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October 14, 2007

Circuit Judge Ralph Winter
Chair, Committee on Judicial Conduct and Disability
Office of the General Counsel tel.(202)502-1100
Administrative Office of the U.S. Courts
Washington, D.C. 20544

e-mailed to: JudicialConductRules@ao.uscourts.gov

Re: Comments on draft rules and request for A/V and stenographic recordings of hearing

Dear Judge Winter,

Please find hereunder my comments on the draft rules. I trust they will be included in the record.

Kindly note that I hereby am making a formal request for a copy of the audio/visual and stenographic recording of the hearing on the Committee's draft rules held on September 27, 2007, in the U.S. District Courthouse at 225 Cadman Plaza, in Brooklyn, NY.

Likewise, I respectfully request a copy of the current rules of the Committee and the Judicial Conference for the processing of petitions for review of circuit council orders under the Judicial Conduct and Disability Act.

I am particularly interested in a copy of the rules that, according to the Report of the Proceedings of the Judicial Conference of March 13, 2007, the Judicial Conference requested from the Committee thus:

1. "to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that clarifies the authority of the Judicial Conference to review on its own initiative any Judicial Conduct and Disability Committee decision, including orders granting or denying petitions for review in misconduct proceedings"; id. page 19;

2. "a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that explicitly authorizes the Committee on Judicial Conduct and Disability to examine whether a misconduct complaint requires the appointment of a special committee, upon dismissal of the complaint by the chief judge under 28 U.S.C. § 352(b), or upon the denial of a petition for review of the complaint by the circuit judicial council under 28U.S.C. § 352(c); id. page 20.

I would be indebted to you if you would acknowledge receipt of this letter and the Comments below.

yours sincerely,

Dr. Richard Cordero, Esq.

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October 13, 2007

Comments on the Draft Rules Governing Judicial Conduct and Disability Proceedings

released by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States[1]

pursuant to 28 U.S.C. §358(c) and the request of Chief Justice John Roberts♦

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♦ These Comments are downloadable via http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_draft_rules.pdf

[1] The Judicial Conference of the United States is the Federal Judiciary's highest policy making body. Set up under 28 U.S.C. §331, it is constituted of the Chief Justice of the Supreme Court, the chief judges of the courts of appeals of the eleven numbered judicial circuits, the District of Columbia Circuit, the Federal Circuit, and the Court of International Trade, and a district judge from each judicial circuit.

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I. From the origin of the Breyer Committee to the Draft Rules

1. On May 25, 2004, the Late Chief Justice William Rehnquist announced the creation of a committee to study the implementation of the Judicial Conduct and Disability Act of 1980 (28 U.S.C. §351-364[2]), and appointed Associate Justice Stephen Breyer as its chair[3]. The next day the Chairman of the Committee on the Judiciary of the House of Representative, F. James Sensenbrenner, Jr., commended him therefor while making statements illustrative of those that had forced the creation of the Committee.[4]

2. Indeed, Congress had expressed its dissatisfaction with the way in which the Act was being implemented by the federal judges. The Act set up a system of self-discipline triggered by the filing of a complaint by anybody with the respective chief circuit judge or by the latter himself against any magistrate, bankruptcy, district, or circuit judge –but not justices of the Supreme Court- who has "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts", such as undue delay, bias or prejudice, abuse of judicial power, conflict of interests, bribery or corruption, disregard for the rule of law or the facts, abusive language, or who exhibits a "mental or physical disability" that renders the judge unable to

[2] Http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rules.pdf .

[3] The other members of the Study Committee were Judge J. Harvie Wilkinson (U.S. Court of Appeals for the Fourth Circuit); Judge Pasco M. Bowman (U.S. Court of Appeals for the Eighth Circuit); Judge D. Brock Hornby (U.S. District Court for the District of Maine); Judge Sarah Evans Barker (U.S. District Court for the Southern District of Indiana); and Sally M. Rider (administrative assistant to Chief Justice William Rehnquist).

[4] News Advisory of the U.S. House of Representatives Committee on the Judiciary, Sensenbrenner Statement Regarding New Commission [sic, read Committee] on Judicial Conduct; http://judiciary.house.gov/Legacy/news052604.htm .

discharge all the duties of office.[5]

3. During the 1980's, the judges recommended to Congress the impeachment of three of their own and Congress impeached and removed them[6]. But as Chairman Sensenbrenner put it, "Since then, however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation." Congress had the means of determining that the Act was not being implemented properly, for it had provided for statistics on judicial conduct and disability complaints to be submitted annually by the judicial councils to the Administrative Office of the U.S. Courts[7] and by the latter to it[8]. Those statistics showed that the Act was not being implemented properly (more on this infra). Chief Justice Rehnquist was well aware of this and "In 2004, [he] pointed out that there "has been some recent criticism from Congress about the way in which the Judicial Conduct and Disability Act of 1980 is being implemented.""[9] Such criticism raised the specter of the total or partial replacement of the system of judicial self-policing by one based on outsiders to the judiciary processing misconduct complaints and meting out discipline to judges. It engendered the graver fear of encroachment on judicial independence that ends up in removal from office[10].

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[5] Reports of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders; see sample at http://Judicial-Discipline-Reform.org/judicial_complaints/no_pending_petitions.pdf. These Reports are reflected in the section dedicated to the Committee in the Report of the Proceedings [in March and September of each year] of the Judicial Conference of the United States, collected at http://Judicial-Discipline-Reform.org/judicial_complaints/JConf_Procee_mar97-mar07.pdf .

[6] These three judges were Harry E. Claiborne, U.S. District Court for the District of Nevada, convicted on charges of tax evasion and removed on October 9, 1986; Alcee L. Hastings, U.S. District Court for the Southern District of Florida, convicted on charges of perjury and conspiracy to solicit a bribe and removed on October 20, 1989; and Walter L. Nixon, U.S. District Court for the Southern District of Mississippi, convicted on charges of perjury before a federal grand jury and removed on November 3, 1989.

[7] 28 U.S.C. §332(g) provides thus: "No later than January 31 of each year, each judicial council shall submit a report to the Administrative Office of the United States Courts on the number and nature of orders entered under this section during the preceding calendar year that relate to judicial misconduct or disability.

[8] 28 U.S.C. §604(h)(2) provides thus: "The Director of the Administrative Office of the United States Courts shall include in his annual report filed with the Congress under this section a summary of the number of complaints filed with each judicial council under chapter 16 of this title [Complaints Against Judges and Judicial Discipline, §§351-364], indicating the general nature of such complaints and the disposition of those complaints in which action has been taken."

[9] Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice, known as the Breyer Report, http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf , page 1; also at 239 F.R.D. 116 (September 2006); http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rules.pdf .

[10] Remarks of the Chief Justice at the Federal Judges Association Board of Directors Meeting, May 5, 2003; http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html . In that speech, the Chief Justice Rehnquist discussed how some in Congress had looked into downward departures from its Sentencing Guidelines by federal judges, and the while "Congress has a legitimate interest in obtaining information which will assist in the legislative process. But the efforts to obtain information may not threaten judicial independence or the established principle that a judge's judicial acts cannot serve as a basis for his removal from office." He found "more troubling…the collection [by Congress through the Feeney Amendment] of such information on an individualized judge-by-judge basis". The real source of his fear that the gathering of such personalized information might be the first step toward removing a judge that departed from the Guidelines became apparent when he admitted that "The principle that federal judges may not be removed from offices for their judicial acts is not set forth in the Constitution", but rather, was established just about two centuries ago in the trial of Justice

4. To ward off Congressional intervention aimed at ensuring the proper implementation of the Act, the Chief Justice appointed the Judicial Conduct and Disability Act Study Committee. At its first organizational meeting, the Committee indicated that it would study complaints filed and already disposed of; interview judges, administrators, and practicing attorneys; and take in public comments. It announced that "It will likely take eighteen months to two years for the Committee to complete its work"[11].That was an extraordinarily long time. The Committee had not only the official annual statistics on judicial complaints, but also the semi-annual Report of the Proceedings of the Judicial Conference, which reflected the reports to the Conference of the standing committee through which it had elected under 28 U.S.C. §331 4th paragraph to exercise its authority under the Act, known at the time as the Committee to Review Circuit Council Judicial Conduct and Disability Orders[12].

5. Moreover, Justice Breyer, as Circuit Justice allotted to the 10th Circuit[13], could have access to the reports on judicial complaints of the Circuit's judicial council to the Administrative Office[14], just as he could hear and participate, whether formally or informally, in the discussion concerning such complaints at the Circuit's Judicial Conference[15]. The same holds true for the

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Samuel Chase of the Supreme Court by the Senate". In other words, the Chief Justice was recognizing the vulnerability of judges to removal from office for their judicial acts because while Congress cannot take amendment the Constitution by simply adopting a law, it can take action not prohibited by it but merely established by precedent.

[11] Supreme Court Press Release, Judicial Conduct and Disability Act Study Committee Organizational Meeting, June 10, 2004; http://www.supremecourtus.gov/publicinfo/press/pr_06-10-04.html .

[12] Reports of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders; see sample at http://Judicial-Discipline-Reform.org/judicial_complaints/no_pending_petitions.pdf. These Reports are reflected in the section dedicated to the Committee in the Report of the Proceedings [in March and September of each year] of the Judicial Conference of the United States, collected at http://Judicial-Discipline-Reform.org/judicial_complaints/JConf_Procee_mar97-mar07.pdf . The Committee is now called the "Committee on Judicial Conduct and Disability"; id. page 730, or page 5 of the Report of March 13, 2007.

[13] 28 U.S.C. §42. Allotment of Supreme Court justices to circuits. The Chief Justice of the United States and the associate justices of the Supreme Court shall from time to time be allotted as circuit justices among the circuits b order of the Supreme Court. The Chief Justice may make such allotments in vacation. A justice may be assigned to more than one circuit, and two or more justices may be assigned to the same circuit.

[14] Fn. 8 supra.

[15] 28 U.S.C. §333. Judicial conferences of circuits. The chief judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit.… Cf. §45(b) …The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

This point is illustrated by the Report of the Judicial Conference of the 2nd Circuit, 2003 and 2004, which were available on the Internet; http://Judicial-Discipline-Reform.org/judicial_complaints/ 2ndCir_Conf_Rpt_03-04.pdf

The 2003 Report shows that the subject of misconduct is discussed in them; id. AR:53, 72, 86.

The Reports also show that 2nd Circuit Judicial Conferences were attended by either Circuit Justice Ginsburg, id. AR:98; or by both she and Justice Breyer: "The second day of the Conference opened with a report on the 2002-2003 United States Supreme Court term by Circuit Justice Ruth Bader Ginsburg. Following her report, Justice Ginsburg and her colleague, Associate Justice Stephen G. Breyer participated in a dialogue with Southern District Judge Loretta A. Preska and Eastern District Judge John Gleeson. Both Justices joined Chief Judge

other judges of the Committee[16], who could also participate in, or learn about, the discussions about judicial misconduct complaints held at the meetings of their respective judicial councils[17].

6. What is more, all the members of the Breyer Committee had extensive practical knowledge of the Act. As their Report would subsequently state, [Chief Justice Rehnquist] "appointed to the Committee three judges who as former circuit chief judges had had considerable experience administering the Act, two district court judges who have served as chief judges and as members of their circuits' judicial councils, and his administrative assistant, with experience in judicial branch administration." [18]

7. So why would they ever need 18 months to two years to complete a study of a law that they had not only heard or talked about for years, but also implemented themselves for years?

8. Before the Breyer Committee completed its study, Chief Justice Rehnquist died. His successor, Chief Justice John Roberts, "asked the Committee to continue its work"[19].

9. In the end, the Committee did not need the maximum of 24 months to complete its study. It needed 27 months. So it was only on September 19, 2006, that Chief Justice Roberts announced[20] the receipt of its Report, commonly referred to as the Breyer Report[21]. He commented on it that:

> one major recommendation is a more vigorous role for the Judicial Conference committee with overall responsibility for the administration of the Act, including creating a mechanism so that chief judges consider, in appropriate circumstances, transferring a case to another circuit for handling. I have asked that the report's recommendations be referred to the appropriate committees of the Judicial Conference for thorough consideration and prompt action.

10. Subsequently, the Judicial Conference authorized its Committee on Judicial Conduct and Disability[22]:

> to develop, and present to the Conference for approval, comprehensive guidelines, and, as necessary, additional rules pursuant to 28 U.S.C. §§ 331 and 358(a), to implement the Judicial Conduct and Disability Act in a consistent manner throughout the federal court system.

Walker, Second Circuit Judge Dennis Jacobs, Chair of the Second Circuit Committee on the American Inns of Court Professionalism Award and Judge Randy J. Holland, President of the American Inns of Court, in presenting the second annual Second Circuit American Inns of Court Professionalism Award to…"; id. AR:83.

[16] Ms. Sally M. Rider, administrative assistant to Chief Justice William Rehnquist, must be presumed to have had access to all pertinent documents judicial misconduct available to the Chief Justice.

[17], "Principal items of discussion at the Judicial Council meetings during the year included judicial misconduct complaints…"; id. AR:84.

[18]. Breyer Report, page 1; http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rules.pdf .

[19] Id.

[20] Supreme Court Press Release, September 19, 2006; http://www.supremecourtus.gov/publicinfo/press/pr_09-19-06.html .

[21] Fn. 9 supra.

[22] Report of the Proceedings of the Judicial Conference of the United States, March 13, 2007, page 19.

11. The Draft Rules together with their Comments[23] are the result of such development.

II. The judges circumvented their duty to give "appropriate public notice" about their call for public comment on the Draft Rules and the hearing

12. The Judicial Conduct and Disability Act provides thus:

> 28 U.S.C. §358(c) Procedures. - Any rule prescribed under this section shall be made or amended only after giving appropriate public notice and an opportunity for comment. Any such rule shall be a matter of public record,…

A. Notice given only on the one single barely known website of the Administrative Office

13. Disregarding that statutory requirement, the Committee on Judicial Conduct and Disability announced its Draft Rules and the hearing on them on only one single and scarcely known website, namely, that of the Administrative Office of the U.S. Courts (http://www.uscourts.gov/). Not even the Supreme Court announced them on its website, even though Chief Justice Roberts was the one who issued the original mandate for the Committee to draft those rules as a means of implementing the recommendations in the Breyer Report[24].

14. Nor was the announcement posted on the website of the lower courts, although the Committee itself as well as the Judicial Conference had recommended that type of posting in connection precisely with complaint procedures:

> **COMMITTEE TO REVIEW CIRCUIT**
> **COUNCIL CONDUCT AND DISABILITY ORDERS**
>
> INFORMATION ON COMPLAINT PROCEDURES
>
> In recognition of the increasing importance of on-line availability of information for the transaction of legal business, and at the suggestion of two members of Congress, the Committee to Review Circuit Council Conduct and Disability Orders recommended that the Judicial Conference:
>
> a. Urge every federal court to include a prominent link on its website to its circuit's forms for filing complaints of judicial misconduct or disability and its circuit's rules governing the complaint procedure; and
>
> b. Encourage chief judges and judicial councils to submit non-routine public orders disposing of complaints of judicial misconduct or disability for

[23] Draft Rules Governing Judicial Conduct and Disability Proceedings Undertaken Pursuant to 28 U.S.C. §§351-364, released on July 16, 2007 [http://www.uscourts.gov/library/judicialmisconduct/commentonrules.html] for public comment by the Judicial Conduct and Disability Committee of the Judicial Conference of the United States; http://www.uscourts.gov/library/judicialmisconduct/Rules_DraftPublicComment.pdf ; and together with the current rules, as adopted in the 2nd Circuit, that the Draft Rules are to replace in http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rules.pdf .

[24] Fn. 21 supra.

publication by on-line and print services.

The Conference adopted the Committee's recommendations.[25]

15. No doubt, the Draft Rules are the kind of non-routine document that should have been submitted, not only to all the websites of the federal judiciary, but also to print services for publication in newspapers. This is precisely what is done to give notice to an analogous group of people, namely, the diffused membership of a class action. The controlling principle is this:

> FRCivP Rule 23. Class Actions
>
> (c)…Notice and Membership in Class…
>
> (2)(B) For any class certified under Rule 23(b)(3), the court must direct to class members ***the best notice practicable under the circumstances***, including individual notice to all members who can be identified through reasonable efforts. (emphasis added)

16. Here the equivalent members of the class to be given notice were all the millions of people that could be expected to need or want to learn about the Draft Rules because they have or can have motive to file a judicial complaint due to their status as parties to cases before magistrates or bankruptcy, district, and circuit judges or simply are or have been witnesses to these officers' misconduct or disability inside or outside the courts. A lot of people indeed! Can it be honestly said that the Committee and all other judges who knew about the release of the Draft Rules gave these "class members ***the best notice practicable under the circumstances***" by placing, or allowing the placing of, the announcement of the call for public comment and hearing only on the one single barely known website of the Administrative Office?

17. The judges could have given notice to all those that "can be identified through reasonable efforts" because they are parties to pending cases and, as such, currently receive notices from the courts. One such notice, for example, was given as recently as September 14, 2007, by the Court of Appeals for the Second Circuit in its interest of reducing its workload through its "new rule, Interim Local Rule 34, requiring counsel to file a joint statement concerning oral argument of cases before the Court." Of course, giving notice to counsel of how they or their clients can file judicial misconduct or disability complaints against the judges is not in the Courts' interest. Consequently, CA2 also did not give notice of the Draft Rules to counsel.

18. The Committee and all these judges also disregarded the fact that a broadly based posting on judicial websites would be in line with the requirements of the E-Government Act of 2002[26] for making court documents electronically accessible to the public. It would also show that a good

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[25] Report of the Proceedings of the Judicial Conference of the United States, March 13, 2002, pg. 58; http://Judicial-Discipline-Reform.org/judicial_complaints/JConf_Reports.pdf .>JC:426.

[26] "[T]he E-Government Act of 2002 (Public Law No. 107-347), [] requires, among other things, that each appellate, district and bankruptcy court maintain a website that provides information on the clerk's office and chambers; all written opinions issued by the court, in a text-searchable format; and access to documents filed or converted to electronic form";. Report of the Proceedings of the Judicial Conference of the United States, September 23, 2003, pg. 17; http://Judicial-Discipline-Reform.org/judicial_complaints/JConf_Reports.pdf .>JC:478.

faith effort had been made to reach the largest number of people and afford them the opportunity to comment on those the Draft Rules.

B. Only one single hearing held in the whole nation and only in a district court

19. In the same vein, the Committee only held one single hearing on its Draft Rules in the whole nation. Still, it was not held at the Supreme Court or the Administrative Office in the Thurgood Marshall Federal Judiciary Building in Washington, D.C., where the specialized press corps that cover them would most likely have found out what the hearing was all about and reported on it; not even at the Court of Appeals for the Second Circuit in New York City. Rather, it was held in the U.S. District Courthouse on 225 Cadman Plaza, in Brooklyn, NY.

20. As a result, only three people testified at the hearing. The witness who testified in favor of the draft rules was allowed to speak for 50 minutes while a decidedly critical witness, Dr. Richard Cordero, Esq., was cut off before 20 minutes by Judge Ralph Winter, the Committee chair, who presided over the hearing, which none of the other members bothered to attend. The third witness spoke against the rules for an even shorter time. Although the hearing had lasted barely an hour and a half, Judge Winter did not allow to testify against the rules a person from the audience who had not learned about the hearing in time to file her request to testify before the Committee set the deadline therefor on August 27, a full month before the hearing on September 27. A hearing held merely pro forma.

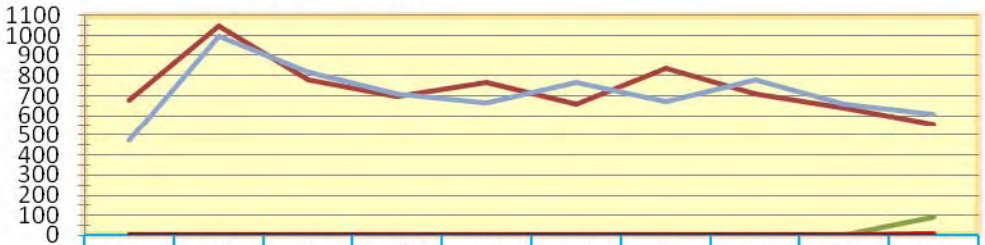
21. So much for public comment. Applying the legal principle that the reasonable consequences of a person's act allows the inference of his or her intent, federal judges who took an oath to uphold the law nevertheless intentionally disregarded their duty under 28 U.S.C. §358(c) to give "***appropriate*** public notice and an opportunity for comment" before amending the Act-implementing rules and instead gave notice reasonably calculated to reach the fewest people possible. (emphasis added) *Why!?*

III. The official statistics of judicial complaints filed and action taken that the judicial councils have produced and the Administrative Office published for 1997-2006 show that federal judges have engaged in the systematic dismissal of the *7,462 complaints filed*, out of which they have *disciplined only 9 peers!*

22. The official statistics of the federal judiciary[27] show that between October 1996 and September 2006, the number of complaints against federal judges and magistrates filed with U.S. chief circuit judges was 7,462, yet the judges disciplined only nine of their peers!

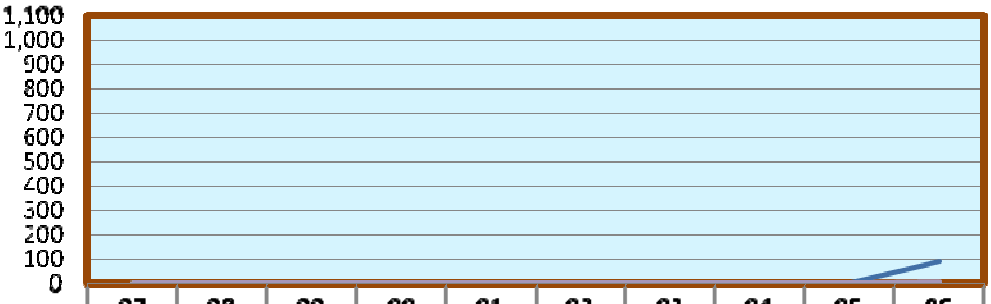
[27] Judicial Business of the U.S. Courts, Administrative Office of the U.S. Courts, see the index of links to their 1997-2006 issues at http://www.uscourts.gov/judbususc/judbus.html ; collected at http://Judicial-Discipline-Reform.org/judicial_complaints/Jud_Biz.pdf , which is a 26MB file and will take several minutes to download. Their Supplemental Tables S-22, 23, or 24, Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c), currently 28 U.S.C. 351-364, are collected at sd:21-41 infra.

Number of Complaints Filed by Complainants and Systematically Dismissed by Chief Judges and Judicial Councils Between '97 and '06



	97	98	99	00	01	02	03	04	05	06
filed by complainants	678	1,049	781	695	766	656	835	712	642	555
filed by chief judges	1	2	0	1	0	1	0	0	0	88
dismissed by chief judges & judicial councils	477	995	820	710	663	770	673	781	661	609
referred to Judicial Conference	0	0	0	0	0	0	0	0	0	0
special investigating committees appointed[†]	0	0	0	0	0	0	0	0	0	7

Judicial Councils' Action Against Complained-about Judges From 1997-2006



	97	98	99	00	01	02	03	04	05	06
filed by chief judges	1	2	0	1	0	1	0	0	0	88
directed chief district judge to take action (magistrate judges only)	0	0	0	0	0	0	0	0	0	1
certified disability	0	0	0	0	0	0	0	0	0	0
requested voluntary retirement	0	0	0	0	0	0	0	0	0	0
ordered temporary suspension of case assignment	0	1	0	0	0	0	0	0	0	0
privately censured	0	0	0	0	1	0	0	0	0	0
publicly censured	0	1	0	2	0	2	0	0	0	0
ordered other appropriate action	0	0	0	0	0	0	1	0	0	0
referred complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0
special investigating committees appointed[†]	0	0	0	0	0	0	0	0	0	7

23. This proves that in violation of an Act of Congress, federal judges have engaged in the systematic dismissal in their own interest of judicial misconduct complaints filed against them.

