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Outline of Comments on
The Draft Rules Governing Judicial Conduct and Disability Proceedings
Released for Public Comment by
the Judicial Conference Committee on Judicial Conduct and Disability

Delivered at the Hearing in the U.S. Courthouse at 225 Cadman Street, Brooklyn, NY, on September 27, 2007

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1. The draft rules are almost identical to the current rules and will not prevent judges from dismissing more than 99% of all complaints against their peers.
2. They protect a complaint system irreconcilable with traditional notions of fair play and substantial justice through due process of law:

   No change in the players or the procedure

   No public filing of complaints or access to the procedure applied to handle them

   No requirement that the complained-about judge respond to the complaint

   No adversarial confrontation between complainant and complained-about judge

   No requirement that a special investigating committee be appointed

   No public access to any investigating report

   No greater rights of appeal for complainants

   No compelling reason to protect judges with "the confidentiality of the complaint process"

   No system of checks and balances on the exercise by judges of absolute judicial power
3 Secret proceedings upon complaints kept from the public privatizes the justice that judges administer to themselves and renders it not equal under law.
4. Only one new relevant provision: Rule 8(b): clerk must copy the Committee on complaints.
5. The example of filing insurance claims, not before the courts, but before the regional CEO of the most powerful insurance company; appeals lie to the regional council of insurers; which decides whether to refer claims to the national insurance conference of successful insurers.
6 The Committee announced this hearing only on one website and is holding only one hearing.
7. In the 218 years since the 1789 Constitution, only 7 federal judges have been impeached and removed from the bench.
8. In the 27 years since the Judicial Conduct and Disability Act of 1980, the Judicial Conference of the U.S. has issued only 15 decisions.
9. Judges that are unimpeachable in practice are above the law, for they fear no adverse consequences from abusing their judicial power. Such power becomes absolute and corrupts them absolutely.
10. Constitutional challenge to 28 U.S.C. §§351-364 on grounds, among others, of equal protection (see http://Judicial-Discipline-Reform.org/docs/no_judicial_immunity.pdf).
11. Need for a **board of citizens** unrelated and unanswerable to the judiciary; otherwise, panels of three retired judges from circuits other than that or those of the complainant and the complained-about judge; empowered to publicly censure him, withdraw from him any and all cases, and recommend his impeachment.
12. Call for the Committee to recuse itself and recommend to the Chief Justice to appoint people unrelated to the Judiciary to draft the rules…after such people have reviewed the complaints filed in the last 10 years.
13. Let the Committee write the equivalent of Emile Zola's "I Accuse" in the Dreyfus Affair.
14. Call for bloggers and journalists to engage in a **Watergate-like *Follow the money!* investigation** to determine whether a federal judgeship has become a safe haven for judicial coordinated wrongdoing.

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February 25, 2008

Mr. James C. Duff
Judicial Conference Secretary & AO Director
Administrative Office of the U.S. Courts tel. (202) 502-1100, fax (202) 502-1033
One Columbus Circle NE
Washington, DC 20544

Dear Mr. Duff,

I am writing to you as Secretary to the Judicial Conference, which next March 11 will consider the adoption of the Revised Rules for processing judicial misconduct and disability complaints. These Rules, just as the current ones that they are supposed to replace, are irremediably flawed as part of the inherently biased system of judges judging judges

Indeed, the official statistics on the disposition of such complaints show that during the 10-year period 1997-2006, there were filed 7,462 judicial complaints, but the judges had only 7 investigated by special committees and disciplined only 9 of their peers! This means that the judges systematically dismissed 99.88% of all complaints. The Late Chief Justice Rehnquist and the Breyer Committee knew about these statistics, yet pretended that the Act had been satisfactorily implemented. Likewise, the Committee on Judicial Conduct and Disability pretends that if only the rules are reworded, judges will handle complaints against themselves as anything other than a dismissible nuisance. Yet its Rules only authorize the continuation of such systematic dismissal by:

Rule 2(b) allowing the non-application of any rule by the judges handling complaints, thus rendering them optional rather than mandatory and ensuring their inconsistent and capricious application;
Rule 3 and its Commentary depriving the official Commentaries of any authoritative status and even the Code of Conduct for U.S. Judges and mandatory rules of any guidance value;
Rule 13 Commentary pretending that special committees may be barred from disclosing information about judges' criminal conduct to prosecutors and grand juries, thus providing for cover ups.

My comments at http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_revised_rules.pdf show that these are but some of the most blatant provisions to ensure the Rules' ineffectiveness. They also show the Rules to be procedurally flawed, for the facts establish the intentional circumvention of the requirement of "giving appropriate public notice and opportunity for comment".

Therefore, I respectfully request that **1)** you take cognizance of my comments attached hereto and submit them to the Conference and its members together with my petition that they do not adopt the Revised Rules; **2)** you and the Conference submit the Revised Rules to public scrutiny through appropriate notice and make public all comments thereupon submitted as well as all those already submitted by judges and others in what was supposed to be a process of public comment rather than a veiled opportunity for judges to indicate to its drafting peers and the Conference how to turn the practice of systematically dismissing judicial complaints into the official policy for defeating the Act through self-exemption from all discipline; and **3)** you let me know at your earliest convenience your decision on this request. Meanwhile, I remain,

sincerely yours, Dr. Richard Cordero, Esq.

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(as of February 11, 2008)

Comments[1] on the Revised Rules

Governing Judicial Conduct and Disability Proceedings

drafted by the Committee on Judicial Conduct and Disability

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

and submitted for adoption to the Judicial Conference of the United States

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[1] These Comments are downloadable via http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_revised_rules.pdf, in a file that also contains most of the shorter documents referred to here. Links to the larger ones are provided infra to make possible their separate downloading.
Note: If a link is not active when clicked or the Internet browser returns a 'file not found' message, copy and paste it in the browser's address bar, delete any period, comma, or semicolon after….pdf, ….html, or any other file type as well as any space anywhere in what must be a continuous string of characters, numbers, and symbols, and press enter.

