

## Federal judge: ‘Bullying’ by Florida JQC threatens independence of state judges

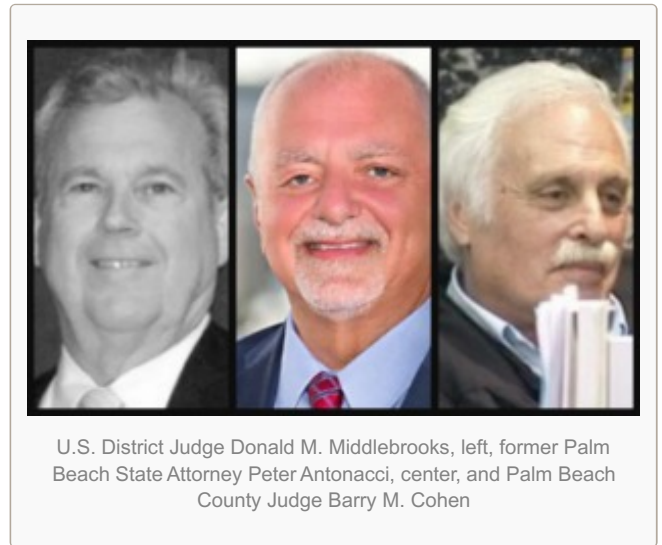
By Dan  
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By Dan Christensen, BrowardBulldog.org

In unusual public criticism, a South Florida federal judge has accused the state’s Judicial Qualifications Commission of “bullying” that threatens the independence of the state’s judges.

U.S. District Judge Donald M. Middlebrooks, in a May 30 speech to lawyers in West Palm Beach, slammed the JQC for what he said was the agency’s misguided prosecution of Palm Beach County Judge Barry M. Cohen for speaking out against perceived legal injustices, including racial profiling.

“The JQC’s actions are wrong, and if continued, will damage the independence of the judiciary,” Middlebrooks said, according to a copy of his speech obtained by *BrowardBulldog.org*.



Noting it was “hard to fault the Florida Supreme Court because Judge Cohen agreed to the reprimand” to put the matter behind him, Middlebrooks nevertheless took to task Florida Supreme Court Chief Justice Ricky Polston. On April 29, Polston administered the high court’s public reprimand of Palm Beach County Judge Barry M. Cohen, calling it “a sad day for the entire judiciary.”

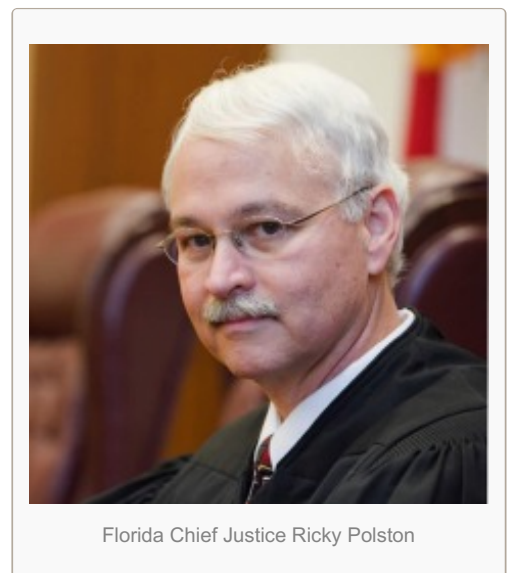
“Judge Cohen was reprimanded for speech – statements he made about matters of public concern – despite agreement that none of his rulings or decisions was ever adversely affected,” said Middlebrooks, who titled his speech “[A Sad Day for the Judiciary](#).”

Polston, who recently applied to become the next president of Florida State University, did not respond to a request for comment.

Middlebrooks noted the JQC accused Cohen of undermining his role as a neutral and detached magistrate by making statements about race and poverty, minimum mandatory sentences and the impact of drug laws on the incarceration of minorities.

“But what is a ‘neutral and detached magistrate?’ Is it a judge who believes in the status quo? One whose views are acceptable to the JQC? A judge whose mind is an empty slate? Or just one who remains silent?” asked Middlebrooks.

“This is dangerous ground,” he said. “The JQC’s actions strike at the heart of what it means to be a judge in a democracy.”



The accusations arose in 2012 when then-interim State Attorney Peter Antonacci sought to force Cohen's recusal from a first-degree murder case for allegedly biased statements that included criticizing "the prosecution decisions of the State Attorney's Office."

According to Middlebrooks, unhappy prosecutors compiled a file on Cohen "based on a handful of statements going back over several years," including remarks he made at a symposium on racial profiling and "statements taken out of context from judicial orders where, while expressing reservations about police conduct, he actually ruled for the state."

But Cohen, a judge for more than 23 years, did not recuse himself. So prosecutors gave the case to Attorney General Pam Bondi's office to appeal. The 4<sup>th</sup> District Court of Appeals bounced the matter, finding no merit in the state's arguments.

Middlebrooks called it "particularly troubling" that a complaint with the same allegations was then filed with the JQC by a "disgruntled litigant" – "reportedly... the acting State Attorney himself."

"How can the JQC allow itself to be used in this fashion?" asked Middlebrooks, noting that while Cohen enjoys an excellent reputation he does not know him personally.

Antonacci, appointed by Gov. Rick Scott, served 10 months before returning to Tallahassee to work as Scott's general counsel in January 2013. The governor's office, noting that JQC complaints are confidential, said Antonacci would not comment.

Mike Schneider, the JQC's executive director and general counsel, defended his agency's handling of the case, calling Judge Cohen's actions "inappropriate" and a "violation of the (judicial) canons."

"There's more than just free speech here. Judges recognize when they accept the office that they also accept restrictions on their behavior that most people would consider onerous," Schneider said.

In his speech to the Palm Beach Federal Bar Association, Middlebrooks cited U.S. Supreme Court Justice Antonin Scalia on what it means for a judge to be impartial – a lack of bias for or against any party to a proceeding. Impartiality, however, doesn't mean a judge cannot have opinions about legal issues, or speak out about matters affecting the justice system, he said.

"An empty slate shows a lack of qualification, not impartiality," said Middlebrooks. "Judges are not robots spitting out rulings, and we shouldn't pretend that they are."

One of the JQC's charges against Cohen was that he handed out a copy of a *New York Times* editorial about sex offender registration laws to a prosecutor and a defense lawyer outside the presence of a jury during a case.

"The notion that a judge can't hand lawyers a newspaper article without diminishing respect for the justice system strikes me as silly," Middlebrooks said.

Middlebrooks cited the movie *Judgment at Nuremberg*, about the war crimes prosecution of German judges who remained silent about the perversions of justice under the Nazis.

"Must (judges) sit silent until a law or the impact of a law is so repugnant that the choice is to resign or take part in injustice – or can a judge sound the alarm?" Middlebrooks said.

Middlebrooks, who also sits in West Palm Beach, said he wished he'd been among the group of Palm Beach area judges and lawyers who traveled to Tallahassee "to stand with" Cohen at his reprimand.

"I think he deserves our respect, our support, and our thanks," concluded Middlebrooks. "Most of all, we should work to stop targeted punishment of judicial speech. If this type of bullying continues, judges in Florida will lose their independence, and that will be a sad day, not only for the judiciary, but also for those who depend upon it for just

decisions.”

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