24. It is absolutely untenable to pretend that only 9 judges out of 7,462 complaints in ten years deserved to be disciplined; in other words, that 99.88% of the complaints could not state a disciplinable case of a judge that under:

> 28 U.S.C. §351(a)…engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts [such as undue delay, bias or prejudice, abuse of judicial power, conflict of interests, bribery or corruption, disregard for the rule of law or the facts, abusive language] or [showed to be] unable to discharge all the duties of office by reason of mental or physical disability…

25. The Act does not make provision for judges to substitute informal means of settling complaints for those that it provides for processing them. Among the latter are special investigative committees to be appointed under §353(a) by the chief circuit judge and constituted of equal numbers of circuit and district judges. Yet, in 10 years they reported having appointed only 7 such committees.

26. On this matter, the Breyer Committee found this:

> There are mistakes in the data that circuits submit to the Administrative Office of the U.S. Courts for national statistical reports on the Act's administration; perhaps most serious, for the period we examined, the circuit data underreported the number of special committees that chief judges appointed.[28]

27. What an indictment of the integrity of the judges! They disregarded the statutory provision for the appointment of such committees in all but 7 out of 7,462 complaints, that is, 0.09% or less than 1 tenth of 1% of all complaints. But if they did appoint more of them, then they 'cooked the books' to make it appear that there had been no need to investigate one of their own.

28. There is a flagrant example of this double-barreled indictment: On August 11, 2003, Dr. Cordero filed, and on the 27th refiled a reformatted complaint with Chief Judge John M. Walker, Jr., CA2, against Bankruptcy Judge John C. Ninfo, II, WBNY,[29] charging him with, inter alia, bias in favor of Chapter 7 Trustee Kenneth Gordon, who according to PACER had appeared before him in 3,382 out of 3,383 cases[30], and supporting or tolerating a bankruptcy fraud scheme. Under Rule 3(a)(2) of the current rules of the 2nd Circuit itself, "If a bankruptcy judge is complained about, the clerk will send copies to the chief judges of the district court and the bankruptcy court"[31]. This means that a copy of that complaint had to be sent to Chief District Judge Richard Arcara, WDNY. Nonetheless, in his section of the 2003 Annual Report of the

[28] Breyer Report, pg. 6; http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rules.pdf >tbr:63.

[29] Judicial Conduct Complaint 03-8547 CA2, http://Judicial-Discipline-Reform.org/docs/DrRCordero_v_JJNinfo.pdf ; also infra sd:43.

[30] http://Judicial-Discipline-Reform.org/docs/TrGordon_ 3383_as_trustee.doc

[31] Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §351 et seq.; http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rules.pdf >tbr:27.

Chief Judges of the Second Circuit, he indicated thus[32]:

JUDICIAL MISCONDUCT COMPLAINTS

None

29. Their integrity is shot under the circumstantial evidence of either possible scenario:

    a. Chief Circuit Judge Walker's clerk of court, Ms. Roseann MacKechnie, disregarded her duty under the Circuit's own rules to transmit a copy of the complaint to Chief District Judge Arcara. What the evidence shows is that more than six months later, on March 8, 2004, Bankruptcy Judge Ninfo engaged in conduct so blatantly biased[33] in favor of another trustee, namely, Chapter 13 Trustee George Reiber, who out of 3,909 cases had 3,907[34] before him, that either Judge Ninfo never received a copy of the August 27 complaint against him or he disregarded it as ineffective to modify his conduct if only for the sake of appearances.

    b. (1) Chief District Arcara received the complaint, but failed to report it. His reporting zero judicial misconduct complaint is necessarily suspect because he stated in his section that[35]:

> As has been the case for more than a decade, the District's workload continues to be substantial. The District ranks second in the Circuit and 22nd nationally with regard to civil filings, and first in the Circuit and 21st nationally with regard to criminal filings. With respect to pending cases per judgeship, the District ranks first in the Circuit and 6th nationally, with 727 cases per judgeship…This district is well above the national average of 611 weighted filings per judgeship versus 523 nationally.

(2) And despite so many filings not a single party took exception to the conduct of any of those overworked judges by filing a misconduct complaint against him? Implausible!, particularly since that year the Judicial Council of the 2nd Circuit reported[36] that in the circuit as a whole there were 29 complaints pending as of September 30, 2002, and by September 30, 2003, 69 additional complaints had been filed.[37]

30. This documented specific case of judicial officers' disregarding complaint provisions and underreporting complaint figures supports the analysis of the general data in the tables above, showing numbers of complaints filed and systematically dismissed with no action taken, in conjunction with those below, comparing an increasing number of cases filed with a steady and even decreasing number of complaints: The judges have also engaged in data manipulation.

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[32] 2003 Annual Report of the Chief Judges of the Second Circuit, pgs. 65, 76; http://Judicial-Discipline-Reform.org/judicial_complaints/2ndCir_Conf_Rpt_03-04.pdf >AR:61, 72.

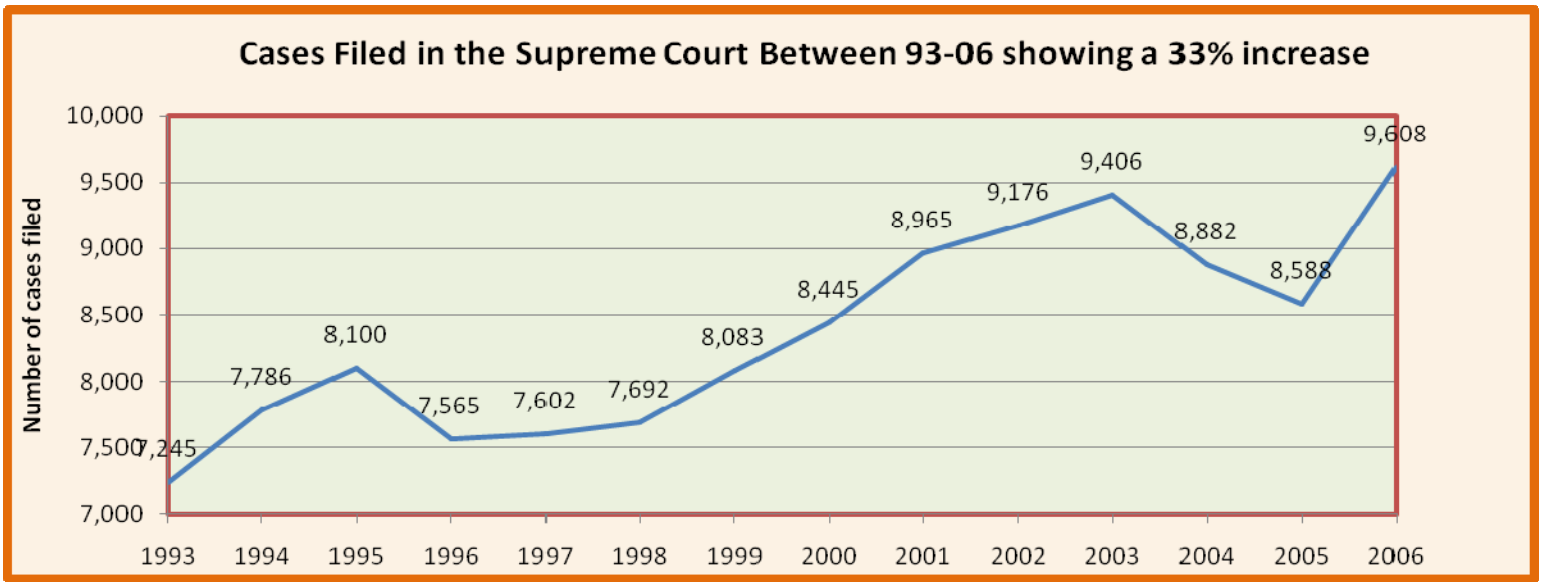
[33] Cf. http://Judicial-Discipline-Reform.org/docs/DrCordero_v_CA2_CJ_Walker.pdf; also infra sd:48.

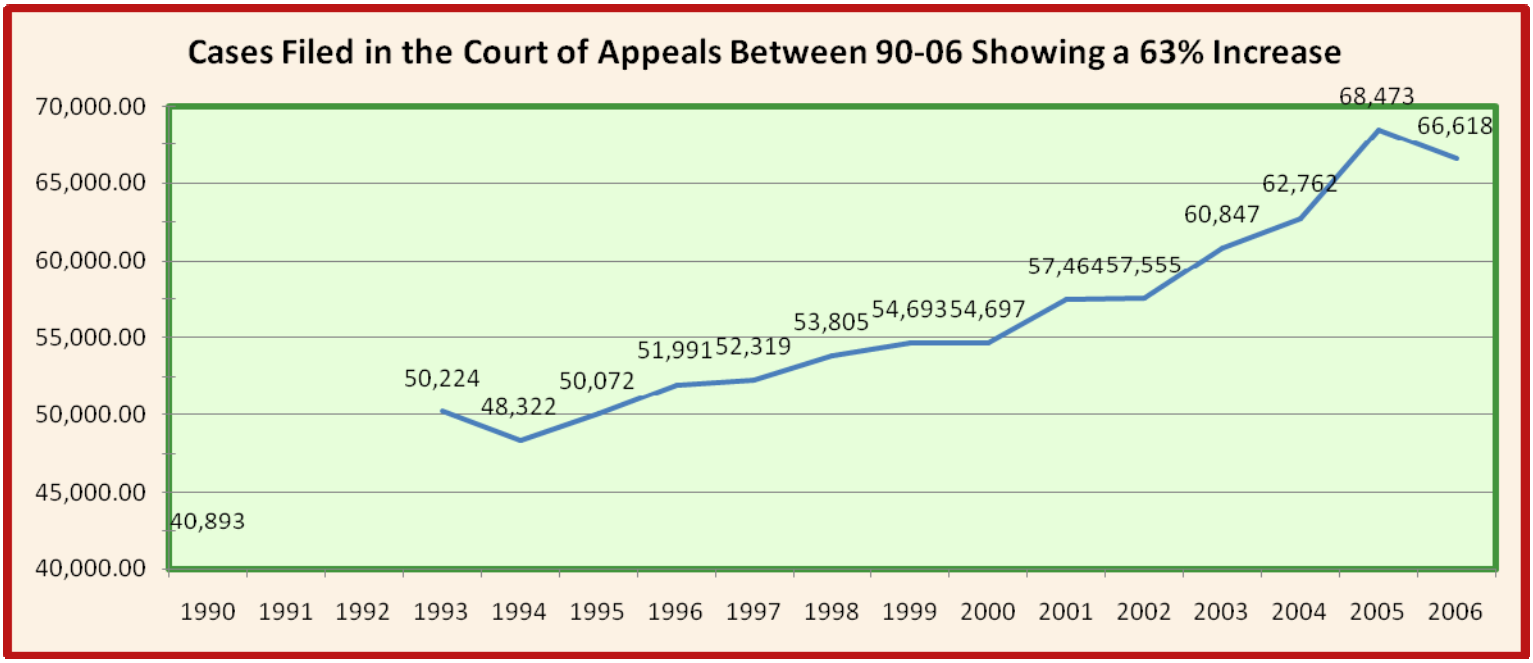
[34] Http://Judicial-Discipline-Reform.org/docs/TrReiber_3907_before_JNinfo.doc .

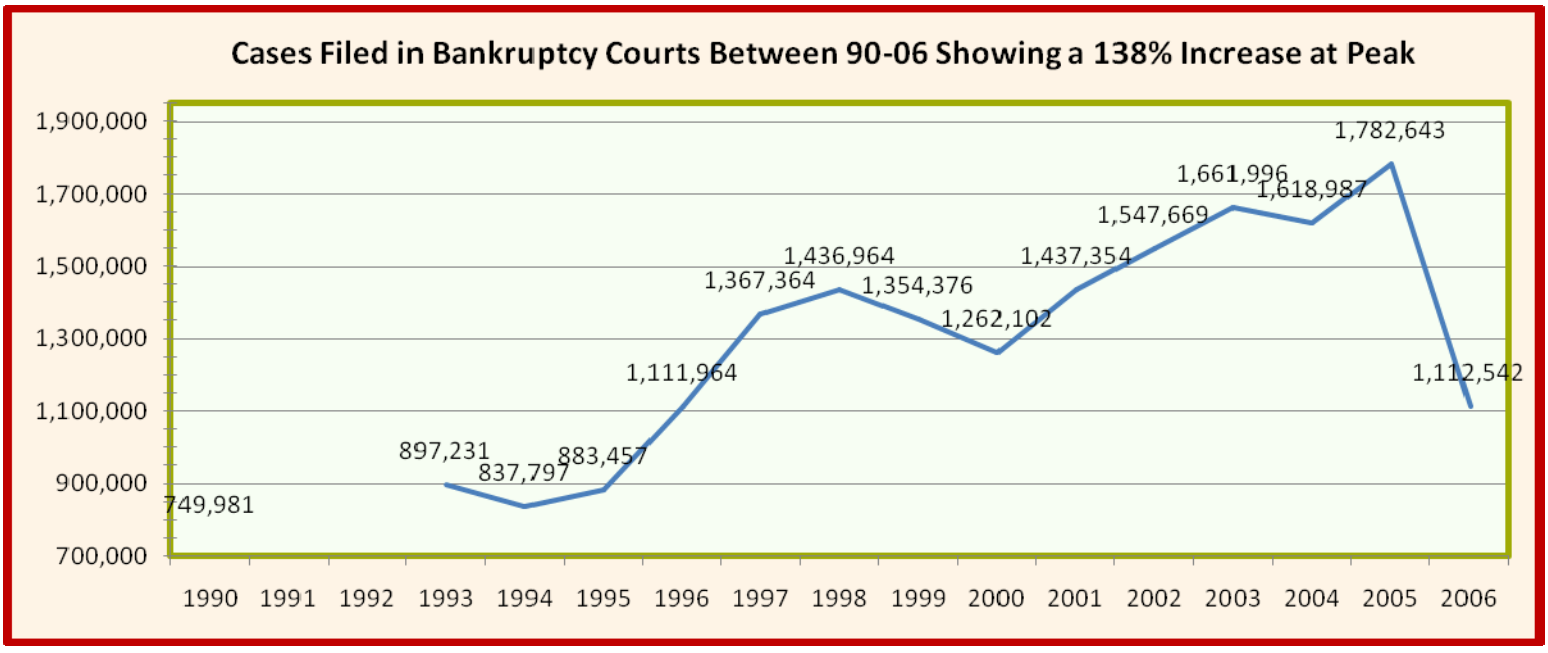
[35] Fn.32, pg. 65-66; AR:61-62.

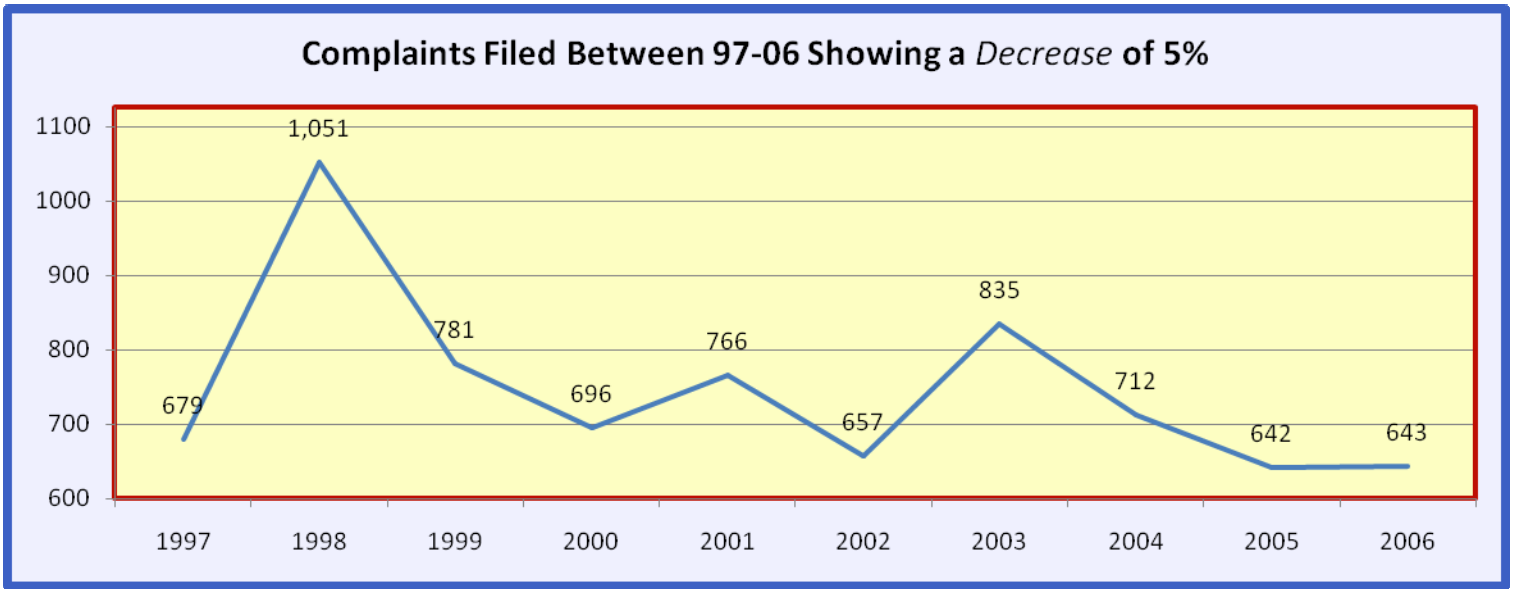
[36] Report made pursuant to 28 U.S.C. §332(g); fn.7 supra.

[37] Table S-22 Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2003, Judicial Business of the U.S. Courts, 2003; infra sd:34.


Cases Filed in the Supreme Court Between 93-06 showing a 33% increase
Number of cases filed
10,000
9,500
9,000
8,500
8,000
7,500
7,000
7,245
7,786
8,100
7,565
7,602
7,692
8,083
8,445
8,965
9,176
9,406
8,882
8,588
9,608
1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006


Cases Filed in the Court of Appeals Between 90-06 Showing a 63% Increase
70,000.00
65,000.00
60,000.00
55,000.00
50,000.00
45,000.00
40,000.00
40,893
50,224
48,322
50,072
51,991
52,319
53,805
54,693
54,697
57,464
57,555
60,847
62,762
68,473
66,618
1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006


Cases Filed in Bankruptcy Courts Between 90-06 Showing a 138% Increase at Peak
1,900,000
1,700,000
1,500,000
1,300,000
1,100,000
900,000
700,000
749,981
897,231
837,797
883,457
1,111,964
1,367,364
1,436,964
1,354,376
1,262,102
1,437,354
1,547,669
1,661,996
1,618,987
1,782,643
1,112,542
1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006



[Footnotes in the originals][38]

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

CC- U.S. COURT OF FEDERAL CLAIMS.

CIT – U.S. COURT OF INTERNATIONAL TRADE.

* REVISED. [regarding complaints pending]

** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

31. To all those increasing numbers of cases filed in these courts[39] must still be added those filed with some Article I courts, which are part of the Executive, not the Judicial, Branch, such as the Tax Court, U.S., and the U.S. Court of Appeals for Veterans Claims. They all support the conclusion to be drawn from these statistics: The significant increase in cases filed with these courts every year attests to the litigiousness of the American society. They belie the judges' report that for the last 10 years Americans have filed a steady number of complaints against them hovering around the average (after eliminating the outlier) of only 712 complaints. The explanation lies in the first footnote in the originals, above: Judges have excluded an undetermined number of complaints arbitrarily, without stating their authority under any provision of the Act or the current rules, under the pretext that "they duplicated previous filings or were otherwise invalid filings".

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[38] Sources: For Table 3, Judicial Business of U.S. Courts, 1997-2006; fn. 27 supra.

For Tables 3, 4, 5, 2005-2006 Judicial Facts and Figures, Administrative Office of the U.S. Courts., collected with links to the originals in http://Judicial-Discipline-Reform.org/judicial_ complaints/Facts_Figures_05-06.pdf .

Tables 1, 2, and 6, supra, report on complaints filed and processed in the District of Columbia Circuit, the 1st-11th judicial circuits, and pursuant to 28 U.S.C.§363, CC, CIT, and the U.S. Court of Appeals for the Federal Circuit.

[†]The category "Special Investigating Committees Appointed" appears for the first time in the 2006 Table.

[39] The sudden drop in the number of bankruptcy cases filed in 2006 was due to the stricter requirements to qualify for bankruptcy relief contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. 109-8, 119 Stat. 23; http://Judicial-Discipline-Reform.org/docs/11usc_Bkr_Code_2005.pdf .

32. Evidence that the circuits' underreporting found by the Breyer Committee itself (¶26 supra) amounts to manipulation of data is contained in the first table above: After 9 years during which the judges identified[40] less than one complaint a year, they jumped to 88 in 2006…and that same year it just so happened that complainants filed the lowest number of complaints ever, 555, so that the total of 643 was well under the average. *What a statistical implausible coincidence of compensating anomalies*! Yet, the judges did not discipline any of those 88 peers, just one magistrate. Their bubble of identified complaints was only for show.

IV. The Draft Rules make no substantive change in the current rules and will be equally disregarded as part of the abuse of the system of judicial self-discipline through the systematic dismissal of complaints by self-immunizing federal judges who know what the release of the Draft Rules and the call for public comment are: *a sham!*

33. The weight of the evidence shows that federal judges have compromised their integrity to protect their peers as well as themselves from incriminatory retaliation from disciplined peers[41] while disregarding their duty "to administer justice without respect to persons"[42]. By so exempting themselves from any discipline, they have abused in their own interest the system of judicial self-discipline set up under the Act. By thus rendering futile the filing of judicial misconduct complaints, they have deprived complainants of the protection that Congress intended to afford them from abusive and disabled judges. Therefore, as a matter of fact, federal judges have arrogated to themselves and for their benefit the power to abrogate an Act of Congress and nullify its implementing rules.

34. Moreover, by systematically dismissing complaints against themselves, federal judges have self-attributed the privilege of being unaccountable. This explains why in the 218 years since the creation of the federal judiciary by the Constitution of 1789, the number of federal judges impeached and removed from the bench is seven![43] This works out to only one federal judge

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[40] "Identifying a complaint" is the term of art under 28 U.S.C. §351(b) for the chief circuit judge, on the basis of information available to him or her, to write an order stating reasons for giving rise to, that is, 'identifying' a complaint against a judge and thereby dispense with the filing of a written complaint by a complainant.

[41] Cf. ¶97 infra. See also The Dynamics of Organized Corruption in the Courts: How judicial wrongdoing tolerated or supported in one instance gives rise to the mentality of judicial impunity that triggers generalized wrongdoing and weaves relationships among the judges of multilateral interdependency of survival where any subsequent unlawful act is allowed and must be covered up; http://Judicial-Discipline-Reform.org/docs/corruption.pdf .

[42] 28 U.S.C. §453. Oaths of justices and judges. Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ XXX, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

[43] Federal Judicial Center, which provides the courts with orientation and continuing education as well as research support to them and the Judicial Conference, and whose board consists of the Chief Justice of the Supreme Court, who presides over it, seven other judges elected by the Judicial Conference, and the director of the Administrative

removed from the bench every 31 years. Given that most judges remain on the bench for fewer than 31 years, this means that once a person nominated by the President of the United States for a federal judgeship is confirmed by the Senate, he is all but statistically certain of being able to do whatever he wants in the assurance that his peers will cover for him and no adverse consequence will come to him at all, not even discipline under the Act, let alone impeachment and removal. The judges have made themselves the only class of people in our country that as a matter of fact are above the law.

35. Why would the judges ever put at risk such privilege by investigating and disciplining each other just because their peers on the Committee on Judicial Conduct and Disability came up with a clever form of words for the Draft Rules that pretend to amend the current rules for implementing the same old Judicial Conduct and Disability Act of 1980 that entrusted to them such a convenient system of judicial self-discipline? The question is all the more pertinent because the Draft Rules:

    a. do not change the players or the procedure in the judicial complaint system;

    b. do not change the judge-protective secrecy that turns a filed judicial complaint into a non-public document;

    c. do not change the lack of a requirement for the judge to respond to the complaint, not to mention make the judge's response available to the complainant;

    d. do not change the abused discretion that has allowed chief circuit judges to dispose of complaints on their own without appointing but seven special investigative committees out of 7,462 complaints;

    e. do not change the policy of no public access to investigation reports;

    f. do not change the abused discretion of judicial councils to prevent review of their decisions by not submitting them to the highest appellate body in the judicial complaint procedure, namely, the Judicial Conference, which accounts for the extraordinary fact that in the 28 years since the passage of the Act the Conference has issued only 15 decisions![44]

    g. do not change the unlawful practice of preventing complainants from appealing to the Judicial Conference despite the Act's clear provision to the contrary:

> **28 U.S.C. §357(a) Review of orders and actions**
>
> **(a) Review of action of judicial council**.-A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

    h. do not change "the confidentiality of the complaint process" and its prohibition on releasing even the complained-about judge's name on documents made public that

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Office of the U.S. Courts, at http://www.fjc.gov/history/home.nsf >Judges of the U.S. Courts>Impeachments of Federal Judges.