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I. By announcing its Draft and Revised Rules on only one scarcely known website, holding only one hearing in an out of the way court, and not posting the comments submitted, the drafting Committee of judges circumvented its statutory duty to give "*appropriate* public notice and an opportunity for comment" in order to minimize public scrutiny and avoid criticism that the Rules will not stop the judges from systematically dismissing in self-interest complaints about misconduct and disability against their peers (emphasis added)

1. On June 13, 2007, the Committee on Judicial Conduct and Discipline of the Judicial Conference of the United States[2] (hereinafter: the Committee) adopted a set of Draft Rules

[2] The Judicial Conference of the United States is the Federal Judiciary's highest policy-making body. It is constituted of the Chief Justice of the Supreme Court, who is its presiding officer, 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, as well as a district judge from each judicial circuit. Its enabling provision is found at 28 U.S.C. §331; http://Judicial-Discipline-Reform.org/docs/28usc331_Jud_Conf.pdf.

(DR)[3] to provide procedural details on the implementation of the Judicial Conduct and Disability Act of 1980 (28 U.S.C. §351-364; the Act) in light of the recommendations contained in the Breyer Report.[4] The Draft Rules were intended to replace the current rules adopted by the 12 regional circuits and 3 national courts[5], which patterned them after "the Illustrative Rules [that] were originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals, and were subsequently revised and amended, most recently in 2000, by the predecessor to the Committee"[6] (Revised Rules, Commentary on Rule 1, page 9, Lines 5-9, hereinafter thus: cR1, p9:L5-9).[7]

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[3] **Draft** Rules of June 13, 2007 (DrR): http://www.uscourts.gov/library/judicialmisconduct/Rules_DraftPublicComment.pdf; also at http://Judicial-Discipline-Reform.org/judicial_complaints/Draft_Rules_13jun7 .pdf; **Revised** Rules of December 13, 2007 (RevR): http://www.uscourts.gov/library/judicialmisconduct/RulesRevised121307.pdf, also at http://Judicial-Discipline-Reform.org/judicial_complaints/Revised_ Rules_13dec7.pdf; **Submitted** Rules of January 23, 2008 (subR), "resulting from a style edit" and to be considered for adoption by the Judicial Conference at its semi-annual meeting on March 11, 2008,: http://www.uscourts.gov/library/judicialmisconduct/Rules012308.pdf, also at http://Judicial-Discipline-Reform.org/judicial_complaints/submitted_Rules_23jan8.pdf. See the next footnote for a file containing these rulesets as well as the soon to be replaced **current rules** applied in the circuits to process judicial complaints, represented here by those of the Second Circuit, also at ftnt. 6 infra; and the **Rules of the Judicial Conference** for the processing of petitions for review of circuit council orders under the Judicial Conduct and Disability Act. To search a term, use the all-sets file; to compare the rulesets, use the individual files and cascade them or open them side by side.

[4] Implementation of the Judicial Conduct and Disability Act of 1980, A Report to the Chief Justice, September 2006; http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf. This Report was produced by the Judicial Conduct and Disability Act Study Committee appointed by the Late Chief Justice William Rehnquist on May 25, 2004, and chaired by Associate Justice Stephen Breyer. The Act, the Breyer Report, and the five rulesets listed in the preceding footnote, with useful navigational bookmarks added and links to the originals, can be downloaded through http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rulesets.pdf.

[5] In addition to the 11 numbered federal judicial circuits and the federal District of Columbia, §363 of the Act includes within its scope of application the U.S. Court of Federal Claims, the Court of International Trade, and the Court of Appeals for the Federal Circuit.

[6] The rules of the various circuits can be downloaded through http://www.uscourts.gov/library/judicialmisconduct/index.html. Cf. Judicial Misconduct Procedures pursuant to the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §351 et. seq.; http://www.ca2.uscourts.gov/judmisconduct.htm and http://Judicial-Discipline-Reform.org/judicial_complaints/CA2_complaint_rules.pdf.

[7] The general reference here is to the Revised Rules to stress the fact that they were issued after the drafting Committee took into consideration comments from their peers and the public on its original Draft Rules, with which they are compared below. Since the Revised and the Submitted Rules are supposed to be substantively the same, these comments are applicable to either of those sets, even if

2. The Committee released its Draft Rules to the public the following July 16, through an announcement[8] made in only one place, namely, the little known portal to the websites of the Federal Judiciary at http://www.uscourts.gov/ [9]. The Committee's conduct contradicted the recommendation that it had made to the Judicial Conference, which the latter accepted, that the current rules be given maximum public accessibility by being posted on all judicial websites:

> 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 [10] 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 publication by on-line and print services.
>
> The Conference adopted the Committee's recommendations.[11]

3. Only the comments submitted by the public by August 27, 2007, were posted on the portal[12],

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there may be stylistic differences in their language. Hence, a general reference to the Revised Rules also applies to the Submitted Rules unless otherwise noted. A reference to a Rule of a particular ruleset uses the latter's abbreviation, that is, DrR#, RevR#, SubR#, respectively. Nevertheless, the number, #, of the Rule in question or the commentary on it, e.g., cDrR#, etc., facilitates both finding the corresponding text and ascertaining whether there is similar text in the other rulesets.

[8] Announcement: For Public Comment: Draft Rules Governing Judicial Conduct and Disability Proceedings; http://Judicial-Discipline-Reform.org/judicial_complaints/351_Breyer_rulesets.pdf, abr:244-246.

[9] Many files cited here can be downloaded through that portal, which gives access to the webpages or -sites of the components of the Federal Judiciary, i.e., the Judicial Conference of the United States, the Administrative Office of the United States Courts, the Federal Judicial Center, and all the federal courts as well as other entities related to federal law. Many of those files can also be downloaded, frequently with useful navigational bookmarks added and links to the originals, from http://Judicial-Discipline-Reform.org.

[10] This Committee changed its name to Committee on Judicial Conduct and Disability in March 2007; http://Judicial-Discipline-Reform.org/judicial_complaints/Com_Rvw_Con&Dis_Orders.pdf at JC:730.

[11] Report of the Proceedings of the Judicial Conference of the United States, March 24, 2002, p58; http://www.uscourts.gov/judconf/sept02proc.pdf.

