



Written by [R. Cort Kirkwood](#) on January 19, 2023

## SCOTUS Probe of Disastrous Dobbs Decision Leak Fails; Culprit Still at Large

The U.S. Supreme Court's investigation to discover who leaked a draft of its [Dobbs v. Jackson Women's Health Organization](#) decision, which overturned 1973's unconstitutional *Roe v. Wade* decision that has partly led to the [murder of 63 million unborn children](#), turned up nothing.

In the eight months after someone leaked the decision to *Politico*, [a report](#) from the Supreme Court Marshal says, investigators couldn't finger a culprit. Not one of the Court officials confessed to investigators, or apparently, squealed on a colleague.



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So the Court has a problem with a leaker or leakers, but stool pigeons won't be found.

Former federal judge and Homeland Security Secretary Michael Chertoff reviewed the findings and recommended that the Court restrict the distribution of sensitive documents and information stored on electronic devices.

### The Probe

Justices circulated the majority opinion on February 10, 2022, and *Politico* published it on May 2, the report explains, before detailing the rules and regulations that govern Court employees, law clerks, and even the justices.

The Court's confidentiality rules, its human resources manual, and the codes of conduct for law clerks and judges, as well as seven federal statutes, regulate or forbid Court personnel from releasing confidential Court information. A decision awaiting release is one of those confidential documents.

Upshot of the report: A leaker is on the loose.

"It is unlikely that the public disclosure was caused by a hack of the Court's IT systems," and investigators did not uncover "evidence that an employee with elevated IT access privileges accessed or moved the draft opinion," the [report says](#):

They found that certain employees emailed the draft document to other employees, with approval. There was no evidence discovered that anyone emailed the draft opinion to anyone else, although technical limitations in the Court's computer recordkeeping at the time made it impossible to rule out this possibility entirely.

The investigators were not able to readily search and analyze all event logs because at the time the system lacked substantial logging and search functions.



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That said, in addition to the justices, 82 employees “had access to electronic or hard copies of the draft opinion,” which, on February 10, was emailed to “a distribution list consisting of law clerks and permanent personnel who work on opinions.” The report continued:

The vote memos were also subsequently sent to this list. There were 70 unique, active users on the distribution list. On March 22, eight more permanent personnel received the draft opinion via email. The investigators also found that two additional permanent personnel accessed the draft opinion electronically by separate means. In sum, the investigators determined that 80 personnel received or had access to electronic copies of the draft opinion.

Hard copies also went out; 34 staffers printed hard copies, and some printed more than one.

Still, the report continues, “there is not adequate evidence, even applying a preponderance of the evidence standard, to conclude that any particular individual was responsible for the disclosure.” Although “a few circumstances justified closer inspection,” the report does not identify those staffers who received “additional scrutiny.”

Logs of deskside printers turned up nothing; ditto for Court-issue laptops or mobile devices. Nor did investigators find incriminating information on personal devices. Employees voluntarily submitted phone and text logs and billing statements.

Noting that all employees agreed to be interviewed, investigators tried to discover whether “an employee might have researched the legality of disclosing confidential case-related information — possibly indicating the person’s intention to do so or concern about having done so after the fact,” the [report continues](#). That, too, was a dead end.

Every employee signed a sworn affidavit that he or she did not leak the decision, although a “few ... admitted to telling their spouses about the draft opinion or vote count, so they annotated their affidavits to that effect.”

Those disclosures violated Court rules:

Some individuals admitted to investigators that they told their spouse or partner about the draft *Dobbs* opinion and the vote count, in violation of the Court’s confidentiality rules. Several personnel told investigators they had shared confidential details about their work more generally with their spouses and some indicated they thought it permissible to provide such information to their spouses. Some personnel handled the *Dobbs* draft in ways that deviated from their standard process for handling draft opinions.

Investigators did not find behavior that would suggest guilt, however, and “the wide array of public speculation, mostly on social media, about any individual who may have disclosed the document,” including the names of law clerks, also turned up nothing. They even checked connections to reporters, especially those at *Politico*.

“Several law clerks were named in various posts [but in] their inquiries, the investigators found nothing to substantiate any of the social media allegations regarding the disclosure.”



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[And so, the conclusion:](#)

Based on a preponderance of the evidence standard, it is not possible to determine the identity of any individual who may have disclosed the document or how the draft opinion ended up with Politico. No one confessed to publicly disclosing the document and none of the available forensic and other evidence provided a basis for identifying any individual as the source of the document. While investigators and the Court's IT experts cannot absolutely rule out a hack, the evidence to date reveals no suggestion of improper outside access. Investigators also cannot eliminate the possibility that the draft opinion was inadvertently or negligently disclosed — for example, by being left in a public space either inside or outside the building.

### **Grave Assault**

Basically, the report concluded the following:

- too many staffers can access sensitive documents;
- printing and copying documents must be safeguarded;
- destroying those documents is not a secure procedure; information security policies must be updated;
- a universal confidentiality policy on handling opinions and sensitive documents must be drafted; and,
- apropos of the leak, Court “personnel appear not to have properly understood the Court’s policies on confidentiality.”

Nothing more can be done to find the leaker, Chertoff concluded in his review. He recommended restricting the hard-copy and email distribution of documents, using information rights management technology to control the use and distribution of sensitive documents, and limiting access to information on outside mobile devices.

The leak was an “extraordinary betrayal of trust” and “no mere misguided attempt at protest,” the [justices warned](#), and “a grave assault on the judicial process.”

They can't do their jobs if deliberations aren't confidential:

To meet our obligations as judges, we accept submissions from parties and *amici*, we engage advocates at oral argument, and we publish explanations of our final decisions. All of this we do in the open. Along the way, though, it is essential that we deliberate with one another candidly and in confidence. That phase of the judicial process affords us an opportunity to hone initial thoughts, reconsider views, persuade one another, and work collaboratively to strengthen our collective judgment. It is no exaggeration to say that the integrity of judicial proceedings depends on the inviolability of internal deliberations.



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