[44] The 15 judicial conduct and disability decisions of the Judicial Conference are collected in http://Judicial-Discipline-Reform.org/judicial_complaints/JConf_decisions.pdf .

exonerate the judge;

i. do not change the absence of measures to counteract the fundamental flaw of the judicial-self-discipline system: It provides for the complained-about judge's closest colleagues and peers, those in the same circuit and even his friends in the same court, to handle the complaint and decide even whether to investigate it, not to mention how to discipline the judge, who can participate in the formulation with the chief circuit judge of "remedial action" (¶90 infra)…after all, colleagues, peers, and friends do not discipline each other. *The horror of such term!*

36. Since the Draft Rules change nothing substantive and are for all practical purposes indistinguishable from the current rules that they are meant to replace, they will change nothing in the judges' decades-long practice of disregarding the rules as well as the Act in order to grant their peers and themselves total immunity from complaints and exemption from discipline. Given that the judges will continue to be sure of escaping any possible negative consequences of their misconduct, they will continue to pursue all sorts of misconduct with a possible positive outcome for them. This explains why judges that have known about and participated in the systematic dismissal of judicial misconduct complaints pretended to call for public comment on the Draft Rules while using therefor means intentionally calculated to reach the fewest potential commentators, for they know too what the Draft Rules are: *a sham!*

37. The inherent lack of impartiality, objectivity, and accountability of life-tenured insiders who can disregard with impunity the call in outsiders' complaints to discipline themselves dooms the system of judicial self-discipline to be abused and to harm those whose complaints are unjustly disposed of. These circumstances highlight the need for an independent board of citizens neither appointed by nor related or responsive to the judiciary, otherwise for a panel of three retired judges from circuits other than that of the complained-about judge, to process publicly filed complaints, hold in public proceedings judges accountable and discipline them for their misconduct, and provide persons injured by them with an effective remedy, that is, compensation for the harm sustained, so that complained-about judges and complainants are treated in accordance with traditional notions of fair play and the substantive principle of "Equal Justice Under Law".

V. Comments on the Draft Rules

ARTICLE I. GENERAL PROVISIONS

Rule 1. Scope, p2, L3, and purpose

38. The Rules[45] are designed by federal judges to protect their own position above both the law and the other two branches of the federal government, that is, the Executive and the Legislative.

[45] Drafts Rules Governing Judicial Conduct and Disability Proceedings, released for public comment by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States; hereinafter the Rules.

They are not designed to enable the attainment of the objective reasonably pursued by a person who bothers to write a complaint and thereby exposes himself to retaliation from the complained-against individual, namely, to cause that individual, here a judge, to cease and desist his complaint-causing conduct and to require such judge or his employer, the Judicial Branch, to compensate the complainant for the harm that he caused the complainant.

39. This is due to the Act[46]'s "largely based…administrative perspective", p11, L40, cf. p26, L37-38. This means that the Act is conceived as a set of housekeeping instructions for the internal management by the Federal Judiciary of its personnel, the judges. Neither the Act nor the Rules attempt to provide a system of checks and balances on the exercise by judges of judicial power. Hence, judges are allowed to exercise their considerable power over property, liberty, and even life not only "during Good Behaviour", U.S. Const., Art. III, Sec. 1, but as a matter of fact also 'during Bad Behaviour' for the rest of their lives.

40. The fact is that in the 218 years since the adoption of the U.S. Constitution in 1789, only seven judges have been removed from the bench, according to the Federal Judicial Center (www.fjc.gov/history/home.nsf >Judges of the United States>Impeachments of Judges). So, they can behave badly while enjoying the assurance that they will not pay any price therefor because their salary cannot be diminished while they hold office, U.S. Const., Art. III, Sec. 1, or even hold on to office after retirement to protect their sinecure. Hence, power exercised for life without any checks and balances becomes absolute power. Such absolute power has a known effect on those who exercise it: It corrupts them absolutely.[47] Such corruption is not limited to the taking of bribes or rendering decisions that protect or advance their economic interests, such as their stockholdings, but also includes the complicit toleration of the wrongdoing that they see other peers practice and that they aid and abet through their silence in exchange for the emotional and social benefit of their friendship and continued camaraderie.

41. Neither the Act nor the Rules recognize the right of complainants to obtain an effective remedy, as the Judiciary, which is part of government, would have to do if it did not in fact hold itself, unlike the two 'lesser' branches of government, above the law, including the First Amendment, which provides "the right of the people peaceably to assemble, and petition the Government for a redress of grievances". Rather, they allow the chief circuit judge to dismiss a complaint without more; if he does not do that, whatever he does is not aimed at providing redress to the complainant, but simply to do something that is "best able to influence a judge's future behavior in constructive ways", p11, L42. There is no attempt to remedy through compensation the harm that the complainant may have suffered at the hands of a judge who showed bias against him or disregarded the law, thereby causing him the loss of rights, property, or liberty and forcing him either to give up the prosecution of his case or to continue litigating in court at enormous additional material and emotional cost.

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[46] Judicial Conduct and Disability Act of 1980, 28 U.S.C. §351 et seq.; hereinafter the Act.

[47] "Power corrupts, and absolute power corrupts absolutely"; Lord Acton in his Letter to Bishop Mandell Creighton, April 3, 1887.

Rule 2. Effect and Construction, p3, L4

42. A chief circuit judge can suspend the new Rules if he only "finds expressly that exceptional circumstances render the application of a Rule in a particular proceeding manifestly unjust or manifestly contrary to the purposes of 28 U.S.C. §§ 351-364 or these Rules", p3, L11-13.

43. Rule 2 exhibits the same defect that the Breyer Committee[48] found regarding the evaluation of the original Rules, namely, a lack of "interpretive standards", p22, L22-25. None of the competent entities for the implementation of the Act through the Rules[49] is required to provide a reasoned statement equivalent to conclusions of law under FRCivP 52(a) of what makes the application of the Rules "manifestly unjust or contrary to the purpose of the Act or the Rules".

44. Note that when the Rule drafters wanted to require the chief circuit judge to state reasons for his conduct, they did so expressly: "The Act authorizes the chief circuit judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint", p9, L4-5.

45. Given the perfunctory decisions by which chief circuit judges systematically dismiss complaints, not to mention the mere forms used by a judicial council to deny review, there is every evidence to support the concern that under the Rules chief circuit judges will continue to dismiss complaints by finding at will and without stating their reasons that in the complaint at hand the Rules are inapplicable due to "exceptional circumstances".

46. Since a district judge cannot suspend the FRCivP just because he deems their application "manifestly unjust or contrary" to the purpose of the law or the FRCivP, why should the chief circuit judge be allowed to do so with respect to the application of the Rules to one of his peers or even to one of his bankruptcy appointees?

47. In any event, once the chief circuit judge finds the Rules inapplicable, what does he do?: dismiss the complaint for lack of regulatory authority or just make up his own rules as he goes along to the detriment of the complainant, who filed her complaint in reliance on those Rules?

48. What the final sentence of Rule 2 does in effect is turn the Rules into suggestions that the chief circuit judge can disregard whenever pressure from his peers or a conflict of interests makes it expedient to do so.

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[48] The Judicial Conduct and Disability Act Study Committee, appointed in 2004 by the Late Chief Justice Rehnquist and chaired by Associate Justice Breyer. It presented a report, known as the "Breyer Report," 239 F.R.D. 116 (Sept. 2006).

[49] These entities are the chief circuit judge, the special committee, the judicial council, the Judicial Conduct and Disability Act Committee, and the Judicial Conference.

ARTICLE II. INITIATION OF A COMPLAINT

Rule 5. Identification of a Complaint, p8, L7

49. "(2) A chief judge:…(B) need not identify a complaint if it is clear on the basis of the total mix of information available to the chief circuit judge that the review provided in Rule 11 will result in a dismissal under Rule 11(c), (d), or (e). However, a chief circuit judge may identify a complaint in such circumstances in order to assure the public that highly visible allegations have been investigated. In such a case, appointment of a special committee under Rule 11(f) may not be necessary", p8L9, 24-30

50. In all but so many words, this Rule allows the chief circuit judge to mislead the public by pretending that he has identified a complaint against a judge and will investigate the information constituting an identifiable complaint, when in fact he has already decided that there is not going to be any such investigation and that the complaint is as good as dismissed but for the signing of the order to that effect.

51. What kind of trust in the integrity of the process did the drafters intend to build in judges, complainants, and the public when they authorized the handling of complaints through deceit? Would stockholders bring a cause of action for negligence, deceit, and mounting a cover up against an investment bank that announced, not just once, but rather as part of an express policy, that it had opened a file on a complaint that some of its officers had engaged in inside trading, falsifying profit figures, and operating illegal offshore accounts, when in fact it had not only not opened any such file, but also never intended to investigate the complaints at all? What would a jury find?

52. This Rule disregards the first and second Laws of Sloth, which precede those of Newton as well as the Magna Carta: first, a person shall not do any work that he can avoid doing; and second, whenever a person, particularly one on a fixed salary, is afforded an excuse not to take onerous action required to perform her duty, especially one that will increase her discomfort by affecting her interests adversely, she will invoke that excuse to minimize discomfort and maximize comfort, her duty notwithstanding. This Law is also known by its popular name, that is, take the easy way out and enjoy your piña colada.

Rule 6. Filing a Complaint, p9, L10

53. "The name of the subject judge should not appear on the envelope"[50], p.11, L1-2. This is an example of unequal justice, since a complaint against any member of the other two branches of government is not shrouded in such secrecy. The secrecy protecting the name of a

[50] "Subject judge" is the term of art for 'complained about judge', or as the Rules define it, "The term "subject judge" means any judge described in Rule 4 who is the subject of a complaint", p4, L23-25.

peer only makes it easier for the chief circuit judge to dismiss the complaint at will without any review or examination whatsoever.

54. Such secrecy is misused when it is a means for the Judiciary to protect its reputational interest in appearing not to have rogue judges in its midst. Bad or rotten apples appear in every organization where human beings, with all their virtues and vices, are present. Actually, if "power corrupts, and absolute power corrupts absolutely", then one would expect to find an above average number of cases of absolute corruption in an institution such as the Federal Judiciary, whose members wield power over the property, liberty, and life of everybody else and do so for life so long as their peers pretend that theirs is "good Behaviour".

55. Secrecy may be necessary to protect the complainant, for as the drafters recognize, complainants may fear retaliation by judges against people who make statements accusing them of misconduct, such as "an attorney who practices in federal court, and that [insists on remaining an] unnamed witness…unwilling to be identified or to come forward", p17, L35-36. But such secrecy should be maintained at the option of the complainant, to the extent that it does not detract from the basic notion of fairness that ensures any person the right to confront his accusers.

56. However, the secrecy that the drafters require is not for the protection of the complainant, but rather for that of the Judiciary and its judges. This is shown by the fact that if the complainant does not agree to remain quiet about her complaint beyond the fact of filing it, she will be penalized by the special committee not letting her know what one could reasonably expect a complainant to be entitled to know if the filing of the complaint were conceived as an act of a victim of a judge's misconduct seeking a remedy, namely, to know with what zeal, competency, and completeness the judiciary investigated one of its own and to that end, receive as of right a copy of the report of the investigation conducted by the special committee.

57. Under Rule 16(e), by contrast, the possibility –not the certainty- of receiving such report is a carrot dangled in front of the complainant. She may be allowed to eat it depending on "the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge", p26, L30-31. The drafters put it in even blunter terms in their Commentary: "In exercising their discretion regarding the role of the complainant, the special committee and the judicial council should protect the confidentiality of the complaint process. As a consequence, Subsection (e) provides that a special committee may consider the degree to which a complainant has cooperated in preserving the confidentiality of the proceedings in determining what role beyond the minimum required by these Rules should be given to that complainant", p27, L13-17.

58. This means that the drafters accord a higher value to keeping the identity of the subject judge secret than to obtaining the benefit that can result for the Judiciary as well as for the complainant from the latter publicizing her complaint, namely, to cause witnesses and other

persons similarly injured by the subject judge to come forward. Thereby the complainant can buttress her complaint and ensure that it is not dismissed out of hand by the chief circuit judge and that he not only appoints a special committee, but that the one appointed conducts its investigation as broadly and deeply as the real extent of the problem warrants, which redounds to the benefit of the Judiciary by enabling it to correct the problem…but this could entail finding the subject judge at fault and even having to reprimand her publicly, which impairs the Judiciary's reputational interests and can threaten the chief circuit judge's and his peers' self-preservation interests…'uhm, better the complainant keep quiet or she will be made to pay a price by not being allowed to learn about the handling of her complaint "beyond the minimum required by these Rules"', p27, L17. Secrecy trumps efficiency and fairness.

59. The Rules' requirement of secrecy and its denial of any meaningful remedy to the complainant for the harm caused her by a subject judge (see comments on Rule 11(d), ¶90 et seq. below) show that the Rules treat the complainant as a mere informant whose only role is to assist a "process view[ed] as fundamentally administrative and inquisitorial, [so that] these rules do not give the complainant the rights of a party to litigation, and leave the complainant's role largely to the discretion of the special committee", p26, L37-39. In light of these circumstances, why should a potential complainant ever bother to file a complaint against a judge since there is nothing in it for her except the implicitly acknowledged well-founded fear of retaliation by, not only the subject judge, but also every other judge "in federal court", p17, L35-36 and ¶55 above,?

Rule 7. Where to Initiate Complaints, p11, L13

60. "With an exception for judges sitting by designation, the Rule requires the identifying or filing of a misconduct or disability complaint in the circuit in which the judge holds office, largely based **on the administrative perspective of the Act**. Given **the Act's emphasis on the future conduct of the business of the courts**, the circuit in which the judge holds office is the appropriate forum because that circuit is likely best able **to influence a judge's future"**, p11, L38-42, **"behavior in constructive ways"**, p12, L1. (emphasis added)

61. There are no standards setting forth the circumstances under which a non-home circuit can transfer a complaint to the subject judge's home-circuit, except "where allegations also involve a member of the bar -- ex parte contact between an attorney and a judge, for example -- it may often be desirable to have the judicial and bar misconduct proceedings take place in the same venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a complaint in, the non-home circuit. The proceeding may be transferred by the judicial council of the filing or identified circuit to the other circuit", p12, L4-9.

62. There is no consideration of the concerns that warrant the application of the doctrine of forum

non-conveniens, or of the practical inconvenience for the complainant who resides in the subject judge's non-home circuit to pursue his complaint against the local lawyer if the non-home judicial circuit decides nevertheless to split the complaint and transfer the part against the subject judge to his home-circuit. The complainant's views on the issue of transfer are not taken into consideration because, after all, the Act takes an "administrative perspective" on complaints and considers them merely an internal matter to be decided, not in order to render justice to the complainant, let alone to punish the subject judge, but simply to improve "the future conduct of the business of the courts", ¶60. If fault the subject judge committed in the past, it has already been forgiven and largely forgotten because the Act is not dealing with even the fault's impact on the present, but rather with how the subject judge's conduct may affect other people in the future. Is the complainant supposed to endure all the considerable emotional and material 'inconvenience' of filing a complaint and petitions against the statistically overwhelmingly frequent dismissal and denial of review just as a public service for the benefit of others? Would it be from the peers of the subject judge that she would receive the example of such altruism?

Rule 8. Action by Clerk, p12, L11

63. "(b) Distribution of Copies", p12, L13. Rule 8 does not require the chief circuit judge to discuss the complaint with the subject judge before dismissing it. The accuracy of this statement is corroborated by Rule 11(f), which provides that "Before appointing a special committee, the chief circuit judge must invite the subject judge to respond to the complaint either orally or in writing if such an opportunity was not given during the limited inquiry", p15, L27-29. The drafters justify the chief circuit judges taking this initiative at this time on behalf of their peers because the drafters validate the chief circuit judges' prejudice against complaints, that is, their preconceived judgment that complaints are meritless and not worthy of subject judges' time since "many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense", p19, L31-33.

64. Hence, Rule 8 does not require the subject judge to take cognizance of the complaint and put in writing his or her response, which at the very least would have a cautionary effect by giving notice to the subject judge that somebody took exception to his or her conduct. Likewise, it does not require the chief judge of the court on which the subject judge sits to do absolutely anything with the copy of the complaint that the clerk is required to send him; he does not even have to bother to read it since he does not have to take a position on it at all. The complaint may well be received by the clerk of his court and systematically sent to the slush pile.

65. Constructive knowledge of the complaint may be imputed to such chief judge by the fact of just having been sent a copy of it. However, requiring that such chief judge certify that she has actually received and in fact taken cognizance of the complaint against one of the judges in her court would have the salutary effect of alerting her to a problem with the subject judge in her

court or even in her court as a whole. Knowing the complaint's content would afford her the opportunity to take appropriate administrative measures to deal with the problem, if not at the earliest opportunity because she already knew or by exercising her supervisory function with due diligence would have known about such problem, at least from then on. What is more, such knowledge would impose on her an affirmative duty to deal with the problem, similar to that which every single judge is under pursuant to 18 U.S.C. §3057 Bankruptcy investigations, that is, the chief judge would have the duty to communicate to the chief circuit judge 'any reasonable grounds that she had for believing either that the subject judge engaged in the conduct or had the disability complained about or that an investigation should be had in connection with the complaint'.

66. The absence in Rule 8(b), ¶63 above, of any required action by either the subject judge or the chief judge of his court upon receipt of the complaint is in faithful compliance with a corollary to the second Law of Sloth, namely: Do not waste your effort doing anything that you are not required to do because if neither the law, nor the rules, nor a code of conduct requires you to do it, then by the definition it is not important and you have nothing to gain from doing it. This corollary has been translated from legalese into plain English as "do not go looking for trouble; let them chase after you, and if they catch you, then do the minimum indispensable to get away with it".

67. As far as the complaint goes, nobody but the chief circuit judge may ever have to know that a complaint was filed. Consequently, the Rules do not provide for the complainant to be informed of the subject judge's reaction to the complaint, for no such reaction is required. As a result, the complaint may be dismissed by the chief circuit judge under Rule 11 without either the complainant, the subject judge, or his chief judge becoming any the wiser for it.

68. What is more, if reaction there is on the part of the subject judge because the chief circuit judge uses his faculty under Rule 11(b) whereby he "may communicate orally or in writing with…the subject judge", p14, L35-36, the complainant may not know of the tenor of it since the chief circuit judge is not even required to notify the complainant of such communication with the subject judge…and all the better, for what would the chief circuit judge notify about his communication with the subject judge?, which is likely to go off thus:

CCJ: Hey Nicky, how are you, old boy!?

SJ: Joey!, How's'it going?

CSJ: Real good. I wanted to let you know again how much I enjoyed that last judicial junket.

SJ: Me too. I learned a lot about fly fishing.

CCJ: Without doubt they are always very educational. Listen, my wife just got the photos. I think Millie will like them too.

SJ: You'r too thoughtful! My wife is making the album for all the gang this time and she's driving me crazy 'cause she don't want to miss no photo.

CCJ: I'll send them to you right away by courier. By the way, I found this thing about you that has been lying on my desk for months, you know…What's the story about it?

SJ: You mean the complaint? Well, so long ago. I think one of the clerks told me that one of those had come in. Joey, there is not'ing to it. You know how things go. These little people come into your court out of their wits after being hit with a suit or revved up by a petty offense they just whipped up from a tea pot into a tempest at law and they're nervous and misunderstand everything you say and exaggerate everything you do and don't understand not'ing 'bout how things are done in the local practice of a real courtroom.

CCJ: Nicky, you don't have to tell me. I remember how things were when I was in district. Today I just give'em a summary order: Affirmed! Affirmed! Affirmed! and move on.

SJ: How I envy you!, Joey. I try as much I can to get rid of these pesky mud slingers to work on the high profile cases with pedigree names. Anyway, you can't shortchange the honchos with big law firms. They have the means to go up and make you look like a hack…

CCJ: and you end up calling in your IOUs to fix it! Nicky, Nicky! I know the drill. Well, I'm so glad we have discussed this matter fully. Sorry I even mentioned it. But don't you sweat it. I'll give this complaint the good shot. I have a form for them too: Dismissed! Dismissed! Dismissed!

SJ: You do that and thank you so much, I really appreciate what you'r doing for me with those photos. Send them right'a way. I think you gotta one when Harry was startled awake by his first fish ever…and fell from the boat into the lake! We'r gonna be teasing him until we meet you guys at the circuit conference!

CCJ: You are such a jerk…I'll help you! I'll write a note on the back of that photo that it has been submitted in a disability complaint against him as evidence he also falls asleep on the bench. Make sure the gang is with him when he reads it. With his leaky bladder after dozing for years at boring squabblers, he'll do it in his pampers laughing!

SJ: You genius!

69. Did the Rule drafters honestly expect CCJ Joey to be "administrative and inquisitorial", p5, L5-6, when he called SJ Nicky to fully discuss the complaint against him? Would he be Torquemada inquiring with piercing fact questions the conscience of a heretic who practiced conduct in opposition to that prescribed in the code of conduct for judges? Or precisely because such code is as weak a basis for any disciplinary action as are other regulations on judicial conduct, p5-L27/p6, L6, would CCJ instead call to administer reassurance to his long-standing friendship with colleagues that he has known for 10, 15, 20 years?

70. During those many years, CCJ has 'worked' with his colleagues, not only at judicial junkets and circuit conferences, but also in judicial council meetings and those of the Judicial Conference as well as in several of the many Judicial Conference committees, just as in committees to renovate the courthouse, in those appointed by the Chief Justice to review judicial salary or discipline; at weekend retreats to induct a new judge, or ceremonies to bid farewell to a retiring judge or

celebrate taking of office as chief judge; in delegations to other countries to teach at seminars on the American judicial system or to receive foreign delegates; with those colleagues CCJ shared memorable moments at the wedding of a daughter, trying moments of accident and death, and made plans to go together with the gang on a Caribbean cruise next…stop it right there! 'cause Dick Schmock just filed a complaint alleging misconduct on SJ Nicky's part so CCJ Joey, who was nominated by the President solely because of his integrity and legal acumen, and was made incorruptible when confirmed by the Senate, as are made all other federal judges, is going to call SJ Nicky to roast on an inquisitorial skewer his motives, impartiality, and respect for the law, regardless of how that incident will char CCJ's relationship with SJ and all the other judges for the rest of CCJ's life-tenured career, but Dick Schmock's one-off complaint is so worth it that…Nonsense! Pure wishful thinking or a knowingly deceitful scenario, for it is contrary to human nature to be objective and critical about one's friends and colleagues that can retaliate with their incriminating knowledge of one's wrongdoing, as shown by the evidence of only nine judges disciplined out of the 7,462 complaints filed in the 10 years between 1996 and 2006.

71. This means that if the chief circuit judge does communicate with the subject judge to consider the complaint however circumspectly, the former will do so with the need to believe the latter, who will be aware that the communication is pro forma and his role is simply to satisfy that favorable prejudice with a story believable on its face. After all, like the Act, "these rules do not give the complainant the rights of a party to litigation", p26, L38, where in an adversarial confrontation with the subject judge in public before an impartial arbiter determined to allow a clash of their respective version of the events the complainant would try to establish his as true and actionable. Instead, the Act and the Rules require the complainant to let his complaint be revealed to the subject judge, while not requiring that he be informed whether the subject judge bothered to give any answer to it, let alone the content of any that he may have given to his friendly colleague, the chief circuit judge.

72. The role of the chief circuit judge is not to let 'sunshine be the best revealer of truth', let alone the best disinfectant, as Justice Louis D. Brandeis once said; but rather to maintain the confidentiality of not only the proceedings, p26, L29-31, but also of even the name of the subject judge, p15, L35-36, in order to "encourage informal disposition", p42, L8-9, of the com-plaint at its earliest stage by her "suggesting", p18, L33, easy terms of disposition to facilitate the subject judge's acceptance of "voluntary corrective action", p42, L6-7, involving no individual or institutional liability or compensation whatsoever. Does this have anything to do with traditional notions of fair play and substantial justice through due process of law, or is it a device crafted to let 'friendship be the best cover up for infectious judicial conduct'?