[12] This commentator's indication of August 23, 2007, of his intended testimony at the September 27 hearing that the Committee posted on the Federal Judiciary's portal at http://www.uscourts.gov/library/judicialmisconduct/hearing/Cordero.pdf, are those that he submitted only to comply with the Committee's requirement, stated in its July 16 announcement (ftnt. 8, supra), that "Requests to appear and testify at the hearing must be e-mailed by August 27 to the Office of the

4. but not those submitted between then and the end of the 90 days for public comment on October 15 [13], and no comments submitted by any judge were ever made public.[14]
5. On September 27, 2007, the Committee held a single public hearing in the whole nation on the Draft Rules, not at the Supreme Court, whose Chief Justice set in motion the process of reviewing the current rules and whose activities are so well covered by the Supreme Court press corps; not in Washington, D.C., at the Office of the Administrative Office of the U.S. Courts, which provides the secretariat for the Committee as well as the Judicial Conference; not at the U.S. Court of Appeals for the Second Circuit, of which the Committee chair, Senior Circuit Judge Ralph K. Winter, is a member and was its chief judge from 1997-2000, and which is also well covered by a press corps; but rather at an out of the way district court in Brooklyn, NY.[15] The transcript of the hearing was subsequently posted only on the portal[16], but not the official audio/visual recording of it.
6. The Committee posted a set of Revised Rules, dated December 13, 2007, only on December

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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".

[13]This commentator's Comments of October 13, 2007, discuss the Draft Rules in more detail than his indication of August 23 of his intended testimony at the hearing (see preceding footnote); http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_draft_rules.pdf. They also provide a historical background to the Draft Rules more detailed than the summary provided here. They are accompanied by most of its shorter references and contain links to the larger ones. The Comments on the Draft Rules and those on the Revised Rules do not overlap and should be read as complimenting each other.

[14]Cf. Judges Impose Secrecy on Ethics-Rules Revision: Secrecy on the rewriting of federal misconduct rules is only deepening suspicions among critics who say judges have failed to police themselves adequately, by Marisa Taylor, MiamiHerald.com, October 26, 2007; http://www.miamiherald.com/news/nation/story/285048.html.

[15]In the same vein, the Breyer Study Committee did not publish any submissions from the public and held no hearing at all. By contrast, the previous similar body, the National Commission on Judicial Discipline and Removal, chaired by Robert W. Kastenmeier, "held six public hearings during 1992 and 1993, and submitted its final report on August 2, 1993"; http://Judicial-Discipline-Reform.org/judicial_complaints/on_Nat_Comm_Removal.pdf. See the 1993 Report of the Commission at http://Judicial-Discipline-Reform.org/judicial_complaints/1993_Report_Removal.pdf. In addition, two volumes of Research Papers of the Commission and one volume of Hearings transcripts were published and can be ordered through the Federal Judicial Center; http://www.fjc.gov/library/fjc_catalog.nsf.

[16]Transcript of the Public Hearing on the Draft Rules Governing Judicial Conduct and Disability Proceedings, held at the U.S. Courthouse, 225 Cadman Street, Brooklyn, New York, on September 27, 2007; http://www.uscourts.gov/library/judicialmisconduct/hearing/transcriptSept2707.pdf; see also the version with page numbers at the top of each page at http://Judicial-Discipline-Reform.org/judicial_complaints/transcript_27sep7.pdf.

21, just before the holiday season. In its announcement, it noted:

> The deadline for submitting the Rules for adoption by the United States Judicial Conference is mid-January. Therefore, any communications to the Committee should occur well in advance of that time. Such communications may be addressed to the Office of the General Counsel, Administrative Office of the U.S. Courts, One Columbus Circle NE, Washington, DC 20544.[17]

7. The Committee did not provide its e-mail address at the Administrative Office for any such communication to be sent to it, unlike what it did when it called for comments on the Draft Rules and asked that the public submit them in digital form by e-mail sent to JudicialConductRules@ao.uscourts.gov.[18] Consequently, those who happened to find out about the Revised Rules and wanted to submit comments that, precisely because they are critical of the Committee and its rules, must be all the more well-researched, thoroughly considered, and professionally presented, have had to scramble to do so, as did this commentator, and send them, certainly by e-mail to the Administrative Office, before "mid-January", a deadline whose impreciseness reasonably indicates that it is flexible enough to allow the Committee to read the few comments likely to be submitted.

8. Indeed, hundreds of people file judicial complaints every year (cR10, p23:L14-17) if not thousands (graph of Complaints Filed, p22 infra, and the comments thereto). But because of the way the Committee announced its Draft Rules and the place where it held its single hearing, only three people submitted comments and they were the only ones to testify at the hearing, where only one journalist showed up. By doing so, the Committee circumvented the duty placed on it by 28 U.S.C. §358(c):

> Any rule prescribed under this section **shall** be made or amended only after giving **appropriate** public notice and an opportunity for comment". (emphasis added)

9. Why would the Committee do that? Could it have been an effort on the part of the Committee, composed of experienced federal judges, to avoid criticism from the public for having produced Draft and Revised Rules that change none of the features in the current rules[19] that judges have so egregiously abused to exempt themselves from any discipline in the context of the inherently biased judges-judging-judges system of self-discipline set up under the Judicial Conduct and Disability Act? Let's examine what the Committee of judges provided for their peers or their complainants in the Revised Rules by comparison with the Draft Rules.

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[17] Http://www.uscourts.gov/library/judicialmisconduct/commentonrules.html. The announcement of the Revised Rules is included in a file containing those Rules enhanced by added navigational bookmarks; http://Judicial-Discipline-Reform.org/judicial_complaints/Revised _Rules_13dec7.pdf.

[18] See footnote 7, supra.

[19] Outline of Comments Delivered at the Hearing on the Draft Rules; http://Judicial-Discipline-Reform.org/judicial_complaints/outline_graphs/pdf.

