than a dozen times, correcting those disclosures only after journalists or non-government organizations have publicized his inaccuracies.

And Justice Thomas is not alone. Justice Alito also has accepted private jet flights, for example from billionaire financier Paul Singer, and then failed to disclose those flights, as required by law. After accepting these private jet flights, Alito then failed to recuse from a Supreme Court case involving Singer.

These are not just missteps by individual justices. Instead, this pattern of behavior reflects an *institutional* failure by the Court itself, which has refused to adopt measures that could prevent ethical missteps and hold accountable those who violate ethics standards. The court does not even have the same ethics standards that apply to lower court judges.

Rather than vilifying individual justices, I want to focus on the need for an institutional response: the need for robust ethics standards and accountability mechanisms to apply at the Supreme Court. Our nation deserves to have a Supreme Court that is worthy of the public's trust, and Congress has the constitutional authority to help make that happen.

Thank you for considering my testimony. I look forward to your questions.