Rule 10. Abuse of the Complaint Procedure, p13, L17

73. "(b) Orchestrated Complaints. Where large numbers of essentially identical complaints from

different complainants are received and appear to be part of an orchestrated campaign, the judicial council may, on the recommendation of the chief circuit judge, issue a written order instructing the clerk of the court of appeals to accept only one or more of such complaints for filing and to refuse to accept subsequent complaints. A copy of the order shall be sent to the complainants whose complaints were not accepted", p13, L27-33

74. This Rule infringes upon the general principle that deprives the clerk of a court of appeals of authority to refuse to file and which is expressed in thus in the Federal Rules of Procedure:

> **FRAP Rule 25. Filing and Service**
>
> **(a)(4) Clerk's Refusal of Documents.** The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.
>
> **FRCivP Rule 5. Service and Filing of Pleadings and Other Papers**
>
> (**e) Filing with the Court Defined.** …The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices.
>
> **FRBkrP Rule 5005. Filing and Transmittal of Papers**
>
> **(a) Filing**
>
> **(1) Place of filing**
>
> …The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

75. What is more, the rules of procedure implicitly deny a judge authority to refuse filing a document by explicitly providing only that a judge may permit a document to be filed directly with him:

> **FRAP Rule 25. Filing and Service**
>
> **(a)(3) Filing a Motion with a Judge.** If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.
>
> **FRCivP Rule 5. Service and Filing of Pleadings and Other Papers**
>
> **(e) Filing with the Court Defined.** …the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk…
>
> **FRBkrP Rule 5005. Filing and Transmittal of Papers**
>
> **(a) Filing**
>
> **(1) Place of filing**
>
> …The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk…

FRBkrP Rule 7005. Service and Filing of Pleadings and Other Papers

Rule 5 F.R.Civ.P. applies in adversary proceedings.

76. When the rules of procedure wanted to give the clerk of court authority to refuse filing a document, it did so expressly and limited strictly the circumstances for the exercise of such authority:

Supreme Court Rules, Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

77. Aside from determining compliance with the expressly stated Rules, the clerk of the Supreme Court is not given authority to review a document's substantive content to determine whether in his judgment it should be classified as belonging to a category that is to be denied filing.

78. The procedural rules do not give authority to a Justice or even the Supreme Court in its entirety to decide that a category of documents are to be denied filing due to the nature of their contents. Therefore, on what basis, other than the unlawful interest of protecting the judges' unaccountability, did the Committee rely to give authority to chief circuit judges and judicial circuits to refuse filing a whole category of documents, thus taking an action contrary to the very essence of a judicial system, namely, deny a category of people access to judicial process?

79. By means of Rule 10, the judges protect themselves from the equivalent of a class action. No provision is made for the possibility that many people may have had the same cause for complaining against the subject judge or that their complaints may add evidentiary weight to the common tenor of the complaints. Nor is the likelihood considered that the review of similar complaints could allow the detection of a pattern of conduct on the part of the subject judge, much less the possibility that in addition to all the elements common to all complaints, each could contain particular elements so that "on the basis of the total mix of information", p5, L24-25, a more detailed picture may be drawn of the subject judge, his conduct, personality, working conditions, and characteristics of complainants.

80. Moreover, how can all complainants regardless of their number, except "only one or more", p13, L31, be deprived of their right to complain against a judge simply because to the latter's peers it just "appears" that their complaints are "part of an orchestrated campaign", p13, L29,? Where does the law permit the view that 'orchestrating a campaign' to recall a governor of a state or a member of the legislature is a permissible exercise of the right "to assemble, and to petition the Government for a redress of grievances", U.S. Const, First Amend., because limited to the Executive and Legislative Branches of Government, but if mounted to complain against a federal judge it becomes a conspiratorial act of people scheming an inherently meritless attack on an unfairly targeted judge and creating such clear and present danger to the Judiciary itself, the Branch above the Constitution, that both need to be protected by breaking the "orchestrated campaign" before the complaints are even filed, let alone reviewed?

81. What logic, let alone principle of law, allows the drafters to conclude that if people use "the Internet or other technology", p14, L3-4, to search for other people with "essentially identical complaints against the same judge or judges", p14, L1-2, and "dozens or hundreds", p14, L1, respond and decide to assemble to petition for redress jointly, then they reveal themselves as "orchestrators" of complaints carrying the virus of mean-spiritedness and frivolousness requiring that they be deleted in bulk lest they infect the Judiciary?

82. Why not eliminate the thousands of complaints against ENRON and its financial backers, or Dow Corning, the manufacturer of leaky silicone breast implants, or the pharmaceutical company Pfizer that marketed the potentially fatal anti-arthritis Vioxx and Celebrex pills, by applying to them the drafters' rationale for blocking the filing of "orchestrated" complaints?: "If each complaint submitted as part of such a campaign were accepted for filing and processed according to these rules, there would be a serious drain on court resources without any benefit to the adjudication of the underlying merits", p14, L4-7.

83. If after "the first complaint or complaints have been dismissed on the merits,… further, essentially identical, submissions follow", p14, L11-12, why did the drafters not draw from that fact the conclusion that it was necessary for the chief circuit judge to 'take from among "We the People" out there "an objective view of the appearance of the judicial conduct in question"', p18, L32-33, as improper, biased, or otherwise complainable, and that the "People"'s view should be dealt with by allowing their complaints to be filed and reviewing them in order to understand what gave rise to it? Such course of action would show that responsiveness is "preferable to sanctions", p18, L31, which sanctions "We the People", not only the subject judge, deserve to be spared because a judiciary that cares to understand public concerns and, if found valid, corrects the underlying problems and, if found invalid, educates the public on why they are so and should be dealt with through other means of action, promotes trust in the courts and in the integrity of their process to administer "Equal Justice Under Law".

84. It would appear from this Rule that the drafters too are judges who just overdid it with their orchestration of tunes for the protection of the vested interests of their above the law class of judges…but that's only a thought.

ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF CIRCUIT JUDGE, p14, L18

Rule 11. Review by the Chief Circuit Judge, p14, L20

85. **Rule 11 "(c) Dismissal.** A complaint must be dismissed in whole or in part to the extent that the chief circuit judge concludes that the complaint:", p14, L41-42, is what he prejudged many complaints to be, that is, 'clearly' dismissable. This impermissible bias on the part of a chief circuit judge against the merits of complaints about his peers is nevertheless validated by the

drafters in their astonishing statement that "many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense", p19, L31-33.

86. This means that out of expediency, a subject judge can skip filing any answer to a complaint against him by simply relying on the chance that it will be dismissed, for he knows that his silence will not be construed as an admission and that the complaint will not be investigated by default, contrary to what happens in lawsuits among people "Under Law" and FRCivP 4(a) and 8(d). Now consider that also out of expediency, a chief circuit judge together with his court routinely disposes of whole appeals by having a blank in a summary order form filled in with "Affirmed" and likewise disposes of motions by having a circle made around either the word "Denied", mostly, or "Granted", rarely, on the Motion Information Statement, which is another form for the movant to summarize her motion so that the judge does not have to read it. That same expediency has generated a bias in that same chief circuit judge toward prejudging as many complaints as he can "clear candidates for dismissal" and dismissing them without any inquiry or investigation.

87. The chief circuit judge must also dismiss the complaint if he concludes that it "(5) is otherwise not appropriate for consideration under the Act", p15, L10. This is a vague and standardless catch-all that allows the chief circuit judge to dismiss a complaint for any reason and no reason. Indeed, Rule 11(g)(1) provides only this: "(g) Notice of Chief Circuit Judge's Action; Petitions for Review. (1) If the complaint is disposed of under Rule 11(c), (d), or (e), the chief circuit judge must prepare a supporting memorandum that sets forth the reasons for the disposition", p15, L32-35. This requirement can conceivably be satisfied by the chief circuit judge simply quoting the Rule in his memorandum, where he states that 'the complaint is dismissed because it is no appropriate for consideration under the Act'.

88. By contrast, when a plaintiff files a complaint against a lesser defendant 'Under Law' and the FRCivP, her complaint can be dismissed summarily before discovery only if the defendant publicly files a motion or a pleading stating its reasons for requesting dismissal, such as those provided under FRCivP 12(b). Thereupon the plaintiff has the opportunity to argue against dismissal, challenging in open court or in a publicly filed answer the factual and legal basis of the defendant's dismissal grounds.

89. It can happen that the district judge dismisses the complaint but fails to perform his duty to state his findings of facts or conclusions of law with sufficient detail to satisfy the purpose of such duty. In such event, the complainant can on appeal at least point to the defendant's reason for dismissal in its motion or pleading, where they would presumably be as detailed and well grounded as the defendant was capable to provide with a view to prevailing in the context of a public adversarial proceeding. However, 'subject' judges are not subject to such proceedings, for they are above the law and entitled to the best defense possible, namely, his peer chief circuit judge, who can summarily dismiss the complaint because it is just "not appropriate for

consideration under the Act", p15, :10.

90. **Rule 11 "(d) Corrective Action.** The chief circuit judge may conclude the complaint proceeding in whole or in part if the chief circuit judge determines that appropriate corrective action that acknowledges and remedies the problems raised by the complaint has been voluntarily taken by the subject judge;" p15, L14-18.

91. This section of Rule 11 provides no standard for determining what is "appropriate" or what action 'corrects' the complained-about conduct of the subject judge, particularly since the subject judge 'volunteers' a remedy that suits him but that has nothing to do with any remedy that the complainant may have requested in his complaint.

92. This means that all is needed from the penitent judge is for him to choose his own penance through his "participation [with the chief circuit judge] in formulating the directive…of remedial action', p18, L36-37, and the chief circuit judge will grant him absolution; in other words: "-O.K., O.K, I won't do it again. –Then go in peace, my son, and remain in "good Behaviour". After all, the chief circuit judge is only interested in doing something that is "best able to influence a judge's future behavior in constructive ways", p11, L42, not in providing a remedy for the harm that his peer inflicted upon the complainant in the past. That harm can be considerable, for it can include the loss of rights and the expense of an enormous amount of effort, time, and money trying to recover them and the suffering of tremendous intentional emotional distress caused by the subject judge due to, for example, his bias against out of town pro se litigants that do not play by the rules of 'local practice' and insist on applying the law of the land of Congress.

93. That harm constitutes injury in fact. Hence, to offer only to "redress the harm, if possible, such as by an apology, recusal from a case, and a pledge to refrain from similar conduct in the future", p19, L3-4, is nothing but insincere lip-service. Moreover, to say in the same breath that "any corrective action should, to the extent possible, serve to correct a specific harm to an individual, if such harm can reasonably be remedied", p19, L5-6, is disingenuous. By not including among the remedies the payment of compensation to the complainant by the subject judge or his institutional employer, the Judiciary, for the injury that either or both have caused the complainant, the drafters exempt the judge and the institution from all liability. Apologetic words by a subject judge are cheap, as are those of "a private or public reprimand", p19, L13-14, of him by the chief circuit judge. Why is it, by contrast, that the "extent possible" of the remedy that a company can be required to provide is so vast that it may even force the company into bankruptcy to compensate the victims of its officers' conduct?, e.g. Pan Am had to file for bankruptcy after being ordered to compensate the victims of the downing of its Boeing 747 on Flight 103 at Lockerbie, Scotland, in 1988.

94. This divergent 'extent of the possible' reveals a double standard of justice: a compensatory one for "We the People Under Law" and an exonerating one for the judicial class above the law. Just as is the sanction of the subject judge by a mere reprimand, a remedy for the complainant of a

mere apology is a mockery of justice.

95. There is no "Equal Justice Under Law" when the subject judge can voluntarily choose his remedy for the future and leave the complaint holding the bag of damages that the judge caused the complainant in the past. Nor is the chief circuit judge under the same law and its tort principles that would require him to hold the Judiciary to its institutional responsibility for the harm caused to a party to a lawsuit by one of its employees during the performance of his duties in the course of business.

96. The fact is that judges are not employees of the Federal Judiciary; rather, they are independent contractors that hold office in their own right "during good Behaviour", U.S. Const., Art. III, Sec. 1. Not even the Chief Justice of the Supreme Court of the United States can remove from the bench a judge due to his 'bad Behaviour', not to mention that "Neither the chief circuit judge nor an appellate court has authority under the Act to impose a formal remedy or sanction", p18, L38-39, and a judicial council cannot be used as proxy to dock his compensation, "which shall not be diminished during [his] Continuance in Office", Const., id.

97. The only real sanction that has any meaningful impact on the subject judge is a referral for impeachment to the House of Representatives…a very risky move, indeed. It may lead to the subject judge adopting the retaliatory position *"If you bring me down, I take you with me!'* and to that end, pointing the finger in turn at the judges higher up in the judicial hierarchy either for the wrongdoing that they actively participated in for their benefit or quietly tolerated out of fear of being ostracized as treasonous pariahs, which could cause them to point the finger at those even higher up. Thereby a domino effect could be triggered that would threaten the Judiciary's reputational interests and the independence that through the Act and the Rules' mechanism of self-discipline it enjoys from effective control by law enforcement agencies or Congressional judicial committees. Given such dismal prospect, some conciliatory and appeasing words, uttered against the continued bass of self-preservation, such as "Then go in peace, my son, and let you and me be good to each other", sound, oh!, so much more reasonable and promising.

98. In light of those circumstances, the best a chief circuit judge can do is forgive and forget and hope that the subject judge will behave better in future…and tough luck for the complainant, for his injuries are in the past and nobody is here now to ensure that "appropriate corrective action….remedies" them, p15, L15-16. "Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint", p18, L28-30. The Rules have been drafted to ensure self-preservation, not to establish checks and balances between "We the People Under Law" and the class of federal judges above the law, let alone to provide "Equal Justice" for both.

99. **"Commentary to Rule 11**: The chief circuit judge is not required to act solely on the face of the complaint. The power to conclude a complaint proceeding on the basis that corrective action has been taken implies some power to determine whether the facts alleged are true. But the

boundary line of that power -- the point at which a chief circuit judge invades the territory reserved for special committees -- is unclear." P17, L10-14.

100. What a pertinent opportunity the drafting of this Rules was to render "clear" such boundary line by providing "authoritative interpretive standards" together with examples in order to cure the "lack of" them found by the Breyer Committee, p2, L22-25. If the drafters did not have the authority or will to provide such needed clarification, what exactly could and did they provide other than cosmetic touch-ups?

101. So rare and inconsequential for complainants are the Rules' 'new' provisions that when the drafters did provide something of some relevant novelty, they had to celebrate their accomplishment by pointing it out. This is what they did with a provision concerning, not complainants and the effectiveness of their complaints, but rather a committee for the administration of the Rules: "The provision [of Rule 8(b)] requiring clerks to send copies of all complaints to the Judicial Conference Committee on Judicial Conduct and Disability is new. It is necessary to enable the Committee to monitor administration of the Act, to anticipate upcoming issues, and to carry out its new jurisdictional responsibilities under Article VI"; p13, L1-4.

102. **Rule 11 "(e) Intervening Events.** The chief circuit judge may conclude the complaint proceeding in whole or in part if the chief circuit judge determines that intervening events render some or all allegations of the complaint moot or remedial action impossible"; p15, L19-22.

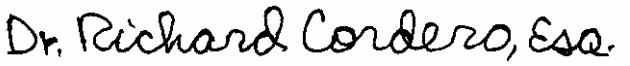
103. This provision is illustrative of how the federal judiciary has managed to place itself above the law applicable to the rest of "We the People": The latter's complainants in civil lawsuits may seek damages against a party even after the party's death by suing its estate and may even recover against the estate. This means that not even the death of the defendant renders 'impossible" a remedy claimed against people "Under Law" and thus, of lesser statute than a subject judge.

104. By contrast, this Rule allows the chief circuit judge to dismiss a complaint whenever the chief circuit judge deems that "remedial action [is] impossible", without having to state specifically what remedial action the chief circuit judge considered to be impossible, let alone why it is "impossible". Nor does the chief circuit judge have to give the complainant the opportunity to state how that 'impossible remedial action' could be rendered possible or what alternative remedial action is possible.

105. Moreover, the absence of any obligation on the chief circuit judge to identify specifically what "remedial action" she considered in connection with the complaint and why she deemed it "impossible" deprives the complainant of the possibility to challenge in a petition for review to the judicial council the chief circuit judge's application of that ground of dismissal to dismiss the complaint. Consequently, how could a judicial council reviewing an order of dismissal effectively determine whether an undetermined "remedial action" was possible or

"impossible"? Lacking such information, the judicial council has nothing on which to base its determination other than its bias toward its peer.

Sincerely,



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Supreme Court of the United States

FOR IMMEDIATE RELEASE

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Judicial Conduct and Disability Act Study Committee
Organizational Meeting
June 10, 2004

The Judicial Conduct and Disability Act Study Committee held its initial organizational meeting today at the Supreme Court. The Chief Justice established the Committee, chaired by Justice Stephen Breyer, to evaluate how the federal judicial system has implemented the Judicial Conduct and Disability Act of 1980. (See 28 U.S.C. §§ 351-364.) That Act authorizes "any person" to file a complaint alleging that a federal circuit judge, district judge, bankruptcy judge, or magistrate judge has "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts," or is physically or mentally unable to perform his or her duties. The Act does not itself prescribe ethical standards; nor does it apply to the Supreme Court.

At today's meeting, the Committee decided that it will initially examine as many non-frivolous Act-related complaints as can be identified, along with a statistical sample of all complaints, filed in the last several years. The Committee will use this information to help shape a further course of examination and analysis, eventually leading to Committee recommendations to the Chief Justice.

"The Committee's task is narrow, but important," Justice Breyer said. "The 1980 Act put a system in place so that action can be taken when judges engage in misconduct or are physically or mentally unable to carry out their duties. We need to see how the system is working. The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability."

In addition to Justice Breyer, the Committee members are: Judge J. Harvie Wilkinson (U.S. Court of Appeals for the Fourth Circuit); Judge Pasco M. Bowman (U.S. Court of Appeals for the Eighth Circuit); Judge D. Brock Hornby (U.S. District Court for the District of Maine); Judge Sarah Evans Barker (U.S. District Court for the Southern District of Indiana); and Sally M. Rider (administrative assistant to the Chief Justice).

The Committee will use staff drawn from the Administrative Office of the United States

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Courts and the Federal Judicial Center. The staff will develop a research plan based both on statistical sampling and interviews, including interviews of judges, administrators, and practicing lawyers, such as prosecutors and defense attorneys. It will examine complaints submitted by members of the public to other institutions, including Congress, and will develop methods for obtaining information from members of the public. Although the Committee will proceed publicly where useful and appropriate, it recognizes the statutory requirement to maintain confidentiality of records and complaints. (See 28 U.S.C. § 360.) It will likely take eighteen months to two years for the Committee to complete its work. The Committee will meet again in the fall.

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Supreme Court of the United States

FOR IMMEDIATE RELEASE

September 19, 2006

For Further Information Contact:
Kathy Arberg 202-479-3211

Chief Justice John G. Roberts, Jr., today released the Report of the Judiciary's Committee to study the implementation of the Judicial Conduct and Disability Act of 1980. In May 2004 the Chief Justice's predecessor, William H. Rehnquist, responding to concerns expressed by members of Congress, appointed the Committee to study the Judiciary's implementation of the Act and to report its findings to him. Chief Justice Roberts asked the Committee to continue its work. Justice Stephen Breyer, who chairs the Committee, transmitted the report to the Chief Justice yesterday. The other members of the Committee are Pasco M. Bowman, Senior U.S. Circuit Judge, Eighth Circuit, Sarah Evans Barker, U.S. District Court, Southern District of Indiana, J. Harvie Wilkinson, III, U.S. Circuit Judge, Fourth Circuit, D. Brock Hornby, U.S. District Judge, District of Maine, and Sally M. Rider, Administrative Assistant to the Chief Justice. Staff work was performed principally by three senior members of the Federal Judicial Center and one from the Administrative Office. The Committee received no special funding.

The Committee and staff studied a sample consisting of approximately 700 complaint files drawn for the most part from about 2200 complaints terminated over a three year period (2001-2003). The members of the Committee established a set of standards to assess how the complaints were handled and examined in-depth the complaint files in about 200 individual cases.

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In releasing the report, the Chief Justice said, "The Committee has engaged in a thorough and comprehensive study of the judiciary's implementation of the Judicial Conduct and Disability Act of 1980, and I thank the members for their work. The report finds that overall, the judiciary has done an excellent job of handling complaints in accordance with the Act, but that in respect to a small number of highly visible cases, improvement is needed. The Committee has identified concrete steps we can take to improve the handling of all cases, and in particular, those that are highly visible. For example, one major recommendation is a more vigorous role for the Judicial Conference committee with overall responsibility for the administration of the Act, including creating a mechanism so that chief judges consider, in appropriate circumstances, transferring a case to another circuit for handling. I have asked that the report's recommendations be referred to the appropriate committees of the Judicial Conference for thorough consideration and prompt action."

The report is available electronically on the Supreme Court's Web site, www.supremecourtus.gov, under Public Information. Copies of the report may also be obtained from the Public Information Office: 202-479-3211.

Search Tip: Use the binocular icons to search within PDF documents.

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For Public Comment: Draft *Rules Governing Judicial Conduct and Disability Proceedings*

On July 16, 2007, the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States released its draft *Rules Governing Judicial Conduct and Disability Proceedings* for 90 days of public comment, **to conclude on October 15, 2007**. From this web page, you may review those rules and submit your comments by e-mail.

- Review Draft *Rules Governing Judicial Conduct and Disability Proceedings* (pdf)

- E-mail your comments to JudicialConductRules@ao.uscourts.gov

With any comments you submit, please specify your:

- Name,
- Mailing address,
- Organization, if any, and
- Occupation (federal judge, state judge, lawyer in private practice, government lawyer, professor, or non-lawyer).

Although submissions will not receive a response, those that are timely will be considered by the Judicial Conduct and Disability Committee as it prepares the draft rules for Judicial Conference consideration.

The draft rules were developed at the direction of the Judicial Conference as a means of ensuring that the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, operates consistently throughout the federal court system. If adopted

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by the Conference, they will constitute binding guidance for chief judges, circuit judicial councils, and circuit staff on the full spectrum of issues noted in *Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice*, 239 F.R.D. 116 (September 2006) ("Breyer Committee Report"). Those issues, and the historical and policy context of these rules, are discussed fully in that report.

You may also comment on these rules at a public hearing being planned for that purpose, to commence at 10:00 a.m. on September 27, 2007, in the U.S. Courthouse at 225 Cadman Plaza East, Brooklyn, New York. Requests to appear and testify at the hearing must be e-mailed by August 27 to the Office of the General Counsel, Administrative Office of the U.S. Courts, at JudicialConductRules@ao.uscourts.gov. Those who submit such requests will be asked to give a written indication of the testimony they intend to provide.

This web page and its links are for use only in reviewing, and commenting upon, the draft Rules Governing Judicial Conduct and Disability Proceedings. No complaints and no communication on any other topic will be accepted here.

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U.S. House of Representatives
Committee on the Judiciary
F. James Sensenbrenner, Jr., Chairman

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www.house.gov/judiciary
News Advisory
For immediate release
Contact: Jeff Lungren/Terry Shawn
May 26, 2004
202-225-2492

Sensenbrenner Statement Regarding New Commission on Judicial Misconduct

WASHINGTON, D.C. - U.S. Supreme Court Chief Justice William Rehnquist yesterday announced the creation of a judicial commission, headed by Supreme Court Justice Stephen Breyer, to look into the implementation of the Judicial Conduct and Disability Act of 1980 concerning judicial misconduct and discipline. House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) released the following statement:

"I am pleased and encouraged by this announcement. Chief Justice Rehnquist should be commended for his willingness to work with the Congress and address this issue in a serious manner. Chief Justice Rehnquist made a wise choice in asking Justice Breyer to head this commission and I´m grateful Justice Breyer has agreed to serve as head of this panel. Justice Breyer´s devotion to the law combined with his exemplary standards of character and integrity will provide this commission with the qualities needed to complete its work."

"The 1980 Act, which was amended during the 107th Congress, is based on a self-governing construct that allows the judicial branch large deference to police itself regarding matters of judicial misconduct and discipline. This system worked quite well during the 1980's. For instance, on three separate occasions, a judicial branch investigation recommended a federal judge be impeached for misconduct. Congress followed these recommendations in each case by impeaching these judges. Since then, however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."