II. Far from being "mandatory", the Revised Rules are nothing but a menu of options any one of which "a chief judge, a special committee, a judicial council, the Judicial Conference Committee on Judicial Conduct and Disability, or the Judicial Conference of the United States" is authorized not to apply, which allows their application of the Rules in any way they choose in order to justify however they want to handle each complaint unconstrained by any guiding standards whether in the official Commentaries accompanying the Rules, the Code of Conduct for U.S. Judges, or even "mandatory rules governing the receipt of gifts by judges, outside earned income and financial disclosure obligations"

10. Revised Rule 2 states that "These Rules are mandatory; they supersede any conflicting judicial-council rules." (RevR2, p9:L20-21). However, any person or body that has anything to do with their implementation, namely, "a chief circuit judge, a special committee, a judicial council, the Judicial Conference Committee on Judicial Conduct and Disability, or the Judicial Conference of the United States" (the implementers; RevR2, p9:L26-29) is authorized to modify or suspend them if in his or its unimpeachable judgment he or it "expressly finds that exceptional circumstances render the application of a Rule in a particular proceeding manifestly unjust or contrary to the purposes of [the Judicial Conduct and Discipline Act of 1980] 28 U.S.C. §§ 351-364 or these Rules" (RevR2, p9:L29-33). Consequently, the assertion that the Rules are mandatory is a vacuous pretension.

11. What is more, or rather less, the Committee deleted the provision in its Draft Rules that "the accompanying Commentaries are to be deemed authoritative interpretations of the Rules" (DrR2, p3:L7-8).

12. By stripping its interpretations of any authoritative status, the Committee undermined the basis of its authority to draft those rules, that is, the Breyer Report, which found "that a major problem faced by chief circuit judges in implementing the Act was the lack of authoritative interpretive standards...Breyer Report, 239 F.R.D 212-15", as quoted by the Committee itself at cR1, p8:L29-31. Thereby the Committee left unmet what it deemed the reason for 'exercising its rulemaking power under section 358 of the Act', namely, the "need...to fashion standards guiding the various officers and bodies who must exercise responsibility under the Act" (cRevR1, p8:L44-47).

13. Actually, what the Committee set out to accomplish through its Draft Rules was not just to guide, but rather to bind. This is what Judge Winter, the Committee Chair, stated at the public hearing on the Draft Rules:

> 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**…." (emphasis added; Transcript, p42:L13-16)[20]

14. Far from binding anybody, the Committee gave to all of the implementers Rule-modifying and suspending power. It deleted the language in the Draft Rules providing for the status of its Commentaries as "authoritative interpretations of the Rules" (DrR3, p3:L7-8). Likewise, it deleted the language that relied on the Code of Conduct for United States Judges[21] as a source of guidance in complaint proceedings:

> The Code of Conduct for United States Judges may provide standards of conduct applicable to proceedings under the Act, although it is not intended that disciplinary action be appropriate for every violation of the Code's provisions. As noted in the Introduction to the Code:
>
> "Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system….(cDrR3, p5:L27-36, **deleted in the Revised from the Draft Rules**)

15. With such deletion, the drafting Committee contradicted by implication the Code of Conduct for U.S. Judges, which in its commentary on Cannon 1 specifically provides that "The Code is *designed* to provide guidance to judges and nominees for judicial office. The Code may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980." (emphasis added)

16. However, that deletion was not enough and the Committee went ahead in the Submitted Rules to reduce the Code to just an aspirational statement, not necessarily informative and definitively not prescriptive:

> Although the Code of Conduct for United States Judges may be informative, its main precepts are highly general, the Code is in many potential applications aspirational rather than a set of disciplinary rules. (cSubR3, p13:L8-12)

17. The Committee went on to delete the language in the Revised Rules that recognized advisory value to "the numerous interpretative opinions" on the Code of Conduct for U.S. Judges. As a result, a corpus formed over decades by the accumulation of opinions issued by peer judges charged specifically with the duty to interpret that and other codes of conduct is no longer even

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[20] Http://Judicial-Discipline-Reform.org/judicial_complaints/transcript_27sep7.pdf.

[21] Code of Conduct for United States Judges, http://www.uscourts.gov/guide/vol2/ch1.html#date; and Checklist for Financial and other Conflicts of Interest, http://www.uscourts.gov/guide/vol2/checklist.pdf; both in one file at http://Judicial-Discipline-Reform.org/judicial_complaints/Code_Cond_Judges.pdf.

mentioned as a source of guidance, let alone authoritative precedent.

> …and the numerous interpretative opinions represent only the advisory views of the Committee on Codes of Conduct with which there may be permissible disagreement and noncompliance. (cRevR3, p5:L25-27, **deleted in the Submitted Rules from the Revised Rules)**

18. But that was still not enough to weaken the Rules. So the Committee stripped the guidance value off even mandatory rules:

> Similarly, the regulations governing the receipt of gifts by judges, outside earned income, and financial disclosure obligations provide guidance in proceedings under the Act, although disciplinary action may not be appropriate for every violation of the regulations. (cDrR3, p6:L4-6, **deleted in the Revised Rules from the Draft Rules**)

> **Replaced by**: Even where specific, mandatory rules exist -- for example, governing the receipt of gifts by judges, outside earned income and financial disclosure obligations -- the distinction between the misconduct statute and the specific, mandatory rules must be borne in mind. (cSubR3, p18:L18-22)

19. What is more, it set up the circuit judicial councils –there are 12 regional circuits, the Federal Circuit, and 2 other national courts subject to the Rules under Rule 3(e, f) (SubR3, p10:L29-33) and Rule 4 (SubR4, p15:L42-46) - as the ultimate arbiters of whatever "misconduct" is:

> Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the Judicial Council of the Circuit subject to such review and limitations as are ordained by the statute and by these rules. (cSubR3, p13:L12-16)

20. The drafting Committee did not satisfy itself with merely rendering misconduct decisions predicated on the violation of a provision of the Code of Conduct for U.S. Judges vulnerable to an attack of void for vagueness. It also opened the decisions of the circuit judicial councils to the graver attack of being the retroactive application of an ex-post facto disciplinary principle: If federal judges cannot rely on the Code or even its "numerous interpretative opinions", not even "mandatory rules", as prior notice of the norms to which they are expected to conform their conduct, how could it be fair for them to find out only after being complained-about and privately or publicly admonished or censured, sanctioned, or even recommended for impeachment whatever it is that they were supposed to do or not to do? Did the Committee, consisting of judges well versed in the law, intend to provide their peers with another means to escape discipline?

21. In any event, there is no question that the Committee elevated each of 15 councils to the status of 'ultimate determiner of misconduct', and could not bring itself to expressly reserve such status for the implementer that logically should be entitled to it, namely, the Judicial Conference, the equivalent of the Supreme Court, which says what the law of the land is in the

system of justice to which common people, those actually "…Under Law"[22], are subject. Nor could it reserve that status even for itself, that is, the Committee on Judicial Conduct and Disability through which the Conference elected to exercise its authority under the Act, as provided for under 28 U.S.C. §331 4th paragraph[23]. On the contrary, by deleting from the Commentaries language on refusal to recuse as the basis of a complaint, the Committee reinforced the presumption that such complaint is merits-related and thus dismissible, thereby reinforcing the position of each judge as ultimate determiner of whether he -or she- should remain on a case regardless of a request for recusal and, of course, conducting or misconducting himself as he sees fit:

> The same standard applies to allegations concerning a judge's failure to recuse. An allegation that a judge should have recused is merits-related. The very different allegation that the judge failed to recuse for improper reasons is not merits-related. (cDrR3, p6:L40-41/p7:L1, **deleted Revised Rules from the Draft Rules**)

Retained in Rule 3(b)(2)(A): Any allegation that calls into question the correctness of a ruling of a judge, including a failure to recuse, without more, is merits related. (SubR3, p11:L27-31)

A. The drafting Committee caved in to the pressure of its fellow judges for freedom from any mandatory disciplinary rules

22. On all these key points the Committee caved in to the pressure of the class of persons 'Above Law', its peers. No doubt it was also aware that it will have to submit its Rules for adoption to the Judicial Conference, of whose 27 members 13 are chief circuit judges who will be actually voting on the replacement of the current rules patterned after "the Illustrative Rules [that] were originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals" (cSubR1, p9:L5-7). They objected to having to comply with rules crafted by anybody else rather than be able to deal with complaints against their own as it suits the judges in each circuit. As the Chief Judge of the 9th Circuit, CJ Mary Schroeder, put it:

> "We have always been concerned in the 9th Circuit about maintaining the ability of our circuit to handle the issues relating to the West, and to try to avoid undue centralization in Washington," Schroeder said. "That is kind of a theme -- a tension between the role of circuit councils and the administrative office."[24]

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[22] "Equal Justice Under Law" is the aspirational principle inscribed on the frieze below the pediment of the Supreme Court building and is supposed to guide the action of the Federal Judiciary as a whole.

[23] Http://Judicial-Discipline-Reform.org/docs/28usc331_Jud_Conf.pdf.

[24] Circuits Wary of Plan for Policing Federal Bench, by Dan Levine, The Recorder, November 2, 2007, published by Law.com; http://www.law.com/jsp/law/LawArticleFriendly.jsp?id =1193907830481.

23. Apparently, Chief Judge Schroeder is under the impression that "the issues relating to [judicial misconduct] in the West" are wilder than those that affect the judiciary and the public elsewhere in the nation and must be handled in a different way by its judges[25]. How representative is her statement of the notion shared by the other circuit judges of their circuits as separate fiefdoms carved out from "a nation under one law" and ruled by feudal lords entitled to handle their own systems of fealty independently of any royal authority? It can be very representative due to one key factor: There is no 'royal authority' in the Federal Judiciary because all Supreme Court justices as well as circuit and district judges enjoy lifelong appointment "during good Behaviour" and their salary "shall not be diminished during their Continuance in Office", as provided for under Article III, Section 1 of the U.S. Constitution[26]. In fact, neither the Constitution nor any statute thereunder gives even the Chief Justice of the Supreme Court power to control any other judges or ask them for an accounting of their conduct, and not only can he not fire any judge, but also cannot even recommend to Congress on his own that anyone be impeached. He is just ceremonially "primo inter pares". His peers are not the associate justices, but rather the chief circuit judges and the district judges that compose the Judicial Conference, who are certainly not going to adopt policy to limit their own power in their courts. Consequently, what the

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[25] Perhaps Chief Judge Shroeder had in mind the grave accusations of conflict of interests and favoritism involving more than $4.8 million in judgments and fees brought to her attention as chief circuit judge in a complaint against U.S. District Judge James C. Mahan and the preservation of the power of the 9th Circuit Judicial Council to exonerate him despite the appearance of blatant impropriety. See Appeals Court Dismisses Complaint Against Judge: Panel says that despite The Times' allegations of favoritism in judgments and fees, the jurist's ties didn't affect his impartiality, by Ashley Powers, Los Angeles Times Staff Writer, December 11, 2007; http://www.latimes.com/news/nationworld/nation/la-na-judge11dec11,1,5619088.story?coll=la-headlines-nation&ctrack=2&cset=true.

The accusations against former Nevada State and later U.S. District Judge James C. Mahan were first published in a series of articles of journalistic investigation entitled Juice vs. Justice, A Times Investigation in Las Vegas, They're Playing With a Stacked Judicial Deck; Some judges routinely rule in cases involving friends, former clients and business associates -- and in favor of lawyers who fill their campaign coffers, by Michael J. Goodman and William C. Rempel, Times Staff Writers, June 8, 2006;. http://www.latimes.com/news/politics/la-na-vegas8jun08,1,438348,full.story?ctrack=7&cset=true; see the whole series at http://Judicial-Discipline-Reform.org/judicial_complaints/Juice_v_Justice.pdf.

The LA Times investigation lasted two years and cost over $250,000. See a video of a panel consisting of LA Times Investigative Journalist Rempel and three university professors, who discussed responses to the judicial corruption thus exposed; mhtml:file://C:\Documents%20and%20Settings\Administrator\My%20Documents\initiatives\Juice%20v%20Justice\Responses%20to%20Judicial%20Corruption%205-4-07.mht.

[26] Http://Judicial-Discipline-Reform.org/docs/US_Constitution.pdf.

Conference members will not do to themselves, none of its Committees will either, including its Committee on Judicial Conduct and Disability, lest they be unceremonially disavowed and asked *"What were you thinking?!"*.