Background on Judicial Conduct and Disability Act of 1980

Individuals who believe a U.S. circuit or district court judge has indulged in misconduct may file a complaint against the judge in the relevant circuit. The chief judge of the circuit is empowered

to dismiss frivolous complaints or those that relate to the merits of a decision. More serious complaints are subject to review by an investigatory committee selected by the chief judge of the circuit and further review may be warranted by judicial councils empaneled for that purpose. The councils and the Judicial Conference, the leadership arm of the federal judiciary, are given wide latitude to take any necessary corrective action, including the authority to recommend that a judge be impeached.

The 1980 Act does not apply to Supreme Court justices. The authority to create this process as a way to instill ethical behavior within the lower federal courts is explicit under Article III of the Constitution. Constitutional questions would arise under the separation of powers doctrine to apply the same construct to Supreme Court justices.

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[Previous Doc in Result List] [Next Doc in Result List]

Remarks of the Chief Justice

Federal Judges Association Board of Directors Meeting
May 5, 2003

Thank you Judge Jolly. I thought I would speak today about two topics that are of great concern to federal judges around the country. The first, of course, is the perennial topic of judicial pay. The second is the issue of Congressional concern about sentencing in the federal courts of the federal judiciary.

One of the critical challenges of American government is to preserve the legitimate independence of the judicial function while recognizing the role Congress must play in determining how the judiciary functions. Article III of the Constitution grants to Article III judges two significant protections of their independence: they have tenure during good behavior, and their compensation may not be diminished during their term of office. But federal judges are heavily dependent upon Congress for virtually every other aspect of their being -- including when and whether to increase judicial compensation.

Last December I met with President Bush to discuss the need for an increase in judges' pay. The President subsequently issued a statement urging Congress to authorize a pay increase for federal judges. On January 7, 2003, the National Commission on the Public Service, chaired by Paul Volcker, issued its report, "Urgent Business for America - Revitalizing the Federal Government for the 21st Century." Among its recommendations is that "Congress should grant an immediate and significant increase in judicial, executive and legislative salaries" and that "[i]ts first priority in doing so should be an immediate and substantial increase in judicial salaries." At the March meeting of the Judicial Conference, the Attorney General spoke in favor of increasing judges' pay, as did Senators Hatch and Leahy.

Whether this means that the stars are aligned for Congress to pass a bill to increase our pay, I cannot say. But I can say that we are closer than we have been for several years, and I am still hopeful that we may get something through during this Congress. The progress we have made is in large part due to the efforts of many federal judges, including the members and leadership of the Federal Judges Association. I particularly want to note the hard work of Deanell Tacha and Richard Arnold, the Chair and Vice-Chair of the Judicial Branch Committee of the Judicial Conference, Judge John Walker, who has helped pave the way for the President's support, and Judge Robert Katzmann, who worked very closely with the Volcker Commission.

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The second topic I would like to address is the recent efforts by some in Congress to look into downward departures in sentencing by federal judges, in particular our colleague Judge James Rosenbaum. We can all recognize that Congress has a legitimate interest in obtaining information which will assist in the legislative process. But the efforts to obtain information may not threaten judicial independence or the established principle that a judge's judicial acts cannot serve as a basis for his removal from office.

It is well settled that not only the definition of what acts shall be criminal, but the prescription of what sentence or range of sentences shall be imposed on those found guilty of such acts, is a legislative function - in the federal system, it is for Congress. Congress has recently indicated rather strongly, by the Feeney Amendment, that it believes there have been too many downward departures from the Sentencing Guidelines. It has taken steps to reduce that number. Such a decision is for Congress, just as the enactment of the Sentencing Guidelines nearly twenty years ago was.

The new law also provides for the collection of information about sentencing practices employed by federal judges throughout the country. This, too, is a legitimate sphere of congressional inquiry, in aid of its legislative authority. But one portion of the law provides for the collection of such information on an individualized judge-by-judge basis. This, it seems to me, is more troubling. For side-by-side with the broad authority of Congress to legislate and gather information in this area is the principle that federal judges may not be removed from office for their judicial acts.

This principle is not set forth in the Constitution, which does grant federal judges tenure during good behavior and protection against diminution in salary. But the principle was established just about two centuries ago in the trial of Justice Samuel Chase of the Supreme Court by the Senate. Chase was one of those people who are intelligent and learned, but seriously lacking in judicial temperament. He showed marked partiality in at least one trial over which he presided, and regularly gave grand juries partisan federalist charges on current events.

For this the House of Representatives, at President Thomas Jefferson's instigation, impeached him, and he was tried before the Senate in 1805. That body heard fifty witnesses over a course of ten full days. The Jeffersonian Republicans had more than a two-thirds majority in the body, and if they had voted as a block Chase would have been convicted and removed from office. Happily, they did not vote as a block; the article on which the House managers obtained the most votes to convict was the one dealing with his charges to the grand jury; there the vote to convict was nineteen to fifteen, a simple majority but short of the requisite two-thirds vote needed to convict.

The significance of the outcome of the Chase trial cannot be overstated -- Chase's narrow escape from conviction in the Senate exemplified how close the development of an independent judiciary came to being stultified. Although the Republicans had expounded grandiose theories about impeachment being a method by which the judiciary could be brought into line with prevailing political views, the case against Chase was tried on a basis of specific allegations of judicial misconduct. Nearly every act charged against him had been performed in the discharge of his judicial office. His behavior during the Callender trial was a good deal worse than most historians seem to realize, and the refusal of six of the Republican Senators to vote to convict even on this count surely cannot have been intended to condone Chase's acts. Instead it

represented a judgement that impeachment should not be used to remove a judge for conduct in the exercise of his judicial duties. The political precedent set by Chase's acquittal has governed that day to this: a judge's judicial acts may not serve as a basis for impeachment.

In the years since the Chase trial, eleven federal judges have been impeached. Of those, three were acquitted, two resigned rather than face trial, and six were convicted. One conviction -- that of Judge West H. Humphreys in 1862 -- was by default since he had accepted appointment as a Confederate judge in Tennessee. The other five convictions were for offenses involving financial improprieties, income tax evasion, and perjury -- misconduct far removed from judicial acts.

But the principle that a judge may not be impeached for judicial acts does not mean that Congress cannot change the rules under which judges operate. Congress establishes the rules to be applied in sentencing; that is a legislative function. Judges apply those rules to individual cases; that is a judicial function. There can be no doubt that collecting information about how the sentencing guidelines, including downward departures, are applied in practice could aid Congress in making decisions about whether to legislate on these issues. There can also be no doubt that the subject matter of the questions, and whether they target the judicial decisions of individual federal judges, could amount to an unwarranted and ill-considered effort to intimidate individual judges in the performance of their judicial duties. We must hope that these inquiries are designed to obtain information in aid of the congressional legislative function, and will not trench upon judicial independence.

Thank you.

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Impeachments of Judges

A Guide to the Preservation of Judges' Papers (pdf)

Impeachments of Federal Judges

John Pickering, U.S. District Court for the District of New Hampshire.

Impeached by the U.S. House of Representatives on March 2, 1803, on charges of mental instability and intoxication on the bench; Trial in the U.S. Senate, March 3, 1803, to March 12, 1803; Convicted and removed from office on March 12, 1803.

Samuel Chase, Associate Justice, Supreme Court of the United States.

Impeached by the U.S. House of Representatives on March 12, 1804, on charges of arbitrary and oppressive conduct of trials; Trial in the U.S. Senate, November 30, 1804, to March 1, 1805; Acquitted on March 1, 1805.

James H. Peck, U.S. District Court for the District of Missouri.

Impeached by the U.S. House of Representatives on April 24, 1830, on charges of abuse of the contempt power; Trial in the U.S. Senate, April 26, 1830, to January 31, 1831; Acquitted on January 31, 1831.

West H. Humphreys, U.S. District Court for the Middle, Eastern, and Western Districts of Tennessee.

Impeached by the U.S. House of Representatives, May 6, 1862, on charges of refusing to hold court and waging war against the U.S. government; Trial in the U. S. Senate, May 7, 1862, to June 26, 1862; Convicted and removed from office, June 26, 1862.

Mark W. Delahay, U.S. District Court for the District of Kansas.

Impeached by the U.S. House of Representatives, February 28, 1873, on charges of intoxication on the bench; Resigned from office, December 12, 1873, before opening of trial in the U.S. Senate.

Charles Swayne, U.S. District Court for the Northern District of Florida.

Impeached by the U.S. House of Representatives, December 13, 1904, on charges of abuse of contempt power and other misuses of office; Trial in the U.S. Senate, December 14, 1904, to February 27, 1905; Acquitted February 27, 1905.

Robert W. Archbald, U.S. Commerce Court.

Impeached by the U.S. House of Representatives, July 11, 1912, on charges of improper business relationship with litigants; Trial in the U.S. Senate, July 13, 1912, to January 13, 1913; Convicted and removed from office, January 13, 1913.

George W. English, U.S. District Court for the Eastern District of Illinois.

Impeached by the U.S. House of Representatives, April 1, 1926, on charges of abuse of power; resigned office November 4, 1926; Senate Court of Impeachment adjourned to December 13, 1926, when, on request of the House manager, impeachment proceedings were dismissed.

Harold Louderback, U.S. District Court for the Northern District of California.

Impeached by the U.S. House of Representatives, February 24, 1933, on charges of favoritism in the appointment of bankruptcy receivers; Trial in the U.S. Senate, May 15, 1933, to May 24, 1933; Acquitted, May 24, 1933.

Halsted L. Ritter, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, March 2, 1936, on charges of favoritism in the appointment of bankruptcy receivers and practicing law while sitting as a judge; Trial in the U.S. Senate, April 6, 1936, to April 17, 1936; Convicted and removed from office, April 17, 1936.

Harry E. Claiborne, U.S. District Court for the District of Nevada.

Impeached by the U.S. House of Representatives, October 9, 1986, on charges of income tax evasion and of remaining on the bench following criminal conviction; Trial in the U.S. Senate, October 7, 1986, to October 9, 1986; Convicted and removed from office, October 9, 1986.

Alcee L. Hastings, U.S. District Court for the Southern District of Florida.

Impeached by the U.S. House of Representatives, August 3, 1988, on charges of perjury and conspiring to solicit a bribe; Trial in the U.S. Senate, October 18, 1989, to October 20, 1989; Convicted and removed from office, October 20, 1989.

Walter L. Nixon, U.S. District Court for the Southern District of Mississippi.

Impeached by the U.S. House of Representatives, May 10, 1989, on charges of perjury before a federal grand jury; Trial in the U.S. Senate, November 1, 1989, to November 3, 1989; Convicted and removed from office, November 3, 1989.

UNITED STATES

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VOLUME 540

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2003

BEGINNING OF TERM

OCTOBER 6, 2003, THROUGH MARCH 1, 2004

FRANK D. WAGNER

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

OFFICERS OF THE COURT

JOHN D. ASHCROFT, Attorney General.
THEODORE B. OLSON, Solicitor General.
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
PAMELA TALKIN, Marshal.
JUDITH A. GASKELL, Librarian.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. VI, 509 U. S., p. V, and 512 U. S., p. V.)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Catherine O`Hagan Wolfe
CLERK OF COURT

Date: 9/14/07

Case Name: In Re: Dr. Richard Cordero v.

Docket No: 06-4780-bk

NOTICE TO COUNSEL

Effective immediately, the United States Court of Appeals for the Second Circuit has adopted a new rule, Interim Local Rule 34, requiring counsel to file a joint statement concerning oral argument of cases before the Court.

Enclosed is a copy of the rule and a joint statement counsel must file in order to comply with the rule. Unless the Court directs otherwise, failure to timely file the joint statement will result in submission of the case for decision on the briefs.

This notice is being sent to you because you have filed one or more briefs in the above-referenced case. Please note that the joint statement is due within 14 days after the due date of the last brief. If the last brief has been filed in this case, the joint statement will be deemed timely filed if the statement is filed with the Court within 14 days of the date of this notice. If only appellant`s brief has been filed to date, the joint statement must be filed within 14 days after the due date of the last brief.

Catherine O`Hagan Wolfe, Clerk

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- **1998 Annual Report of the Director**
  Leonidas Ralph Mecham
- **1997 Annual Report of the Director**
  Leonidas Ralph Mecham

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Table S-24.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the Twelve-Month Period Ended September 30, 1997

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1996*	109	0	1	21	5	11	7	10	1	3	11	31	8	0	0	0
Complaints Filed	679	3	15	16	40	62	69	84	68	28	56	137	54	47	0	0
Complaint Type																
Written by Complaint	678	3	15	16	40	62	69	84	68	27	56	137	54	47	0	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	461	3	4	10	3	24	29	14	11	5	102	249	7	0	0	0
District	497	0	14	17	27	28	48	43	59	25	45	121	38	32	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	2	2	2	6	3	2	2	2	6	1	3	0	0
Magistrate Judges	138	0	0	1	8	7	15	27	10	0	9	24	25	12	0	0
Nature of Allegations**																
Mental Disability	11	0	0	0	1	1	2	0	2	0	3	2	0	0	0	0
Physical Disability	4	0	0	1	0	1	1	0	1	0	0	0	0	0	0	0
Demeanor	11	0	0	0	2	0	0	0	0	0	1	4	0	4	0	0
Abuse of Judicial Power	179	3	0	6	25	1	40	20	8	13	17	19	22	5	0	0
Prejudice/Bias	193	1	9	8	32	8	27	12	17	4	14	30	20	11	0	0
Conflict of Interest	12	0	0	0	0	0	2	1	2	0	3	3	0	1	0	0
Bribery/Corruption	28	0	0	1	0	2	1	0	4	2	4	13	0	1	0	0
Undue Decisional Delay	44	0	0	1	0	6	1	10	4	2	3	11	5	1	0	0
Incompetence/Neglect	30	0	0	3	4	1	0	0	5	0	0	16	1	0	0	0
Other	161	1	3	2	0	30	1	38	24	10	7	19	22	4	0	0
Complaints Concluded	482	3	9	13	33	31	69	80	49	24	41	60	53	17	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	2	4	0	3	1	4	2	1	3	6	2	0	1	0	0
Directly Related to Decision or Procedural Ruling	215	0	0	6	12	21	34	26	21	11	14	31	24	15	0	0
Frivolous	19	1	0	0	0	0	3	0	1	6	1	5	2	0	0	0

Table S-24. (Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	2	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaint Withdrawn	5	0	0	0	0	0	4	0	0	0	0	0	0	1	0	0
Subtotal	270	3	4	6	15	22	45	29	23	21	21	38	26	17	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Complaints Pending on September 30, 1997	306	0	7	24	12	42	7	14	20	7	26	108	9	30	0	0

[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-24.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the Twelve-Month Period Ended September 30, 1998

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1997*	214	0	6	3	10	31	0	6	18	4	18	82	1	35	0	0
Complaints Filed	1,051	1	27	10	73	120	73	46	86	37	78	265	37	197	1	0
Complaint Type																
Written by Complainant	1,049	1	27	10	73	120	73	46	86	36	78	264	37	197	1	0
On Order of Chief Judges	2	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0
Officials Complained About**																
Judges																
Circuit	443	1	16	2	14	22	23	13	8	17	134	20	11	162	0	0
District	758	0	47	9	56	83	50	27	82	26	83	250	29	16	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Bankruptcy Judges	28	0	2	0	1	2	5	1	3	2	3	6	1	2	0	0
Magistrate Judges	215	0	3	2	8	13	15	12	16	5	7	110	8	16	0	0
Nature of Allegations**																
Mental Disability	92	0	0	3	9	4	7	2	18	0	36	13	0	0	0	0
Physical Disability	7	0	0	2	1	2	0	0	1	0	0	0	0	1	0	0
Demeanor	19	0	0	0	2	3	0	1	3	0	0	8	0	2	0	0
Abuse of Judicial Power	511	1	2	2	30	8	48	16	8	21	27	168	9	171	0	0
Prejudice/Bias	647	0	21	9	36	32	22	22	44	19	46	198	20	178	0	0
Conflict of Interest	141	0	0	1	0	7	3	3	0	0	3	117	2	5	0	0
Bribery/Corruption	166	0	0	0	0	0	3	0	0	1	2	155	2	3	0	0
Undue Decisional Delay	50	0	3	1	4	4	2	0	1	5	7	14	8	1	0	0
Incompetence/Neglect	99	0	0	0	1	4	4	0	3	1	1	81	1	3	0	0
Other	193	0	17	1	11	94	3	13	20	4	11	3	10	6	0	0
Complaints Concluded	1,002	1	33	13	56	95	73	49	70	40	78	257	35	202	0	0
Actions by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	43	0	6	0	4	2	5	0	2	3	6	5	3	7	0	0
Directly Related to Decision or Procedural Ruling	532	1	0	5	19	54	42	15	43	16	52	88	18	179	0	0
Frivolous	159	0	1	1	1	1	0	1	5	13	2	133	1	0	0	0

Table S-24. (September 30, 1998—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	2	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Complaint Withdrawn	5	0	1	0	0	0	1	0	1	1	1	0	0	0	0	0
Subtotal	742	1	8	6	24	57	48	16	51	34	62	227	22	186	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	258	0	25	7	32	38	25	32	19	6	16	29	13	16	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	260	0	25	7	32	38	25	33	19	6	16	30	13	16	0	0
Complaints Pending on September 30, 1998	263	0	0	0	27	56	0	3	34	1	18	90	3	30	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-23.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the 12-Month Period Ending September 30, 1999

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1998*	228	0	3	1	23	48	0	3	28	0	19	75	3	25	0	0
Complaints Filed	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
Complaint Type																
Written by Complaint	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	174	4	16	0	23	3	7	31	16	7	25	31	11	0	0	0
District	598	0	48	17	63	24	55	98	58	27	24	99	47	38	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	30	0	0	1	2	2	0	3	2	1	2	16	0	1	0	0
Magistrate Judges	229	0	1	4	11	5	6	64	14	4	10	69	30	11	0	0
Nature of Allegations**																
Mental Disability	69	0	0	0	26	4	3	11	3	0	2	5	0	15	0	0
Physical Disability	6	0	0	0	2	0	0	0	1	1	0	2	0	0	0	0
Demeanor	34	0	0	0	2	1	4	0	5	3	1	14	1	3	0	0
Abuse of Judicial Power	254	0	1	2	7	45	17	4	9	10	16	91	27	25	0	0
Prejudice/Bias	360	2	15	8	34	20	16	28	41	15	23	85	32	41	0	0
Conflict of Interest	29	0	0	0	5	1	6	4	0	0	2	6	2	3	0	0
Bribery/Corruption	104	0	0	4	10	26	4	4	3	1	2	44	0	6	0	0
Undue Decisional Delay	80	0	5	0	0	6	6	2	5	2	2	30	18	4	0	0
Incompetence/Neglect	108	1	0	0	3	5	3	0	6	0	2	71	2	15	0	0
Other	288	0	2	0	3	62	0	143	25	7	4	26	8	8	0	0
Complaints Concluded	826	2	18	12	57	63	53	184	82	31	45	163	50	66	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	0	0	6	0	8	1	4	4	0	0	0	0
Directly Related to Decision or Procedural Ruling	300	2	0	5	19	12	21	31	24	14	11	84	28	49	0	0
Frivolous	66	0	5	2	19	0	6	6	1	3	3	16	4	1	0	0

Table S-23. (September 30, 1999—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	10	0	0	0	3	0	0	0	1	0	0	3	2	1	0	0
Complainant Withdrawn	2	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0
Subtotal	406	2	9	7	41	12	34	37	34	19	18	107	35	51	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	416	0	9	5	16	51	19	147	46	12	27	54	15	15	0	0
Withdrawn	4	0	0	0	0	0	0	0	2	0	0	2	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	420	0	9	5	16	51	19	147	48	12	27	56	15	15	0	0
Complaints Pending on September 30, 1999	183	0	1	6	65	19	2	15	18	0	10	27	11	9	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) for the 12-Month Period Ending September 30, 2000

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 1999*	181	0	1	5	65	19	2	18	15	0	7	27	11	11	0	0
Complaints Filed	696	2	18	21	59	53	61	113	56	44	51	111	32	73	2	0
Complaint Type																
Written by Complainant	695	2	18	21	59	53	61	113	56	44	51	111	31	73	2	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Officials Complained About**																
Judges																
Circuit	191	4	4	4	9	10	14	23	4	11	45	35	15	13	0	0
District	522	0	17	20	41	36	62	60	50	29	52	92	26	37	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	26	0	0	1	2	6	1	2	2	2	2	5	2	1	0	0
Magistrate Judges	135	0	0	3	7	2	10	28	13	6	6	32	6	22	0	0
Nature of Allegations**																
Mental Disability	26	0	0	0	2	6	6	5	0	1	3	2	0	1	0	0
Physical Disability	12	0	0	1	1	3	4	0	0	0	0	3	0	0	0	0
Demeanor	13	0	0	0	3	2	0	0	0	0	1	6	0	1	0	0
Abuse of Judicial Power	272	0	0	10	29	25	29	43	9	23	20	38	16	30	0	0
Prejudice/Bias	257	1	13	8	28	17	15	24	28	13	17	39	25	29	0	0
Conflict of Interest	48	1	0	0	11	9	1	5	1	0	3	8	1	8	0	0
Bribery/Corruption	83	0	0	2	21	12	8	4	0	2	6	22	2	4	0	0
Undue Decisional Delay	75	0	2	1	11	6	6	7	5	3	3	16	4	11	0	0
Incompetence/Neglect	61	0	0	0	1	7	8	3	1	3	5	31	0	2	0	0
Other	188	0	7	1	5	66	0	50	4	7	13	20	9	6	0	0
Complaints Concluded	715	2	15	17	80	67	60	123	48	44	51	104	39	65	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	0	0	2	0	0	4	0	9	1	0	12	1	0	0	0
Directly Related to Decision or Procedural Ruling	264	2	4	3	29	31	26	23	21	11	23	38	15	38	0	0
Frivolous	50	0	4	1	0	0	2	8	2	12	8	9	2	2	0	0

Table S-22. (September 30, 2000—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	6	0	0	1	0	0	0	3	0	0	0	0	2	0	0	0
Action No Longer Necessary Because of Intervening Events	7	0	0	0	1	0	1	2	0	0	0	1	0	2	0	0
Complaint Withdrawn	3	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0
Subtotal	359	2	8	8	30	31	34	37	32	24	31	60	20	42	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	354	0	7	9	50	36	26	86	16	20	20	42	19	23	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	356	0	7	9	50	36	26	86	16	20	20	44	19	23	0	0
Complaints Pending on September 30, 2000	162	0	4	9	44	5	3	8	23	0	7	34	4	19	2	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c) During the 12-Month Period Ending September 30, 2001

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2001*	150	0	4	9	33	5	3	9	23	1	6	32	4	18	3	0
Complaints Filed	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
Complaint Type																
Written by Complainant	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
On Order of Chief Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	273	0	15	16	31	13	25	23	12	16	33	53	16	20	0	0
District	563	0	16	26	52	23	45	50	86	37	69	104	25	30	0	0
National Court	3	0	0	0	0	0	0	0	0	0	0	0	1	0	1	1
Bankruptcy Judges	34	0	0	2	2	6	2	2	1	3	0	12	2	2	0	0
Magistrate Judges	143	0	3	1	17	8	12	25	17	3	10	20	9	18	0	0
Nature of Allegations**																
Mental Disability	29	0	0	0	5	4	1	3	3	1	2	5	0	5	0	0
Physical Disability	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Demeanor	31	0	0	1	14	2	1	0	1	4	2	5	0	1	0	0
Abuse of Judicial Power	200	0	3	3	28	3	35	28	1	13	21	33	15	16	1	0
Prejudice/Bias	266	0	18	11	24	9	17	31	36	13	11	43	14	38	1	0
Conflict of Interest	38	0	0	0	10	4	3	8	1	1	0	5	4	2	0	0
Bribery/Corruption	61	0	0	0	2	5	4	6	1	1	1	33	3	5	0	0
Undue Decisional Delay	60	0	0	0	6	6	3	11	2	6	4	15	0	7	0	0
Incompetence/Neglect	50	0	0	2	5	8	3	3	7	0	1	20	0	1	0	0
Other	186	0	8	1	0	50	4	47	16	3	8	32	7	10	0	0
Complaints Concluded	668	0	18	16	75	53	61	108	68	39	41	100	30	58	1	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	13	0	1	0	4	0	0	0	1	2	1	4	0	0	0	0
Directly Related to Decision or Procedural Ruling	235	0	2	3	17	26	25	42	20	14	18	27	14	27	0	0
Frivolous	103	0	0	2	13	0	6	13	14	12	7	31	2	3	0	0

Table S-22. (September 30, 2001—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	4	0	0	0	0	1	0	0	0	1	1	0	1	0	0	0
Action No Longer Necessary Because of Intervening Events	5	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0
Complaint Withdrawn	3	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0
Subtotal	363	0	3	6	34	28	31	55	35	29	28	62	17	35	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	303	0	15	10	40	25	30	53	33	10	13	38	12	23	1	0
Withdrawn	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	305	0	15	10	41	25	30	53	33	10	13	38	13	23	1	0
Complaints Pending on September 30, 2001	248	0	17	15	60	2	5	1	52	5	17	34	6	30	3	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c) During the 12-Month Period Ending September 30, 2002

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2001*	262	0	17	15	60	3	5	19	44	5	17	36	6	31	3	1
Complaints Filed	657	0	20	14	62	51	59	81	77	28	54	105	47	54	5	0
Complaint Type																
Written by Complainant	656	0	20	13	62	51	59	81	77	28	54	105	47	54	5	0
On Order of Chief Judge	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	353	0	47	6	10	4	17	26	52	11	52	114	11	3	0	0
District	548	0	13	20	41	35	68	32	72	29	43	127	36	32	0	0
National Courts	5	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0
Bankruptcy Judges	57	0	1	1	1	6	4	2	2	0	3	27	2	8	0	0
Magistrate Judges	152	0	1	2	10	6	8	21	11	2	21	48	11	11	0	0
Nature of Allegations**																
Mental Disability	33	0	0	0	4	1	3	2	6	1	3	11	2	0	0	0
Physical Disability	6	0	0	0	0	1	2	0	0	0	0	3	0	0	0	0
Demeanor	17	0	0	1	3	0	3	0	0	0	0	7	0	3	0	0
Abuse of Judicial Power	327	0	1	7	57	6	29	49	14	13	19	71	17	41	3	0
Prejudice/Bias	314	0	34	16	40	13	20	35	51	11	20	36	19	16	3	0
Conflict of Interest	46	0	1	0	18	9	2	3	2	0	4	3	1	3	0	0
Bribery/Corruption	63	0	0	0	15	0	4	6	8	0	5	20	1	4	0	0
Undue Decisional Delay	75	0	1	0	15	3	3	5	3	7	10	15	7	6	0	0
Incompetence/Neglect	45	0	0	2	2	1	7	1	9	0	6	16	1	0	0	0
Other	129	0	4	2	0	46	3	16	8	2	4	32	9	3	0	0
Complaints Concluded	780	0	35	25	93	48	61	98	98	30	57	124	47	61	3	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity with Statute	27	0	1	0	1	0	3	1	7	0	1	9	1	3	0	0
Directly Related to Decision or Procedural Ruling	249	0	6	5	23	17	24	36	31	14	11	36	22	22	2	0
Frivolous	110	0	9	2	9	2	13	7	5	7	10	36	7	3	0	0

Table S-22. (September 30, 2002—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	1	0	0	0	0	1	0	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	6	0	0	0	2	0	1	0	0	1	0	0	0	2	0	0
Complaint Withdrawn	8	0	0	2	2	1	0	0	1	0	0	1	0	0	1	0
Subtotal	403	0	16	10	37	20	41	44	45	22	23	82	30	30	3	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	375	0	19	15	56	28	20	54	51	8	34	42	17	31	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	377	0	19	15	56	28	20	54	53	8	34	42	17	31	0	0
Complaints Pending on September 30, 2002	139	0	2	4	29	6	3	2	23	3	14	17	6	24	5	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. CLAIMS COURT.
[2] CIT = COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2003

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2002*	141	0	3	4	29	6	3	7	22	4	15	16	6	20	5	1
Complaints Filed	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
Complaint Type																
Written by Complainant	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	204	6	4	19	8	4	16	27	15	2	26	43	12	22	0	0
District	719	0	14	24	49	28	54	54	53	34	157	156	39	57	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Bankruptcy Judges	38	0	0	2	1	3	1	2	5	2	1	16	3	2	0	0
Magistrate Judges	257	0	0	5	11	6	21	24	21	3	91	40	7	28	0	0
Nature of Allegations**																
Mental Disability	26	0	0	1	6	4	5	1	0	1	2	5	0	1	0	0
Physical Disability	7	0	0	0	1	0	0	2	0	0	2	1	0	1	0	0
Demeanor	21	0	0	1	4	3	1	4	0	1	1	3	1	1	1	0
Abuse of Judicial Power	239	1	0	7	20	3	29	22	2	6	30	59	14	45	0	1
Prejudice/Bias	263	2	12	9	20	14	21	26	29	11	36	37	14	29	2	1
Conflict of Interest	33	0	0	1	3	5	3	2	2	1	2	7	3	4	0	0
Bribery/Corruption	87	0	0	1	4	6	10	6	15	0	20	22	0	3	0	0
Undue Decisional Delay	81	0	0	3	9	6	6	4	3	5	25	16	2	1	0	1
Incompetence/Neglect	47	0	0	3	3	2	8	2	3	0	15	6	1	4	0	0
Other	131	0	0	0	4	37	4	45	0	9	2	13	14	0	3	0
Complaints Concluded	682	2	12	18	42	40	69	94	53	31	87	117	42	69	4	2
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	39	0	1	0	1	0	3	0	17	2	9	6	0	0	0	0
Directly Related to Decision or Procedural Ruling	230	2	3	2	14	13	30	24	10	15	15	46	9	46	1	0
Frivolous	77	0	0	0	7	1	3	6	0	7	25	21	1	6	0	0

Table S-22. (September 30, 2003—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	8	0	0	1	0	0	0	1	0	0	5	1	0	0	0	0
Complaint Withdrawn	8	0	0	0	0	0	1	0	0	0	4	2	0	1	0	0
Subtotal	365	2	4	3	22	15	37	31	27	24	59	77	10	53	1	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dismissed the Complaint	316	0	8	15	20	25	32	63	26	7	28	40	32	16	3	1
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0														
Subtotal	317	0	8	15	20	25	32	63	26	7	28	40	32	16	3	2
Complaints Pending on September 30, 2003	294	0	2	22	56	7	1	20	42	1	25	45	11	61	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2004

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2003*	249	0	2	19	34	3	10	19	22	1	29	38	11	61	0	0
Complaints Filed	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0
Complaint Type																
Written by Complainant	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	240	6	20	16	4	6	23	16	24	8	14	84	13	6	0	0
District	539	0	39	21	15	22	52	51	69	27	55	128	23	37	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	28	0	0	8	1	2	1	2	4	1	0	6	2	1	0	0
Magistrate Judges	149	0	1	5	3	10	18	26	7	3	25	26	11	14	0	0
Nature of Allegations**																
Mental Disability	34	0	0	4	3	5	4	4	2	0	1	10	0	1	0	0
Physical Disability	6	0	0	0	2	1	0	0	0	0	0	3	0	0	0	0
Demeanor	34	0	1	1	6	0	4	3	0	1	7	9	1	1	0	0
Abuse of Judicial Power	251	1	3	11	6	0	42	2	4	2	71	59	22	28	0	0
Prejudice/Bias	334	2	19	27	35	14	22	35	42	7	38	52	20	21	0	0
Conflict of Interest	67	0	5	8	4	6	3	3	2	0	5	22	7	2	0	0
Bribery/Corruption	93	0	0	9	5	10	5	3	1	0	25	33	0	2	0	0
Undue Decisional Delay	70	0	2	7	5	7	4	10	2	5	8	13	4	3	0	0
Incompetence/Neglect	106	0	0	9	3	8	2	3	0	0	18	16	0	47	0	0
Other	224	0	1	1	33	30	10	89	3	24	0	24	9	0	0	0
Complaints Concluded	784	2	28	40	51	34	73	99	56	35	94	135	42	95	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	6	0	5	0	4	1	5	0	0	2	0	0
Directly Related to Decision or Procedural Ruling	295	2	9	7	18	13	31	38	16	21	37	65	8	30	0	0
Frivolous	112	0	8	4	3	0	1	11	3	5	18	5	4	50	0	0

Table S-22. (September 30, 2004—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	3	0	0	0	1	0	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	9	0	0	0	0	0	0	2	0	0	2	0	0	5	0	0
Complaint Withdrawn	3	0	0	0	1	0	0	0	0	0	0	1	1	0	0	0
Subtotal	449	2	21	11	29	13	37	51	23	27	63	72	13	87	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Complaints Pending on September 30, 2004	177	0	5	9	6	9	0	15	38	0	12	49	10	24	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2005

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2004*	212	0	4	9	57	9	8	16	30	1	13	30	8	25	2	0
Complaints Filed	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0
Complaint Type																
Written by Complainant	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	177	1	18	1	7	4	28	10	7	6	2	80	7	6	0	0
District	456	0	21	15	23	41	32	52	51	11	22	102	27	59	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	4	0	5	1	2	3	1	2	9	2	2	0	0
Magistrate Judges	135	0	1	4	6	8	9	35	5	2	13	27	7	18	0	0
Nature of Allegations**																
Mental Disability	22	0	1	2	3	2	2	3	0	0	0	6	0	1	2	0
Physical Disability	9	0	0	2	0	0	0	0	0	0	0	4	0	2	1	0
Demeanor	20	0	0	3	0	2	0	2	0	1	2	8	1	1	0	0
Abuse of Judicial Power	206	1	7	13	3	5	26	6	3	4	28	57	0	52	1	0
Prejudice/Bias	275	1	12	19	43	21	9	16	40	5	15	57	15	20	2	0
Conflict of Interest	49	0	2	5	5	11	2	1	3	1	2	13	3	1	0	0
Bribery/Corruption	51	0	0	3	2	1	2	2	1	0	4	32	0	4	0	0
Undue Decisional Delay	65	0	0	6	8	8	2	9	2	0	4	14	7	5	0	0
Incompetence/Neglect	52	0	2	4	4	3	2	3	0	1	8	22	1	1	1	0
Other	260	0	2	1	80	40	11	80	0	7	1	19	18	0	1	0
Complaints Concluded	667	1	22	23	91	47	48	90	47	16	45	120	33	81	3	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	21	0	1	0	5	0	1	0	2	0	3	5	3	1	0	0
Directly Related to Decision or Procedural Ruling	319	1	8	8	46	18	20	30	12	6	29	57	16	65	3	0
Frivolous	41	0	1	3	1	0	4	6	3	8	5	10	0	0	0	0

Table S-22. (September 30, 2005—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	5	0	0	0	0	1	0	1	0	0	0	2	0	1	0	0
Action No Longer Necessary Because of Intervening Events	8	0	1	0	0	1	1	0	0	0	1	0	0	4	0	0
Complaint Withdrawn	6	0	0	0	2	0	0	2	0	0	0	2	0	0	0	0
Subtotal	400	1	11	11	54	20	26	39	17	14	38	76	19	71	3	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Complaints Pending on September 30, 2005	187	0	15	5	2	20	3	25	38	0	6	32	11	29	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Table S-22.
Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2006

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Complaints Pending on September 30, 2005*	210	0	3	5	31	20	12	21	42	3	6	29	2	35	1	0
Complaints Filed	643	1	16	31	14	43	47	76	72	35	44	133	49	79	3	0
Complaint Type																
Written by Complainant	555	1	16	0	0	0	47	76	72	35	44	133	49	79	3	0
On Order of Chief Judges	88	0	0	31	14	43	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	141	1	14	13	0	3	7	6	14	16	3	34	24	6	0	0
District	505	0	17	50	10	31	36	45	68	31	32	99	40	46	0	0
National Courts	3	0	0	0	0	0	0	0	0	0	0	0	0	0	3	0
Bankruptcy Judges	33	0	0	2	0	1	2	5	2	3	0	12	2	4	0	0
Magistrate Judges	159	0	0	26	4	6	18	20	14	1	8	31	8	23	0	0
Nature of Allegations**																
Mental Disability	30	0	3	4	1	3	1	4	0	1	0	11	2	0	0	0
Physical Disability	3	0	0	0	0	1	0	0	0	0	0	2	0	0	0	0
Demeanor	35	0	0	0	0	4	2	4	1	1	1	17	5	0	0	0
Abuse of Judicial Power	234	1	6	18	0	0	38	22	4	2	21	63	14	44	1	0
Prejudice/Bias	295	1	3	22	28	22	16	35	50	9	18	45	14	31	1	0
Conflict of Interest	43	0	1	6	1	15	2	2	0	0	4	9	2	0	1	0
Bribery/Corruption	40	0	0	8	2	4	2	0	3	0	3	16	0	2	0	0
Undue Decisional Delay	53	0	0	2	2	8	5	5	2	5	2	11	1	10	0	0
Incompetence/Neglect	37	0	1	5	0	3	1	2	0	0	7	15	0	3	0	0
Other	200	0	0	2	38	41	4	59	0	23	4	9	18	0	2	0
Complaints Concluded	619	1	13	26	45	46	59	74	58	38	35	102	37	81	4	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	25	0	2	1	8	0	2	0	3	2	2	3	2	0	0	0
Directly Related to Decision or Procedural Ruling	283	1	2	5	15	26	24	35	25	13	21	46	17	51	2	0
Frivolous	63	0	4	4	3	0	3	4	5	18	4	7	4	7	0	0

Table S-22. (September 30, 2006—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC[1]	CIT[2]
Appropriate Action Already Taken	5	0	0	0	1	0	0	0	0	1	0	1	1	1	0	0
Action No Longer Necessary Because of Intervening Events	6	0	1	0	1	1	0	0	0	0	0	1	0	2	0	0
Complaint Withdrawn	9	0	0	0	0	0	1	2	1	0	1	1	0	3	0	0
Subtotal	391	1	9	10	28	27	30	41	34	34	28	59	24	64	2	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges only)	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	227	0	4	16	17	19	29	33	24	4	7	43	13	16	2	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0													
Subtotal	228	0	4	16	17	19	29	33	24	4	7	43	13	17	2	0
Complaints Pending on September 30, 2006	234	0	6	10	0	17	0	23	56	0	15	60	14	33	0	0
Special Investigating Committees Appointed	7	0	0	0	1	1	1	0	0	0	0	2	0	2	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.
[1] CC = U.S. COURT OF FEDERAL CLAIMS.
[2] CIT = U.S. COURT OF INTERNATIONAL TRADE.
* REVISED.
** EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

Dr. Richard Cordero

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M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

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August 11, 2003

STATEMENT OF FACTS

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York

I. The court's failure to move the case along its procedural stages

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, Pfuntner v. Trustee Kenneth Gordon, et al., dkt. no. 02-2230, which derived from bankruptcy case In re Premier Van Lines, Inc., dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29[1])and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as last December 26 and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. At those hearings Dr. Cordero will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

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[1] This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#.

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13th month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23 hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case

A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that

he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-45, 46; 108, ftnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

B. The Court Reporter tries to avoid submitting the transcript of the hearing

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

F. Court officers have disregarded even their obligations toward the Court of Appeals

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

III. The issues presented

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

Whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on
August 11, 2003, and, after being reformatted, on August 27, 2003

Dr. Richard Cordero

Sept 10, 2003

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

September 2, 2003

Richard Cordero, Ph.D.
59 Crescent Street
Brooklyn, NY 11208-1515

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero:

We hereby acknowledge receipt of your complaint, dated August 27, 2003, received in this office on August 28, 2003.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351.*

You will be notified by letter once a decision has been filed.

Sincerely,

Roseann B. MacKechnie, Clerk

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

C:107

sd:80

Dr. Richard Cordero

Ph.D., University of Cambridge, England
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March 19, 2004

STATEMENT OF FACTS

Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**

The Hon. John M. Walker, Jr., Chief Judge

of the Court of Appeals for the Second Circuit

addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers

to the Circuit Judge eligible to become the next chief judge of the circuit

On August 11, 2003, Dr. Richard Cordero filed a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. The wrongful and biased acts included Judge Ninfo's and other court officers' failure to move the case along its procedural stages. The instances of failure were specifically identified with cites to the FRCivP. They have not been cured and the bias has not abated yet (5, infra) [1].

Far from it, those failures have been compounded by the failure of the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, to take action upon the complaint. Indeed, six months after the submission of the complaint, which as requested (11, infra) was reformatted and resubmitted on August 27, 2003 (6, 3, infra), the Chief Judge had still failed to discharge his statutory duty under §351(c)(3) to "**expeditiously**" review the complaint and notify the complainant, Dr. Cordero, "by written order stating his reasons" why he was dismissing it. He had also failed to comply with §351(c)(4), which provides that, in the absence of dismissal, the chief judge "shall **promptly**…(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under the paragraph". (emphasis added)

Consequently, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint (1, infra). To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4 (4, infra). One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty.

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, Pfuntner v. Gordon et al, docket no. 02-

[1] Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, infra), a copy of the document is there and here too.

2230, which was brought and is pending before Judge Ninfo. The facts underlying this evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, infra). The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, infra). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give

him a copy of his written objections.

Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman's conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the territory of the Second Circuit and which they defend by engaging in non-coincidental,

intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there– who would that be?- to find out what "the local practice" is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of "the local practice" so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant's presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he "shall **promptly**…(C) provide written notice to…**the judge** or magistrate whose conduct is the subject of the complaint of the action taken". (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge's failure to act were proved correct, it would establish that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero's February 2 status inquiry letter.

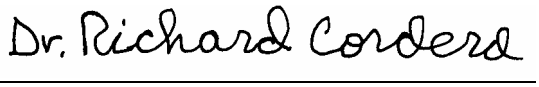
Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

waste of effort[2], time[3], and money[4], and inflicting upon him tremendous emotional distress[5] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[6] and dismiss the facts[7] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[8], Judge Larimer[9], court personnel[10], trustees[11], and local attorneys and their clients[12], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take 'prompt and expeditious action' by taking action belatedly. His failure is a consummated wrong and his 'prejudicial conduct' has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero's experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI's interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.



March 19, 2004

59 Crescent Street
Brooklyn, NY 11208

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tel. (718)827-9521

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[2] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[3] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[4] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[5] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[6] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[7] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[8] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[9] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[10] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[11] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[12] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D. **[Opening Brief=A:1301; Reply Brief=A:1511; Mandamus Brief=A:615]**

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(as of April 17, 2007)

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

March 30, 2004

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

Re: *Judicial Conduct Complaint*, 04-8510

Dear Mr. Cordero:

We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351.*

You will be notified by letter once a decision has been filed.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

C:326 Clerk Allen's acknowledgment of 3/29/4 of Dr. Cordero's complaint v CJ Walker & notice of filing it as 04-8510

sd:87

1

PUBLIC HEARING

RE:

DRAFT RULES GOVERNING JUDICIAL CONDUCT AND DISABILITY PROCEEDINGS:

U.S. Courthouse
Brooklyn, New York

TRANSCRIPT OF PROCEEDINGS

September 27, 2007
10:00 a.m.

BEFORE:

HONORABLE RALPH K. WINTER, Chair
Committee on Judicial Conduct and Disability

SPEAKERS:

ARTHUR D. HELLMAN
RICHARD CORDERO
FRANCIS C.P. KNIZE

****

Proceedings recorded by mechanical stenography.
Transcript produced by Computer-Assisted Transcription.

THE COURT: This is a public hearing concerning the draft rules that have been published for public comment, the rules governing judicial conduct in disability proceedings undertaken pursuant to 28 U.S.C. Section 351-364. We have three witnesses scheduled. Professor Friedman originally was scheduled. Professor Monroe Friedman was originally scheduled to testify, but was unable to make it, but he did submit a prepared statement that will become part of the record of these proceedings.

These proceedings will be published in one form or another, probably on line, and will be available to the other members of the committee as well as myself. We will transmit the prepared statements of each of the witnesses to the committee immediately so you can be assured even though the other members of the committee were unable to make it here today they will be aware of the statements and testimony given.

I want to call first Professor Arthur D. Hellman. I would ask that each of the witnesses give a summary of their views on these rules that last around ten minutes and I will, where appropriate, engage in dialogue with the witnesses. Each of the witnesses' prepared statements -- I may have said this already -- each of the witnesses' prepared statements will be part of the record.

Okay, so I call Professor Hellman.

PROFESSOR HELLMAN: Is this mike working? Yes.
THE COURT: Yes.
PROFESSOR HELLMAN: Thank you, Judge Winter, for inviting me to express my views at this hearing. I'm going to be submitting a supplemental statement that will deal with some matters of drafting primarily involving the organization of the rules.
THE COURT: We would be very, very happy to receive that. I think that the rules need a considerable amount of drafting work and style work and perhaps some substantive work, but we will be happy to receive that.
PROFESSOR HELLMAN: Thank you, I appreciate it.
I think it is important that this document be user friendly and I appreciate the -- that the initial document was prepared under some time pressure and it will be perhaps now time for some not just drafting, tweaking, but maybe even a little bit of reorganization.
THE COURT: Can I ask you a question that has been posed in one of the comments, as we've seen in the comment period? Do you think that these rules should primarily be directed to use by chief circuit judges, special committees, judicial council and the conference committee, or do you think that they should be directed toward people who want to file complaints, to the public who have complaints?
I must say that I personally am leaning to the view

that the rules ought to be addressed to the people who have to conduct the proceedings pursuant to the act and that the public user friendly material should be put on the web site so each court that is governed by these rules --

PROFESSOR HELLMAN: Well, I think the first audience is, of course, the chief circuit judges, the circuit council and the other people who work on it, but I do think that, as I've said in my prepared statement, and I'll be saying again today, I do think transparency is important in this process and I don't think there's a conflict between those two purposes. I think for either group you want to explain what the rules require, what they don't require, and how they ought to be carried out.

One of the things the Breyer Committee pointed out is that there are changing personnel within the circuit and within the committees, different people have to deal with these rules, and I don't think their interests in having a clear, well organized set of rules are user friendly -- to use that term again -- I don't think those interests are in conflict at all. I think if you write a set of rules that explains to the people who administer the act what they're supposed to do it will also serve the interests of the public. I don't see a conflict there.

Well, in my remarks here this morning and at the risk of giving an unduly negative impression, because I think

overall the committee has done an excellent job, I will concentrate on the relatively few points where I take issue with the proposed rules. I'll address these in the order in which they appear in the draft, starting with Rule 5.

Rule 5 deals with the power of a circuit chief judge to identify a complaint. In conjunction with Rule 3, the rule provides that if a chief judge obtains information from any source that gives reasonable grounds to inquire into possible misconduct by a judge, the chief judge must identify the complaint and initiate the review process under Chapter 16.

That language would seem to make it clear that the threshold for identifying a complaint is very low and that doubts should be resolved in favor of instituting formal proceedings under the act. Well, I endorse that standard which is basically what the Breyer Committee recommended. My concern is that at least some of what the rule gives with one hand it takes away with the other. Section 2(b) relieves the chief judge of the obligation to identify a complaint if it is clear on the basis of a total mix of information that the complaint will be dismissed.

Then, the next sentence provides the chief judge may identify a complaint in such circumstances in order to assure the public that highly visible allegations have been investigated.

Here it seems to me the rule does depart somewhat

from the Breyer Committee recommendation and in my view unwisely. When allegations are highly visible and that isn't going to be very often, the chief judge should be required to identify a complaint even if it is clear that the complaint will be dismissed.

This does at least two things. First, it helps to remove the cloud that would otherwise hang over the judge's reputation and perhaps more important and I'll quote the Breyer Committee here: "The more public and high visibility the matter, the more desirable it will be for the chief judge to identify a complaint in order to assure the public that the allegations have not been ignored."

I'll turn now to Rule 11, which deals with the initial review of complaints by the circuit chief judge. This rule and rather lengthy commentary address what I view as the key operational question in the operation of the administration of the act. Under what circumstances must a chief judge appoint a special committee rather than act summarily to terminate the proceeding?

Proposed Rule 11(b) includes language that emphasizes the limited scope of the inquiry that the chief judge may conduct without turning the matter over to a special committee. The chief judge must not make findings of fact about any matter that's reasonably in dispute -- of course, that's in the statute -- nor may the chief judge make

determinations concerning the credibility of the complainant or putative witness.