24. This explains the Committee's incontrovertible surrender to the chief circuit judges and their peers apparent in Rule 5, which deleted the language in the Draft Rules that made it mandatory for a chief circuit judge to identify a complaint:

> Rule 5(a)(1) Subject to Rule 7, where information known to a chief circuit judge meets the standard of Rule 3(a)(2) and no complaint containing such information has been filed under Rule 6, a chief circuit judge **must** identify a complaint **and,** by written order stating the reasons, **begin the review** provided in Rule 11. Where a complaint filed under Rule 6 contains information constituting an identifiable complaint of misconduct or disability but the complainant does not claim it as such, the chief circuit judge **must** identify a complaint.(DrR5, p8:L10-16, emphasis added; **deleted in the Revised from the Draft Rules**)

> **Replaced by**: Rule 5(a) Identification. When a chief judge has information constituting **reasonable grounds** for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge **may** conduct an inquiry, **as he or she deems appropriate**, into the accuracy of the information even if no related complaint has been filed. A chief judge who **finds probable cause** to believe that misconduct has occurred or that a disability exists **may** seek an **informal resolution** that **he or she finds satisfactory**. If no **informal resolution** is achieved or is feasible, the chief judge **may** identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is **clear and convincing and no informal resolution** is achieved or is feasible, the chief judge **must** identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. [What person?, what allegation? Is this Rule applicable if the chief judge "has information" first-hand? As to this awkward sentence, see ¶2727 infra.] This Rule is subject to Rule 7. (emphasis added; SubR5. p16:L11-30.)

25. Under this Rule as submitted, the chief judge is not dutybound to do anything even when she has "reasonable grounds for inquiry into…misconduct or…disability", e.g. because she "has information" from the mouth of a judge who boasted over wine and lobster at lunch with her and others at a sponsor-paid judicial junket that he decided a case so that a mall would be built near his lot of land and increase significantly its value. But she "may conduct an inquiry", though not necessarily according to some professional method of inquiry; rather, only as "she deems appropriate"…such as by having dessert in private with that judge. Moreover, even after finding "probable cause to believe that misconduct has occurred or a disability exists", she does not have to identify a complaint; instead, she only "may seek an informal resolution satisfactory that she finds satisfactory", that is, not necessarily consonant with the requirements of the law, let alone the prescriptions of any Code of ethical conduct, but simply whatever happens to satisfy the chief in her unlimited discretion, e.g. the judge agrees not to be so incautiously boastful. More still, no duty to identify a

complaint is triggered, for she must first try again an "informal resolution" or after making a reservation for a skin-rejuvenating mud bath. Only if none "is achieved or is feasible, must", the chief only "identify a complaint"

26. Even the preponderance of the evidence is not enough to impose the duty on the chief circuit judge to identify a complaint in order to nip in the bud any misconduct or disability for the sake of the people that are harmed by it and the administration of justice that is impaired thereby. The chief can quietly sit on his hands, or go to a spa for a facial, until the misconduct or disability is blatant enough to be "clear and convincing", thus allowing the possibility that somebody else may file a complaint under Rule 6 and let the chief off the hook of complaining against one of his peers. But if he does anything, it must first be to try the informal approach. It follows that even "clear and convincing evidence" of misconduct –but not necessarily of disability, which is not mentioned here- can be disposed of through informal means, never mind that the misconduct in evidence may involve conflict of interests, corruption, bribery, bias, prejudice, and abuse of power. (¶39 infra) Only if "no informal resolution is achieved or is feasible, the chief must identify a complaint" (SubR5. p16:L11-30).

27. Could the Committee have bent over backwards more strenuously in order to spare the chief circuit judges and their peers what their practice shows they consider to be the nuisance of handling judicial complaints? Yes, and it did. So that awkward last but one sentence of Rule 5(a) (¶2424 supra) is the unwelcome orphan of a Draft Rules section that the Committee killed in revision:

> Rule 5(a)(2) A chief circuit judge:
>
> (A) may not decline to identify a complaint:
>
> (i) because the chief circuit judge deems otherwise cognizable allegations not to be credible, unless the sole source of information has been unreliable in the past; or
>
> (ii) because the person or persons making such allegations have not filed a complaint under Rule 6.
>
> (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.[27]

[27] Rule 5(a)(2)(B) has been deleted from the Rule itself only for its content to reappear in the Commentary to Revised Rule 5 thus:

> In high-visibility situations, it may be desirable for the chief circuit judge to identify a complaint without first

> (C) may decline to identify a complaint if the matter has been resolved by informal means. (DrR5, p8:L17-32, **deleted from Submitted Rules in the Draft Rules**)

28. In the vacuum left by that deletion, the chief circuit judges are now allowed to disregard allegations of misconduct and disability brought to their attention by another person if only they consider them "not to be credible"…no need to conduct any inquiry whatsoever even if the allegation is "otherwise cognizable", for if in doubt, the benefit cuts in favor, not of the public or the integrity of judicial process, but rather of the peers, who after all are their friends and colleagues, not to mention, persons 'Above Law and every suspicion'.

29. While "Judicial councils retain the power to promulgate rules consistent with these Rules" (p3:L20), they need not bother to do so. They adopted their current local rules, but that entailed acknowledging them as a constraint on their action that in theory forces them to handle all judicial complaints filed with them uniformly in their own circuit. Now they can simply pretend to apply the single set of national "mandatory" Rules only to modify or suspend them systematically through partial or total non-application in order to "handle the issues relating to" their local peers and themselves as it most advances both their individual and judicial-class interests. Given that the sets of facts of two complained-about judges are never exactly the same, nothing is easier for a judge than to seize on an element particular to a case and craft a form of words in order to "expressly find[] that exceptional circumstances render application of [a] Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules" (SubR2, p9:L29-33). After all, it is not as if his finding were subject to review by an independent person who could in turn find the manifest abuse of this provision. On the contrary, if the suspension or modification of a Rule were known to a complainant at all, or if any petition for review were allowed, any such review would be conducted by the peers not only of the complained-about judge, but also of the judge or judges that made the finding of exceptional circumstances. Now why would the reviewing judges want to overturn such finding and thereby make lifelong enemies of life-tenured colleagues? Just for

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> seeking an informal resolution (and then, if the circumstances warrant, dismiss or conclude the identified complaint without appointment of a special committee) in order to assure the public that the allegations have not been ignored. (cSubR5, p18:L42-47)

The condemnation that was leveled at this express policy of deceit when contained in the Rule is well deserved by its formulation in this Commentary too because it "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 identified 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. 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?", http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_draft_rules.pdf, p19¶49 et seq.

the sake of the proper administration of justice or the integrity of judicial process? What is in it for them in doing so since they too are life-tenured to "hold Office during good Behaviour"?