That's fine as far as it goes, but I would go a bit further. I would like to see the rule state very explicitly that if the allegations have even the slightest factual foundation or objective evidence leaves some room for crediting them, a special committee must be appointed.

THE COURT: Excuse me.

Wouldn't the appropriate test and one that would be user friendly be the test that's used in motions for summary judgment - that the chief judge has to appoint a special committee where there are material issues in dispute based on public opinion or something else, where a reasonable fact finder could find misconduct or disability, but where a reasonable fact finder couldn't, then a special committee shouldn't be appointed?

I mean, I'm not using the exact terms of art used in summary judgment proceedings, but wouldn't that be the useful test to incorporate in these rules?

PROFESSOR HELLMAN: I think the summary judgment standard is very close to the one that is in the statute and which the rules propose to implement. What I'm suggesting, though, is that the rules themselves, based on the history that the Breyer Committee lays out, have to be quite emphatic that that is the standard and one particular matter that I

think ought to be in the rules, it is in the commentary, which is -- which I might applaud, is that a chief judge may not dismiss a complaint on the ground of insufficient evidence without communicating with all persons who might reasonably be thought to have knowledge of the matter. It is in the commentary. I would put that in the rule. It is in part to address situations like the one that's in the 8th Circuit complaint that I described in my statement and I won't go into details of that here.

Basically, what it comes down to, I think, and I don't think it is specially different from the summary judgment standard, but it may be useful to use something a little different and closer to the statute, is that if any reasonable observer would think that the matter remains reasonably in doubt, then the special committee should be appointed.

It is a little different, I think, the setting is a little bit different from the summary judgment standard because there the Court is adjudicating a dispute between two private parties, in the ordinary case, be no suspicion at all, there wouldn't be any reason for the court to err one way or the other, but where it is the judiciary itself who is in -- is the subject of the complaint, I think you have to push a little more, at least in the verbal directions, to make clear that the special committee should be appointed.

Now, I should add, also, and this isn't in my statement and maybe I should have added it there, that it does seem to me, as the view and Breyer committee both emphasize, there can be flexibility into the way special committees operate. They don't have to be a massive operation and if it is a simple kind of question, special committee ought to be able to operate pretty quickly and efficiently, but the statute draws this line between the chief judge role and special committee role and I think the rules should be written in strong terms to preserve and emphasize that line.

Suppose, though, that notwithstanding the rule and all the admonitions you put into it, the chief judge fails to appoint a special committee when the rule requires it and the circuit council ratifies that action, is there anything that your committee, the conduct committee can do? Well, as you well know, in 2006, in one stage of the proceedings against Judge Emanuel Real, the committee said no, there's nothing they can do. The committee now thinks there is something they can do. What that something is is not totally clear.

I'm referring, of course, to Rule 201(b). I've addressed this point at rather great length in my written statement and here I'm just making a couple brief comments.

First, I do agree that there is a gap in the misconduct procedures that probably should be filled. Second, the preferable way to do that would be through a statutory --

THE COURT: Your statement did raise some doubt as to whether the committee was authorized by the statute to do this, but I take it you're concluding that it does have authority to do this?

PROFESSOR HELLMAN: I think it is a very close question and I have to say I'm troubled by the prospect of the committee's pursuing review with -- with the language of the statute saying the order of the circuit council affirming a dismissal is final. What it does seem to me you could do, though, is in combination with the monitoring which is contemplated there could be a provision for committee scrutiny, preferably before the order has been made public, and then perhaps a quiet talk between the committee chair and the circuit council presiding judge to say, in effect, you know, I understand your position that they don't need a special committee here, but it seems to us that from a national perspective the interests of the judiciary would be better served by appointing one.

I do think you would have to make it clear that you can't issue orders. I see no basis in the statute for that. You might have ultimately decided that --

THE COURT: Then you really agree with what was then the majority of the committee in the misconduct case in which by three two vote the committees have no jurisdiction.

PROFESSOR HELLMAN: I don't see how you get around

the language, in review preclusive language as far as any order from your committee to the circuit council would go.

Now, again, what happened, as you know, is that in the end, a special committee was appointed in a related -- on a related complaint and that ended up looking at the same allegations. So, as I suggested in my statement, you could have a kind of collateral review that isn't reviewed technically the way habeas is, not review of the state court judgment, but a separate proceeding that may affect it.

What I would really like to see is a statutory amendment that would be an enabling act type of amendment, something that would authorize the judicial conference to construct channels of review in the cases that we're talking about. I think to try to write the thing into a statute itself, I think that is hard and you don't need to do it in the statute, but I think the enabling act works well in that --

THE COURT: You have pointed out a gap in the rule, the proposed rule, but I think the intent of the committee was that it would issue orders that special committees be appointed and the view of the committee which I have to say is now unanimous, this rule was proposed unanimously, including two of the three members of the committee who had joined in the earlier jurisdictional ruling, the majority there, but I think we think interstitially there is authority that that --

that the way the act is structured it makes almost no sense to have a system in which you can avoid review by not doing what the statute directs you to do and worse than that set up precedent that differ from circuit to circuit, that something might be misconduct in one circuit but not in another.

So, I have to say, in case you want your supplemental comments to say something about that, I have thought at least, I -- I'm not authorized to speak for the rest of the committee, but I thought our deliberations indicated that this was not going to be an advisory opinion, this was going to be an act of the United States Judicial Conference ordering the special committee be appointed.

PROFESSOR HELLMAN: Well, I'm certainly quite willing to rethink my views on that. It does seem to me important, though, that the rules themselves should then explain in a fairly comprehensive fashion where this authority comes from and how do you reconcile it with the seemingly absolute prohibition in what is -- I forget the statutory provision -- 352(c), factual statutory provision that says these particular kinds of orders you propose to review shall be final.

That it seems to me is language that's very difficult to get around and I agree with you entirely as a policy matter and I agree, also, I suppose, that if Congress had thought this through at the time, they might have done something different. I suspect the assumption was that, as it turned

out to be true, virtually all of these dismissals would be clearly correct and Congress did not want to build in channels of review that would burden the judicial conference of the United States with reviewing what could be a very large number of petitions to find the one or two, maybe three every three years that would warrant a second look at the national level. I think that is not totally unreasonable judgment.

THE COURT: I mean, I think the judgment of Congress -- I thought the Breyer Committee rather uncovered the fact that perhaps the most frequent error that was made was in not appointing a special committee, and I ought to add because there is some concern on the part of other witnesses we'll hear from that any system in which judges judge judges is going to be loaded against judges. At least one of the misconduct proceedings in which a special committee was not appointed, the findings favored -- the findings were that the Judge had engaged in misconduct, an acting chief circuit judge found that the chief circuit judge had engaged in misconduct, but no committee was appointed. That would have cut off national review.

PROFESSOR HELLMAN: Yes. I discussed this in my article that I'll be making available to the committee. I thought that was maybe the most egregious case in the Breyer Committee report. Although, interestingly, it would not have been caught by the mandatory review provision in your rule,

because, as far as I'm aware, there was no dissent from the circuit council order that affirms that unfortunate order of the acting chief judge. So, I agree entirely as a policy matter.

THE COURT: It would not have been shielded, though, in the review, because the rules as drafted -- you mentioned in your statement the rules as drafted vest the committee with discretion to review any council order that didn't involve a special committee, although we expect that review to be rare indeed.

PROFESSOR HELLMAN: Yeah, it seems to me that that's a somewhat awkward procedure that perhaps should be clarified a little bit more in the rule, especially, as I think I indicated in my statement, the relationship between that and the timing provisions about public disclosure that your committee is going to want to do whatever it does before that order goes out to the public.

THE COURT: I thought that was a very cogent criticism of the rules. You're going to turn to that now?

PROFESSOR HELLMAN: I wasn't going to address the specific point here today. I would be happy to talk about it. I wasn't expecting to get into that level of detail.

THE COURT: I was wondering whether you had any thoughts -- I don't think you mentioned it in your statement -- on Rule 12(c). I'm sorry 21(c). Rule 21(c) is the rule

that says that committee decisions reviewing council orders shall be by majority vote of the members of the committee, not from the same circuit as the subject judge. Then sets up a system of rotating lists when someone is disqualified. I was wondering if you would comment on that.

The committee spent actually a fairly large amount of time on that rule. There was a very strong feeling on the part of the committee that we -- at some point in the review process you really had to have a body of people that were not from the same circuit as the subject judge. The review in our committee is likely to be of a very serious kind and we ought to do our best to get people in that are independent.

Could you comment on that rule?

PROFESSOR HELLMAN: Yeah. I have to say that is not one that I focused on myself and I might want to address that a little bit more, if I have further thoughts in my supplemental statement, but it raises a broader point which I think comes up in another -- in another point I don't address in my statement, namely, in the provisions for transfer. When the 2001 act or 2002 act was under consideration, it was an additional provision that got -- didn't get in because it just was vetted too late for transfer to another circuit when all of the circuit judges were recused and your comment suggests that there may -- that is an area that maybe ought to be looked at a little bit for the very reason you suggest, that

the suspicion that the judge's own colleagues may appear to be unduly favorably disposed and may be that once you get into the sort of adjudicated stage, as distinguished from the very early investigatory stages, it ought to be a little bit easier to send the case to another circuit. I'm not suggesting that. That was one of the legislative proposals some years ago and it never got anywhere, but I think that is something --

THE COURT: We do have provisions for transfer of that kind --

PROFESSOR HELLMAN: Yes.

THE COURT: -- in the rules.

PROFESSOR HELLMAN: Yes, you do and what I'm suggesting -- I think it is mostly for circumstances where everybody is disqualified.

THE COURT: Well, I think the intent was broader than that. There are some cases in which the matter is so serious and the issue is so close that it is very awkward for everybody to have it in the circuit of the subject judge. I mean, I think there is that kind of case. It might be a very divisive case and the rules provide there can be transfers, but the request has to be made to the chief justice and the chief justice then picks the transfer circuit. We did that rather than just have the chief circuit judges communicate amongst each other, because we thought if you had a highly

controversial, highly sensitive case and you wanted to transfer it, there might be a very divisive argument over where the transfer.

There was another point. There's nothing that says the other circuit has to accept the case when it gets there, so we thought that the best thing was leave it to the chief justice to pick the circuit and order them to take it.

PROFESSOR HELLMAN: Two quick comments on that. One, I agree with everything you said about the policy considerations and the -- that may be one of the circumstances in which monitoring -- ongoing monitoring by the committee could really be useful, because sometimes the people in the circuit may be too close to see, too close to the situation to see how bad it might look and how things would be improved if the matter were handled by another circuit and again a quiet call from the committee chairman might do that.

The other thing I want to add is this business of selecting the circuit to which the matter goes, that was the main object of the unsuccessful 2002 amendment that I mentioned and we came up -- actually, those working on it came up with a provision. I can't remember where it was drawn from, but basically it says you just go to the next circuit in sequence, but it did not give the chief justice any leeway in that, because it seemed that even picking the chief judge or the circuit that will handle it, that in the kind of situation

you've described, which by definition is highly charged, perhaps some partisan underpinnings or overtones to the matter, that there's much to be said for an automatic rule if it is from the 7th Circuit, it goes to the 8th; from the 8th to the 9th and so forth. You can do it any other way. That was just a simple way of doing it. That's another area where a small fix to the statute might be in order.

THE COURT: What is wrong with the rule as the committee has proposed? It seems to me that is the fairly workable rule. It is 26.

PROFESSOR HELLMAN: Yeah. I think it is a very workable rule. The question is whether it would be better to constrain the discretion of the chief justice and so that everybody knows that it went to circuit X because that's what the law required, not because the chief justice chose a circuit with a Republican chief judge, Democratic chief judge or anything like that. I regret tremendously I even have to talk in those terms here, but that is what some of these complaints involve and I think to the extent that the process can diminish the level of suspicion because it is just all -- all required by statute or rule by that matter, maybe could do this by rule, I think you contribute to the perception that nobody's trying to fix the matter in any way. It is very, very important.

THE COURT: There's another provision for it, for

transfer earlier in the statute that has to do with the rare but occasional case in which the misconduct is alleged to have occurred while a judge was sitting by designation. The rule set up a system in which the first filed or identified complaint determines which circuit. The home circuit is almost always the circuit which the judicial misconduct complaint must be filed. It is the circuit in which all judicial misconduct complaints can be filed, but that where you have a complaint involving misconduct in a circuit where the judge was sitting by designation, the complaint or -- whether identified or filed could go there, and, then, there is a provision allowing transfers if it appears that it would be better heard in one circuit rather than another.

I don't know whether you care to comment on that.

PROFESSOR HELLMAN: Well, I read over that one and I thought the committee handled that -- the rule handled that very, very well, that it is -- it does make sense because the whole system under the statute is future oriented, it does make sense to have the judge's home circuit as the default circuit, but in the extremely rare situations where there is an episode in some other circuit where the witnesses may be in that circuit or where there may be impact on the practice of law somehow in that other circuit, there's the ability to transfer it there, if it makes sense.

I mean, I would think it would be extremely rare.

You would have the adjudication -- not quite the right word, but the consideration of the matter in any but the judge's home circuit, but I think you've handled that in a very good way and making it possible for those rare situations where it does make sense.

Let me jump now to Rule 244, which I see as raising two fairly distinct sets of issues. First, there are issues relating to the nature and timing of public disclosure. The basic rule which is continued to the illustrative rules is that orders and memoranda of the chief judge and the judicial council will be made public only when final action on the complaint has been taken and is no longer subject to review.

Moreover, in the ordinary case, where the complaint is dismissed, the publicly available materials will not disclose the name of the judge without his or her consent.

Now, after thinking about that a good deal, I concluded that for the overwhelming majority of complaints, these rules do no harm and on balance probably make sense for the reasons I include in my statement. I do think a different or at least a somewhat more flexible approach is called for when the substance of a pending complaint has become widely known through reports in main stream media or responsible web sites and in that relatively unusual situation. I would like to see a presumption, no more than that, that orders issued by the chief judge or the circuit council will be made public

when they're issued and the judge will be named.
I emphasize very strongly I'm not suggesting any sort of absolute rule, but when it's no longer possible to achieve the goal that you've stated in the commentary, avoiding public disclosure of the existence of pending proceedings, when that's no longer possible, it would generally make sense for the judiciary to go public in its official actions.
THE COURT: I find your suggestion was interesting, but in drafting rules it has to be made clear who it is that you would have make the judgment as to whether the presumption has been overcome.
PROFESSOR HELLMAN: Well, there are a couple of ways you could do this. It could be the -- most naturally it would be the person or body issuing the order, but for something this sensitive you might say, for example, the chief judge -- it is the chief judge, but only after -- with the approval of a circuit council. You might go to that end. If it is the circuit council, I don't know whether you could build in or at least encourage a consultation with the conduct committee.
In other words, make it a little bit of a complicated process or at least make sure more than the -- decide himself or herself is the person to make that decision. We're talking here about a tiny number of cases, but they are, as the Breyer Committee points out, the cases that shape public perceptions on how this system is working. It does seem to me, I mean, a

question of bound to reality if everybody knows ... Also, it seems to me when the judiciary -- it is true of anybody else, too, but when the judiciary is withholding information for no apparent reason and that's the way it is going to look when people know what is being withheld, the effect is to reinforce that all the concerns about guild favoritism that the Breyer Committee talked about and which you did earlier, Judge Winter, that is what you very appropriately emphasized, so it is -- it is a handful of cases.

I would be happy to see the rules build in procedural safeguards, perhaps, rather than trying to state the criteria in the form of a rule, but to make just for a little bit of flexibility for these circumstances where the -- again, where the purpose that is stated in the commentary can no longer be accomplished.

THE COURT: Since you are one of the leading scholars in this area, I tell you that there is a concern I have heard voiced, I am not sure how much weight I give it, but there is a concern I've heard voiced and that is that sooner or later, if you don't keep the names, the name of the judge confidential, sooner or later people will, whether in a confirmation proceeding or in something else, people will then start saying, Ahh, this judge had 75 misconduct complaints filed against him or her and that will be the big headline in a follow-up story. That all 75 are filed by one or two

prisoners serving life sentences for murder who kept filing complaint after complaint alleging the decision on habeas corpus was wrong, clearly dismissible, that will get lost in the debate.

There are very serious concerns that -- I mean, we're dealing with -- and this ought to be in the record -- minimum of 600, maximum now of 800 complaints a year. That is, I think, more than one per judge. Certainly one per Article III judge. And some of the complainants are people who file many complaints and many of the complainants are just complaining about a decision which is clearly outside the statute. I think there is a concern there.

In anticipation, not that I share it, some people would say that your rule will encourage people who have access to the press to file complaints and to give them to the press at the time. But, anyway, I just want for your future work to know what the concerns you would hear are if you had talked to judges, as I have, about these problems.

PROFESSOR HELLMAN: Let me address the first point. I share that concern. In fact, I say that in my statement at page 26. I think the very same concern you're talking about, that the -- that routine orders dismissing a complaint, because they address the merits would be misused by people if the judge's name were made public in those routine cases, so that's why I come down in agreement with the committee for the

routine cases which, of course, are the overwhelming majority of them. I agree with your rule, the publicly issued materials should not disclose the judge's name.

So, as for the second, I recognize that and that's one of the reasons why the -- why I think any modification of the rule should be done very cautiously and giving a great deal of discretion and building in these procedural safeguards that I'm suggesting because there is a possibility. It has not happened yet, even though people can do this. I mean, people can -- I've seen -- when I was researching for my testimony a couple of years ago, I found that few complaints on web sites with unredacted materials identifying the judges, but that has not happened and I'm not sure that the limited flexibility I'm suggesting here would change that 'cause it would be so, so limited.

THE COURT: Assuming we know who the decision-maker would be, would the act of the decision-maker have to be -- to publicize a name be sua sponte or would a complainant or representative of the media or someone have to ask for it?

PROFESSOR HELLMAN: I would think that you ought to have rules that would require the decision-maker or decision-makers to make that judgment when they're thinking about the order, because how you -- how you write something, I think might affect -- might be affected by whether you know it's going to be published, made public at a particular time

and whether it is going to name the judge. I want to give a little bit more thought to that.

THE COURT: I wish you would. Most judicial councils meet -- I think the 2d Circuit judicial council meets usually every six months. If it meets every six months, the number of dismissed complaints that it would be dealing with would be, you know, 50, 100, and I just think as a practical matter it would be very difficult for a judicial council with each complaint to find out how much publicity it may have gotten. I mean, I don't think it is quite as obvious. I mean, usually the complaints that really -- that get the really big publicity are complaints that do get considered at some length, but the fact that a complaint may have been in the paper once may not be something that council is even aware of. I mean, I would think a sua sponte rule would not work well.

PROFESSOR HELLMAN: I think for the overwhelming majority, and, really, overwhelming, you wouldn't have to do anything different and even a single mention in some newspaper somewhere, I don't think that would meet the standard anywhere.

I mean, again, one of the odd things about -- maybe it isn't so odd. One of the recurring features of working on these matters is that you spend an enormous amount of time on rules and practices that affect only a tiny handful of the

cases. If you look at the statute itself, it has a huge section devoted to the special committee which is one or two a year is what it has been, maybe half a dozen, if you have a very big year, but that's in some ways the largest.

THE COURT: At present there is doubt as to how many special committees there are. The official statistics for one year were one, but several others were known to exist. I mean, there are statistics that are received by my committee, may or may not be correct, there is reasons to believe they aren't correct, and I must say I agree with your proposal that the rules be amended to make sure every order establishing a special committee be sent to my committee, if we're going to monitor it.

PROFESSOR HELLMAN: Yes, but even if it is five rather than one, it's still a tiny fraction, but that is where the attention goes for good reasons and it is the same in this matter of what is going to be disclosed, that the -- the attention we're giving here and the attention I've given in my statement is disproportionate to the number of occasions on which there would be -- it would be -- there would be any need even to think about the question, but again those are the cases that shape public perceptions and, so, of necessity that's where our attention goes to.

Rule 24 also deals with the manner of making orders public and here my suggestions are more in the nature of fine

tuning pretty minor stuff. I think the rule should require without qualification that all of these orders be posted on court web sites. That is a departure from what I suggested when I testified in 2001. At that time I suggested a few representative orders or routine orders, but it seems to me after the E Government Act, it is a de minimis burden and it will add a lot to our knowledge and, by the way, it has also occurred to me that it may be if a complainant saw these orders in these typical cases where all they're doing is complaining about the merits of a decision, maybe some of them would not file.

I mean, it is very -- it is just about impossible for anybody to see those orders in the ordinary course so that you can have all the exhortations and admonitions and warnings on the web sites and in the rules and everywhere that people look for it saying the purpose of it is -- of this process is not to challenge decisions and you should not try to simply reargue your case or say that the judge made a wrong decision or even a very wrong decision. Instead, all of those things maybe would have a little bit more impact if people saw some of the complaints that had been filed and dismissed on those grounds. Maybe not.

THE COURT: That's an interesting suggestion.

PROFESSOR HELLMAN: It would be worth doing, I think, and it would certainly enlighten the public and it would be,

as I say -- it is six or 700 orders, as I pointed out in my statement. There are going to be that many orders from the 5th Circuit in Almendar Torres cases this year. They are boilerplate orders published now in Fed appendix. Some people I think now pay money for that and they're posted on the Court web sites. Compared with that it is really not adding a lot of posting or work for court staff. I also think the committee should be more aggressive in promoting publication practices that will lead to the development of a readily available body of published precedent on what constitutes misconduct and how it ought to be appropriately dealt with under the act.

In the article that I was sharing with the committee, I cite at least half a dozen important decisions that are just not available anywhere outside of the Clerk's offices or the Thurgood Marshall Office Building.

THE COURT: Well, we have recommended to the judicial conference and I believe it is Emil Famed (ph.), the creation of a compendium of decisions for that purpose in the Federal Judicial Center. Mr. Willging who's here today is working on that and we hope to have cross-references between the rules when finally promulgated in this compendium and I would suggest you -- when your testimony is concluded you might want to get Mr. -- I don't know, do you know Mr. Willging?

PROFESSOR HELLMAN: Yes.

THE COURT: Okay, well, I don't have to go on with what I was about to say.

PROFESSOR HELLMAN: Only thing I would just emphasize and I think it is implicit if what you already said is that this compendium ought to be on the public judiciary web site, not just something available to court insiders. These are public documents and there is absolutely no reason why the compendium should not itself be --

THE COURT: If I recall, members of the audience, isn't that where we have our minds on?

UNIDENTIFIED SPEAKER: I don't think we've decided that. What I'm preparing could go on a public web site, no question.

PROFESSOR HELLMAN: I'm very glad to hear that. What makes it so sad about this body of decisions -- I will be closing on this note. What makes it so sad is that the overall picture that the decisions convey is of judges who do take seriously the obligation to investigate allegations of misconduct and to impose appropriate discipline. Not that there aren't occasional lapses, but they really are occasional and yet the habits of nondisclosure are so deeply embedded that the judiciary behaves as though it has something that it's trying to hide. In the past that might not have mattered quite so much. We live now, as we all know, in an era of mistrust and I think it is very important the judiciary

recognize the importance of transparency.
The very fact you're holding this hearing today and inviting comment on the draft rules, that's a great start and I really do applaud that and I hope you'll make -- take the very modest additional steps that will truly bring visibility to the process, that will strengthen the credibility of the judiciary and ultimately the independence of the judiciary which is at bottom what this whole process is about.
I would be happy to answer other questions and I will be submitting that supplemental statement on organization.
Maybe I can say one thing about that organization at this point. I'll be happy --
THE COURT: I have been interrupting you. Why don't you go ahead.
PROFESSOR HELLMAN: The major point that I will be suggesting is that Rule 11, which deals with what the chief does ought to be broken up into two rules with a separate rule that would have the things that the chief does that terminates the proceeding and the statute is written very awkwardly. That's what you're dealing with here. The statute talks about dismissing a complaint on certain grounds and terminating the proceeding on others. I think you do have to follow the statute, but it makes it -- I mean, a lot of the difficult cross-referencing in these rules comes about because of that complexity and it seems to me if you could take the provisions

that deal with dismissals, orders dismissing and concluding proceedings and put them in what I suppose would be Rule 12, you would have Rule 12 orders and you would have a shorthand that people could use to refer to. Might even use it in the rule.

Rule 12 orders would be orders the chief does and finally disposed of a complaint, whether by dismissing it on the grounds in which dismissal is authorized or concluding the proceedings, if that is done. I think you would find a lot of the later provisions would be easier to write if you could simply refer to Rule 12 orders, rather than ACDE, whatever it is that you have to do now.

I am fairly experienced at this stuff and I find it pretty hard to navigate. That's my principal organizational suggestion. The other is I think there's some real misplacing between rules three and five. Some of the team in three describing when a chief judge ought to identify a complaint, belongs in five so that you have one rule that deals -- that gives everything the chief judge needs to know about when to identify a complaint.

THE COURT: I would be very pleased to receive detailed comments of that nature from you.

PROFESSOR HELLMAN: Sure, sure. I just wanted to sketch the kind of thing --

THE COURT: Could you get them to us by October

15th?
PROFESSOR HELLMAN: I would definitely do that.
THE COURT: I want to thank you for your testimony. It is not up to me to direct your scholarship, but if you could find a way so that the judiciary's point of view about some of these problems, namely, that when you have a job in which you have to make decisions favoring one party or another, 50 percent of the people you deal with go away deeply unhappy and a very large percentage of them think a great injustice has been done, but we can't get fairness of justice without an independent judiciary, and no one wants to see this procedure turn into something that scares judges away from calling them as they see them when they do adjudicate disputes between people and I think it is that that creates the apprehension of the judiciary over the misuse of these rules and the misuse of how many numbers of complaints have been filed against the judge and things like that.
Anyway, thank you very much. You have been very, very helpful.
PROFESSOR HELLMAN: Thank you, Judge Winter. I do appreciate it. I just want to express complete agreement with the last point and to say that I don't think that transparency is at all intentioned with that, but will promote that.
Thank you very much.
THE COURT: Thank you.

Our next witness is Dr. Richard Cordero.
Dr. Cordero, I have read your written testimony. It will become part of the record of this proceeding and will be transmitted to the other members of the committee and if you want to take ten minutes now and summarize your main points or add other points, go ahead.
DR. CORDERO: Thank you, Judge Winter. I would like to add a statement that I have prepared, because it has some graphics and I am going to be making reference to them and it would be useful if you had a copy in front of you.
THE COURT: Fine. That's fine.
DR. CORDERO: Should I bring it to you?
THE COURT: Yes. We will make that part of the record, also. Do you have an extra copy of it?
DR. CORDERO: Yes.
THE COURT: Would you give a copy to Mr. Saxe, please.
Go ahead, Dr. Cordero.
DR. CORDERO: You started the hearing this morning by asking a pertinent question. You asked whether the rules should be focused on the chief and circuit judge or on the complainants. It seems that to me that the question is actually irrelevant because the point is whether the rules will be effective as they are now. The rules are as they have been drafted simply identical to the current rules that have

been in place for almost 27 years and these rules have proved to be completely ineffective and --

THE COURT: Well, I'm not sure I agree with that. I think that the rules that went to identify a complaint, the rules about the kind of inquiry chief circuit judges ought to make, the definitional sections, all involve materials that are hardly clear on the face of the statute and hardly clear in what might be called the common law that has developed under the statute.

DR. CORDERO: Well, the fact is that the rules of now, as far as the substance goes of the process of complaining against you, the judges, they are the same as the current rules.

THE COURT: In reviewing your testimony, I was struck by the fact that your main complaint is against the statute. The statute sets up that procedure about filing a complaint and who deals with it. This hearing is not about changing that. This hearing is about rules that have -- are proposed to implement that statutory scheme so that with all due respect the committee has no power to propose rules that would do the kind of thing that you seem to want, which is to get judges out of the misconduct procedure except as defendants.

DR. CORDERO: Well, the fact is that in the statement that I submitted on August the 23rd, my focus was on the rules, it was not the act. I submitted commentary of specific

rules and they were addressed to their ineffectiveness. The rules as they stand now, they do not change the players or the procedure. They do not make the complaints available to complainants and to other people. The complaints are not to render public. They do not require that the complaint about a judge take cognizance of the complaint because the procedure as it stands now is simply for the clerk to receive the complaint, to send it to the chief circuit judge and then to send it to the complaint about judges and to his chief judge. They don't have to do anything whatsoever with the rules.

So, as I'm going to show on the basis of evidence, they can simply ignore that a complaint was ever filed against them because they do not have to take any action because the chief and circuit judge overwhelmingly is not going to do anything whatsoever about the complaint.

In fact, the Breyer report indicated that in some circuits it is the clerks that read the complaint and even prepare an order to be signed by the chief and circuit judge. So, it is not the judge that treats the complaint and that takes action on them. It is relegated to a matter that can be handled by simply clerks.

Now, the rules do not provide any adversarial confrontation between the complainant and the judge so that there is a system completely different from the system that applies to anybody else that complains against anybody else,

that is, aside from complaint. What we have as a system of the courts is a person who is a complainant that complains against another person who is a defendant and everything happens in the open. Why is it in the case of against -- complaining against a judge there must be such secrecy that even the name of the judge must not be known, that the public must not know the name of the judge?

We see in respect to the order, other two branches of government, the Executive and Congress, that all sorts of complaints are made against the President of the U.S., all sorts of complaints are made against members of Congress. The republic doesn't fall apart because people complain against the President of the United States or against his Secretaries or against other members of the Executive. The republic doesn't fall apart because people complain against a member of Congress. Why is it there should be such secrecy when a complaint is filed against a judge?

You indicated that there should be independence on the part of the judges so that they may not be afraid when deciding on controversies put before them. Why would they be afraid because somebody complains against them? Those are two different things. A person can complain against a judge and he can still decide however he wants, the same way that the President of the United States takes decision and everybody complains against him and he simply goes about his business of

performing the duties of his office. The judge could do the same thing even if a person complained about him and not only his name became public, but, also, the complaint itself, the substance of the complaint. That would eliminate the secrecy that shrouds the procedure right now which leads to the supported complaint that that secrecy is simply a way of supporting what the Breyer report called the gild favoritism, which means the judges are handling complaints against their peers and they are doing nothing about it.

I want to bring now the evidence that I have here because this evidence -- if this evidence is produced by the administrative office of the U.S. Courts this evidence is produced by the reports that the -- reports to make every year to the office of the -- to the Administrative Office of the U.S. Courts. They have to report on the number of complaints that have been filed against judges every year. They are published in the judicial facts and figures. They're also published in the annual report of the director of the administrative office of the U.S. Courts.

Now, I have examined those statistics that are available on the Internet for the last ten years and I have presented them in the graphics that you have in front of you. You will see that in the last ten years, since October 9th, 1996 to September 2006, 7,472 complaints were filed. They were filed overwhelmingly by complainants. Out of those

complainants, you will see there that only five complainants were filed by the chief circuit judge and nevertheless he's the person who works with all the circuit judges, he attends committees, he attends meetings of the judicial council, he attends annually -- actually twice a year, the meetings of the judicial conference of the United States. He sees what people do when they come into -- what they do and say when they go to judicial junkets and have no more inhibitions and, nevertheless, in spite of all that insider information that he gets, all the 13 circuit chief judges in the last ten years have identified five complaints, five complaints.

Now, we have -- the Professor spent --

THE COURT: As I understand the draft proposed rules, they are intended to meet the criticism that chief judges have been too reluctant to identify complaints and to appoint special committees.

DR. CORDERO: Excellent. So, let's go --

THE COURT: Your problem is that you think the chief circuit judge shouldn't be the one doing that.

DR. CORDERO: That is one of the --

THE COURT: It is really beyond the scope of this hearing.

DR. CORDERO: No, no, Judge.

THE COURT: Statute --

DR. CORDERO: No, Judge Winter, I would like to go

back to the evidence because whatever comment they make, they may be irrelevant, I want to --

THE COURT: The evidence is not only in your document. The evidence is in the Breyer report, too, and I take it the conclusion you're drawing is not an illegitimate conclusion that this should not be a self-regulatory process, but it shouldn't be done through the judiciary itself. I think that's a feeling that you share with others.

All I'm saying is that you are not commenting on the rules; you are making comments suggesting that the statute itself ought to be amended and my committee has no jurisdiction whatsoever to do anything like that.

DR. CORDERO: Well, for one thing, your committee could examine the evidence that is available and say -- state where they're applying the rules as they are drafted now would change in any way the situation that we have right now.

You indicated whether the chief circuit judge should be one identifying complaint. Well, look what happened when they do identify complaints. On page three, on the first graph, you see that for nine years circuit chief judges had identified only five complaints. Then, all of a sudden, in 2006, they identify 88 complaints. That is incredible.

Now, what happened with those 88 complaints? Absolutely nothing. They were dismissed the same way all other complaints were dismissed. You can see, also, something

that is statistically impossible. For nine years the number of complaints filed by complainants over --

THE COURT: I'll ask you once again what is it that you want the rules to do to remedy your perception of what -- of something going wrong?

DR. CORDERO: I will address that question because I think it is a fair question. I would like to simply finish with the analysis of the statistics because it is --

THE COURT: Well, you've had almost 20 minutes. I'll give you another five minutes, but you certainly have to get to the rules and tell me something, tell the committee something about what rules you think ought to be drafted to implement the statute rather than attacking the statute.

DR. CORDERO: Well, Judge Winter, I am not attacking the statute. I am attacking the usefulness of the rules. You began the hearing by asking whether the rules should be addressed to the chief circuit judge or to the complainant and I am indicating that it doesn't matter. This won't change anything.

Also, I would like to point out that the Professor had 55 minutes to --

THE COURT: You're not going to get 55 minutes, Dr. Cordero. The Professor was engaged in a useful discussion of the draft proposed rules. I have yet to get any concrete suggestion from you as to how the rules ought to be

redrafted.
DR. CORDERO: The rules should be redrafted in such a way that complaints are made public, that the secrecy protecting judges is lifted, that the public know why is it that people are complaining so that one can establish a pattern of conduct on the part of judges, either on one judge because there are several complaints filed against him, or on the part of judges because they engage in coordinated judicial wrongdoing. Why would they not do that if there is no possibility that they will be disciplined?
In this graph that I present on page three, of all the complaints that were filed during ten years, 7,462, how many people, how many judges were disciplined? Nine. Nine judges. That is less than one point one tenth of a percent. That means that however much we discuss here about the rules as they stand now, they're going to be fundamentally use because they mirror the rules that are now in effect and therefore they're going to have the same effect as the present rules. Based on the principle that they say they are the hallmark of rationality is to do the same thing, what, expecting a different result? Well, that applies here.
THE COURT: One would have to qualify your assessment of the number of judges disciplined by noting that the act allowed informal methods of resolving things and there might well be a complaint that a judge through age or disease or

illness or other infirmity was no longer able to conduct the business of the office and it may well be that the chief circuit judge talked to that judge and the judge resigned and the complaint is dismissed without any evidence of discipline, but, also, would you tell me what is the number of disciplinary actions that one should expect every year under your system?

DR. CORDERO: Judge Winter, I don't think anybody could answer that question because the answer --

THE COURT: If you can't answer that question --

DR. CORDERO: No, the answer --

THE COURT: -- you can't using raw numbers alone say that the act isn't working. The Breyer Committee quite extensively went through the merits of many cases where discipline was not imposed or no special committee was appointed and the Breyer Committee was quite candid in concluding that the act had not been administered well in many of the serious cases. And that's one of the reasons we are now drafting rules that will bind chief circuit judges to doing things, but you're presenting me with nothing but raw numbers and I really can't draw a conclusion. I mean, where do you disagree with the Breyer report?

Also, on confidentiality, I invite you to look at Section 360(a) of the statute. What you're attacking, what you're calling secrecy is in part at least in the statute.

DR. CORDERO: You talk about the Breyer report and the description of the members of the Breyer report. What was highlighted was that they had a lot of experience dealing with compliance. It is obvious that if people were assessing their own handling of those complaints, the outcome was going to be positive. So, the Breyer report was inherently bound to find that the handling of the complaints was appropriate because it was written by people that had a vested interest in reaching that finding.

THE COURT: I think most people who have read the Breyer report have not come to the conclusion that it approves the implementation, that it regarded the implementation of the act as having been anywhere near perfection. I think most people who read the Breyer report find it to be quite critical of the judiciary.

Okay, why don't you conclude with one or two more sentences and then I will call the next witness.

DR. CORDERO: Judge Winter, I have more specific comments against -- on the rules and I would like to be able to --

THE COURT: I'm asking you --

DR. CORDERO: You see how many people are here. It is because the committee put the announcement of the hearing on only one single web site. Even the web site of the Supreme Court does not contain a notice of this hearing. This

hearing --
THE COURT: The Supreme Court is not governed by the statute. The Supreme Court is beyond the statute. I'm sure that's why it isn't on their web site.
All right, Dr. Cordero, if you would like to file a supplemental statement with the committee, you are welcome to do so, but thank you, that concludes your presentation.
DR. CORDERO: Thank you.
Next witness is Francis C.P. Knize.
MR. KNIZE: Judge Winter, just let me change the tape.
THE COURT: Okay.
(Pause in proceedings.)
MR. KNIZE: Hello. My name is Francis Knize and I'm a producer and --
THE COURT: I apologize for mispronouncing your name, Mr. Knize.
MR. KNIZE: That's quite all right.
THE COURT: I want to welcome you here today. I have looked over, I've read your statement, and it will be part of the record of these hearings and you'll have ten minutes to summarize your statement to which I will add any interruptions that I make, time for that. Go ahead.
MR. KNIZE: I thank you. I'm a producer, I've taken an interest in these hearings on behalf of the American public

and since we are a trickle up government that supposedly are represented by the people, the people believe that they have an interest in any kind of judicial oversight process.

I start with a definition of constructive fraud and constructive fraud by Bovier's Law Dictionary 1856 Edition is as follows: Constructive fraud: A contract or act, which is -- which, not originating in evil design and contrivance to perpetuate a positive fraud or injury upon other persons, yet, by its necessary tendency to deceive or mislead them, or to violate a public or private confidence, or to impair or injure public interest, is deemed equally reprehensible with positive fraud, and therefore is prohibited by law. And since I only have ten minutes, I will cut out a lot of my presentation here and get to the point.

In sum, in relation to the Ninth Amendment of the Constitution, the Ninth Amendment lends strong support to the view that, quote, unquote, liberty protected by the Fourteenth Amendments -- Fifth and Fourteenth Amendments from infringement by the federal government or states is not restricted to rights specifically mentioned in the first eight amendments. It was said that this category of fundamental rights includes those fundamental liberties that are implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. That was in the Palko versus Connecticut case.

I will not state the numbers because there's not enough time, please, I ask the public to refer to the actual testimony on record. These hearings on judicial --

THE COURT: Do you have any comments on the draft rules? I mean --

MR. KNIZE: Absolutely. I agree with Dr. Cordero in that simply the omission of rules or the surrounding facts around -- concerning the rules are basis for a testimony and if the judiciary cares to hear public comment -- now, I'm not a lawyer, but I can tell you what I've heard from the American public at large. So, if I may continue?

THE COURT: Sure, you may continue.

MR. KNIZE: These hearings on judicial conduct stem from the 1980 judicial act which originally wasn't intended for, but did manage to immorally and by definition, fraudulently put judges above the law. For 27 years now, those who look to this branch of government for relief have been disappointed time and time again. They have been exacerbated in many instances by judges who threaten the very lives of those who petition their courts for relief. And our own former U.S. Attorney General John Ashcroft condemned the judicial branch of government by characterizing this branch as organized crime. And you can refer to the document on record as to his exact quote.

But this is just the very tip of a very large iceberg

which each day gets worse, not better. Americans simply want the judicial conference to do something positive, act responsibly to remedy the harsh criticisms the judiciary has weathered. The judicial conference may have interest that not only has John Ashcroft has opined on such judicial crime, but other judicial officials have, as well, including but not limited to chief judge Edith Jones at the 5th Circuit Court of Appeals as follows:

Corruption in the agencies charged with enforcing our laws not only threatens communities by allowing dangerous criminals to roam free, it also undermines the confidence of our citizens in law enforcement and the criminal justice system. The same is true with respect to judicial corruption. We must all, in our own countries, lead the fight to ensure integrity within our police and judicial systems.

So, concerning these rules today, many in the public have expressed to me on behalf of my television series "In the Interest of Justice," that this document in itself shows an appearance of impropriety. Canon 2 implies judges shall avoid impropriety and the appearance of impropriety in all activities. That would include judicial conference activities concerning complaints against judges. The impropriety exists when judges are judging the judges. People perceive a lack of true oversight when men are the judges of their own causes and seem to form an illegal nobility. The recommendation from the

general public is that a fair and impartial tribunal of citizens should be the judges of misconduct accused of a judicial officer.

And I go on, skipping some paragraphs. The illegal statement: Shocking to the universal sense of justice. Judges should not adjudicate hearings on complaints against a judge because it creates a quid pro quo situation where judges would tend to keep other judges off the hook for accountability. The judicial conference must incorporate, quote, unquote, the doctrine of judicial restraint and therefore accept restrictions on their conduct that might be viewed as burdensome by ordinary citizens and should do so freely and willingly, and that's out of Canon 2, as you well know.

Having the gumption to produce a document as the one above shows the willingness of the judicial conference to forego the black letter of judicial ethics in order to maintain control over the rules and keep involvement by the public out of the process.

The Constitution, in Article 1, Section 9, paragraph 3, states no bill of attainder or ex post facto law shall be passed. The fact is it is perceivable that the rules governing judicial conduct are, in all practical effect, a bill of attainder or ex post facto law, and what I mean by that, the Constitution does not grant the kind of secrecy that

the judicial conference is giving its judges in the judiciary through the Judicial Conduct and Disability Act of 1980.

And it does so by assigning a commission of partial parties to decide in favor of their peers. At least the appearance of that to the public from what I gather from talking to at least -- just hundreds of citizens around the country, due process rights concerning complaints against government agents must fairly be decided by an impartial jury of citizens because that is what is secured by the Constitution.

And I cite some laws on the record that show reinforcement of that concept. Given that we philosophically are a trickle up government, whereby the government is by the people, rules 11 onward accomplish just the opposite, a nobility. Quote, a sovereignty itself is, of course, not subject to law for it is the author and source of law, but in our system while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people by whom and for whom the government exists and acts and that is Justice Matthews of the U.S. Supreme Court in the case of Yick Wo versus Hopkins.

My main point today, if I have to emphasize a point, is that the problem is obvious when 99 percent of all complaints against judges are summarily dismissed. The public perceives a 99 percent dismissal of all complaints as a system

that is broken. The report "Implementation of Judicial Conduct and Disability Act of 1980," a report to the chief justice by the Breyer Commission concluding that the system works well is perceived as nothing more than a farce by the American public in light of such a high statistic for dismissal of complaints or ruling against complaints.

The American Bar Association has shown through its polls that public confidence and trust is at an all time low and it is less than 30 percent. You have to look at different ratings they make that divide the average and it is running about 30 percent, so you can argue 40 percent, but in some areas of law it is starting at 20 percent confidence in the judiciary and the judicial conference must note these very pertinent polls done through the American Bar Association.

There's a problem with the judiciary acknowledging its imperfections. Sooner or later a blow back effect will occur against the judiciary for suppressing the problem of judicial misconduct.

America is demanding constitutionality by all three branches of the government. The Judiciary Act of 1801, Section 31, 6th Congress, Session 2, Chapter 4 is a preemptive congressional act section that prevents the judiciary from undue rule making. It is a legislative act that prohibits making regulations that are repugnant and repugnant to the Constitution for the public that doesn't know what that means.

Provided and the quote is in the ruling, quote, unquote, provided always that they are not repugnant to the laws of the United States.

The draft rules of 19 -- of the 1980 Act are repugnant in that they don't afford an impartial hearing concerning complaints against judges and I'm going to cut through a lot of this, again, because I know I'm impinging upon --

THE COURT: Are you suggesting that the committee had power to provide decision-makers other than judges in its rules?

MR. KNIZE: Well, I think the judicial conference is a very powerful agency and that what they do --

THE COURT: It would require action by the Congress of the United States, wouldn't it?

MR. KNIZE: Obviously, the act has to go through the Congress. There has to be oversight, because it is a congressional act.

THE COURT: What you're suggesting is something that simply -- you may be right, but what you're suggesting is something that would require legislation. It is totally beyond the jurisdiction of this committee.

MR. KNIZE: Yes, but rule making should not be repugnant to the Constitution of the United States and that's how -- the appearance of impropriety for some of these rules

is apparent to many Americans and when the rules --
THE COURT: I can well understand why there is doubt, why there is skepticism about a process, as there always is by any self-regulatory process, I can understand that, but these rules -- this committee does not have power to depart from the statute and the statute sets up a system that you don't like and I think you're just in the wrong forum. That's all.
MR. KNIZE: I think whatever happens with the judiciary reflects upon the judiciary committees at both the house and the senate and there should be some cross talk.
In fact, if I may, the report "Judicial Independence, Interdependence and Judicial Accountability: Management of the Courts from the Judges, Perspective, Institute for Court Management: Court Executive Development," a very prominent report of May 2006 just a little over a year ago, program phase three says on page 11 to answer your question, Justice Winter, a review of the separation of powers doctrine and the interbranch conflicts created will enhance the understanding of judicial independence. Separation of powers does not specifically mean creation of a barrier that positively prevents any connection or contact between the branches. Preferably it finds expression mainly in the existence of a balance among the branches, powers, in theory and in practice that makes it possible independence in the context of specific reciprocal supervision.

Although the judiciary is a independent coequal branch of government, the constitutional doctrine of separation of powers allows some overlap in the exercise of governmental functions. This overlap is sometimes referred to as the doctrine of overlapping functions. So, I think that pretty much explains that the judiciary itself by its highest judges through this report communicates to the world that there should be some sort of interbranch communication. Are.

THE COURT: Would you wind up, please.

MR. KNIZE: Winding up. Winding up. I -- the American public from my observation wants the judicial conference to add to the rules the following: Complaints are too often ignored by the judicial conference and it hardly ever gives notice to the movant. The citizens demand that once a complaint is filed an index number must immediately be issued by the ruling authority and that an official hearing must be granted within 30 days. That would be helpful. It would actually resolve a lot of problems that Dr. Cordero has brought up.

I will conclude now with -- that the finding must address each of the specific allegations and be released publicly and put on the record. Canon 2 states public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must

expect to be the subject of constant public scrutiny. So, that's par for the course that the public expresses its opinion through me today.

And I also want to address one last point before I go that Dr. Cordero alluded to and I would like to say that the rules are dependent on the qualification that the judicial conference has set for misconduct. However, many in the public believe that breaking the law in itself is grounds for misconduct and that there's no discretion to ignore jurisdiction and there's many functions of a judge where discretion does not come to play where the judge must follow the law and time and time again judges are not following the law and when what I have experienced and what other Americans have experienced is that the other judges rally to protect the judge who broke the law and then it becomes a conspiracy, an ever building conspiracy and I have experienced this firsthand.

I'm not here to talk about my case, but I could tell you that I have experienced this firsthand and it goes on and on and on and my next step is file some complaints with the judicial council and I wonder what's going to happen.

So, on that note, I thank you very much. Thank you.

If you have any other questions, I would be glad to answer them.

THE COURT: Thank you. Thank you very much.

MR. KNIZE: Thank you, Justice winters.
THE COURT: That concludes the hearing.
UNIDENTIFIED SPEAKER: Would you permit further testimony from the public? I requested three-and-a-half weeks ago to be permitted to testify. I wish to address specifically the rules --
THE COURT: I know of no such request.
UNIDENTIFIED SPEAKER: I have it right here, E-mailed from the Administrative Office.
THE COURT: If you will listen to me. Anyone who feels that they asked to testify, I would like to see the documents in which you asked to testify and see that they were filed in a timely fashion.
Thank you.
UNIDENTIFIED SPEAKER: I have it right here.
THE COURT: You can send it to me.
UNIDENTIFIED SPEAKER: I have a draft statement addressed to the rules, specifically the violations of the statute reflected in the rules with respect to merits related --
THE COURT: The comment period on the rules is still open. It is open until October 15th. If you would like to comment on the rules, please, do so.
UNIDENTIFIED SPEAKER: How?
THE COURT: I'm not here to get in an argument

with the audience. I will have the room cleared if it starts.

Thank you. The meeting is concluded.

(Proceedings concluded.)