B. By making the Rules in effect optional rather than mandatory and its official Commentaries on them non-authoritative, the Committee has ensured that their application by the life-tenured, close-knit judges of the 15 judicial circuits and national courts will be inconsistent and subject to the dynamics of "you can dismiss the complaint, *so do it!*, because if you bring me down, *I take you with me!*"

30. Through the double whammy in its Revised Rules of empowering implementers with modifying and suspending authority while withdrawing the language that in its Draft Rules required that its "Commentaries are to be deemed authoritative interpretations of the Rules" (DrR2, p3:L7-8), the Committee has not just left unsatisfied its acknowledged need for Rule-implementing guidance, but has in fact managed to leave in worse shape a situation that was already very bad due to its dismal implementation record:

> "To meet the reform goals presented by the Breyer Committee," said Judicial Conduct and Disability Committee chair Judge Ralph K. Winter, "and in order **to ensure the consistent application of the Act throughout the Judiciary**, our Committee concluded that a set of rules or guidelines governing the proceedings under the Act needed to be drafted and published for comment. For example, the Breyer Report noted that **in many critical areas the Act provided little guidance** as to the disposition of complaints filed or when chief circuit judges are themselves required to initiate complaints."[28] (emphasis added)

31. Not only has the Committee defeated its original purpose "to ensure the consistent application of the Act throughout the Judiciary", but it has also ensured that it will be inconsistent. This can be easily illustrated, for one only has to imagine a chief circuit judge who modifies or suspends some Rules through their partial or total non-application and then appoints a special investigative committee, who in turn modifies or suspends some Rules too before its report ends up in the hands of the circuit judicial council, who also modifies or suspends other Rules, which is likewise done by the Committee on Judicial Conduct and Disability only for the Judicial Conference to do the same. After so many persons participate in guidance-free chipping away at the Rules even in a single case and in as many cases as they want, what probability remains there for consistency through ad hoc application within a circuit, not to mention at the national level? None, except that instead of the implementers simply disregarding the current rules, as

[28] Public Comment Invited on Judicial Guidelines, The Third Branch, Newsletter of the Federal Court, vol. 39, number 8, August 2007; published monthly by the Administrative Office of the U.S. Courts Office of Public Affairs; http://www.uscourts.gov/ttb/2007-08/public/index.html.

they do now, the Revised Rules will make inconsistency legal by empowering the implementers to disregard them by merely claiming "exceptional circumstances".

32. What kind of justice system would we end up with if detectives, such as FBI investigators, U.S. attorneys, district judges, circuit judges, and Supreme Court justices were mandated to apply criminal and civil law provisions except whenever they 'expressly found that exceptional circumstances render their application manifestly unjust or contrary to the purposes of the law'? If each of these officers were entrusted with the equivalent of Presidential pardon, what incalculable harm would be inflicted upon the fundamental legal principles of reliability of notice, expectation of punishment, and non-arbitrary and uniform law enforcement throughout the procedural stages of any case? Why are judges entitled to fashion for themselves a system of discipline where any of their peers can let them off the hook by merely claiming "exceptional circumstances"?

33. Therefore, it is quite disingenuous on the part of the drafting Committee to pretend that the chief circuit judges' **a)** absence of any duty to apply the Rules to identify a complaint against a peer despite having "reasonable grounds...probable cause...and clear and convincing evidence" of his misconduct or disability; **b)** license to handle such evidence as they deem "appropriate...or... satisfactory"; **c)** requirement first to try to dispose of such evidence through "informal resolution" (SubR5, p16:L11-30); and **d)** authority not to apply any Rule even after they have identified a complaint or received one from a complainant (SubR2, p9:L25-33) is the equivalent of "police officers and prosecutors['] discretion in making arrests or bringing charges" (cSubR5, p17:L9-11).

34. By caving in to the implementers' wishes for ad hoc non-application of the Rules, the drafting Committee has authorized them to engage systematically in the veiled dismissal of complaints even as they go through the motions of processing them, just as it explicitly provided (cSubR5, p18:L42-47)[29]. It has reduced the Rules to a means by which judges can proceed arbitrarily and capriciously to guarantee that their complained-about peers may continue undisciplined to "engage in conduct prejudicial to the effective and expeditious administration of the business of the courts", thereby knowingly defeating the Act's purpose set forth at 28 U.S.C. §351(a). Since this is the foreseeable consequence of its revision and works in its own and its peers' vested interest in disposing of complaints against themselves and evading the discipline that they could entail, the Committee must be deemed to have intended the inconsistent application of the Rules. Hence, to protect its own image as their drafters it stated only as a pretense that "Unlike the Illustrative Rules, these Rules provide mandatory and nationally uniform proceedings under the Act" (p3:L14-16). In fact, however, it provided through its Rules authority for the judges to handle complaints against their own ineffectively, with partiality, and non-uniformly in pursuit of self-immunization from discipline.

[29] Ftnt. 27 supra and the corresponding text.

III. The Revised Rules reinforce the judges' means to continue their systematic dismissal of misconduct and disability complaints against their peers that allowed the judges so to implement the current rules that, according to the official statistics of the Administrative Office of the U.S. Courts, out of the 7,462 complaints filed in the 1997-2006 period they had only 7 investigated by special committees and disciplined only 9 of their peers, thereby dismissing out of hand 99.88% of all complaints!

35. In the 10-year period 1997-2006, the official statistics on judicial complaints published by the Administrative Office of the U.S. Courts show that out of the 7,462 complaints only 9 judges were disciplined.[30] These AO statistics reveal the systematic dismissal of judicial complaints by the chief circuit judges and the circuit judicial councils[31]. They dismissed 99.88% of all complaints out of hand without any investigation, for in those 10 years they had only 7 complaints investigated by appointment of special committees. This point was confirmed by Committee Chairman Judge Winter:

> 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.[32]

36. If those complaints had been identified and those special committees had been appointed as they were supposed to, a number of judges would have been found to have not only 'engaged in conduct prejudicial to the administration of justice', but also committed acts spanning the scope of the criminal code. This follows from the fact that despite judges having abused the Act's system of judicial self-discipline to exempt themselves from any discipline or liability, judges cannot gabble out the weaknesses of their human condition and steel themselves invulnerable to the temptation to grab benefits accessible with impunity through their office. This is all the more so since it is not because of their incorruptible character that judges are either nominated by the President or confirmed by the Senate, but rather because they fit the mold of these political representatives in a process that is commonly set in motion by power brokers in the

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[30] All the tables of these official AO statistics have been collected in one PDF file containing also links to their originals and can be downloaded from http://Judicial-Discipline-Reform.org/judicial_complaints/complaint_tables.pdf.

[31] The Supreme Court Justices and the Chief Judges Have Semi-annually Received Official Information About the Self-immunizing Systematic Dismissal of Judicial Conduct Complaints, But Have Tolerated It With Disregard for the Consequent Abuse of Power and Corruption; http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf.

[32] Transcript of the Public Hearing on September 27, 2007, p42:L13-20; http://Judicial-Discipline-Reform.org/judicial_complaints/transcript_27sep7.pdf.

two major parties.[33] Consequently, they can stray into criminal activity in the same proportion as the rest of the population.

37. The Bureau of Justice Statistics of the U.S. Department of Justice has determined that 1 in every 31 persons in the adult U.S. population is either in prison or jail or on probation or parole, i.e., under correctional supervision.[34] If this ratio is applied to the total number of 2,184 judicial officers in the Federal Judiciary[35], 70 such officers should currently be correctional supervisees. Yet, *none* is! This fact defies statistical probabilities even if the 1/31 ratio applicable to the general population were refined to represent only white male top government professional employees, such as most federal judges are. It is the result of an inherently biased judges-judging-judges system that allows life-tenured judges to cover for each other and exempt themselves from any ethical, civil, and criminal liability through the systematic dismissal of judicial misconduct complaints. By thus rendering futile the filing of judicial misconduct complaints, the judges 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 rules of application.

38. Instead of ensuring that judges administrate "Equal Justice Under Law", the judges-judging-judges system of judicial self-discipline generates a vicious circle of abusive exercise of judicial power. It begins with one instance of abuse by a judge that is either supported by his peers for a share of the material benefit involved or just tolerated by other colleagues in order to enjoy a moral benefit. The former can be the sharing of a bribe or the purchase of stock for a judge acting on an insider tip obtained from counsel for one party or through the in camera review of documents with proprietary information claimed to be exempt from discovery. The moral benefit can be just as tangible, for it consists of the continued emotional wellbeing and social goodwill from the other members of the judicial class secured by a judge through her complicit silence about a peer's wrongdoing that she has detected or been informed of. Not only would the members' camaraderie be lost to any judge who identified or filed a complaint

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[33] See the case study of U.S. James C. Mahan in Juice v Justice, http://Judicial-Discipline-Reform.org/judicial_complaints/Juice_v_Justice.pdf.

[34] Probation and Parole in the United States, 2006, by Lauren E. Glaze and Thomas P. Bonczar, BJS Statisticians, Bureau of Justice Statistics Bulletin, December 2007, NCJ 220218; http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus06.pdf, box on p.2; also at http://Judicial-Discipline-Reform.org/judicial_complaints/Probation_Parole.pdf.

[35] Table 1.1 Total [federal] judicial officers, Judicial Facts and Figures, Administrative Office, http://www.uscourts.gov/judicialfactsfigures/2006/Table101.pdf; also at http://Judicial-Discipline-Reform.org/judicial_discipline/judicial_officers.pdf. To the number of judges and magistrates must be added the nine justices of the Supreme Court.

against a peer, but also their retaliation would be swiftly visited upon her, beginning with distrustful circumspection in her presence followed by her overt ostracism as a renegade. After a judge engages in wrongdoing and others support or tolerate it, all of them must continue covering it up, lest they self-incriminate or be incriminated as principals, accessories, or passive enablers. Since the first instance proves that abuse of judicial power is beneficial at no risk, other judges follow suit, either alone or with others who were in some degree involved in earlier abuse or that for the first time seek a material or moral benefit from it. Abuse of power begets more abuse in any close-knit social group where members stand or fall together. When they have power to aid each other to do wrong with impunity, abuse becomes a self-reinforcing modus operandi. So is generated the dynamics of corruption and interdependent survival. [36]

39. In the judiciary, however, abuse is all the more insidious and pernicious because judges wield enormous power over the property, liberty, and even life of not only people that appear in their courtrooms, but also of everybody else subject to their pronouncements of what the Constitution and the laws thereunder provide. Just consider decisions with far-reaching capacity to make economic winners and losers in the area of eminent domain, patent-extending improvements, and the definition of party in interest in bankruptcy. As the judges' abuse of power goes on uncontrolled and unpunished, it becomes absolute power and it corrupts them absolutely. So they allow themselves to engage in all the categories of wrongdoing under which the Administrative Office classifies the allegations in judicial complaints: abuse of judicial power, demeanor –which includes judicially unbecoming or abusive language or treatment of others-, prejudice, bias, conflict of interests, bribery, corruption, undue decisional delay, incompetence, neglect, and mental or physical disability that prevents the discharge of all the duties of office[37]…for the know that 99.88% of all complaints are dismissed without investigation. (¶35 supra)

40. It is complaints alleging such serious wrongdoing by their peers that the judges dismiss systematically, without any investigation. They are bound to do so because their survival has become interdependent as a result of having followed the motto that is their only guidance in

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[36] The Dynamics of Organized Corruption in the Courts, http://Judicial-Discipline-Reform.org/Follow_money/Dynamics_of_corruption.pdf.

[37] See the categories of misconduct listed in the AO statistical tables of judicial complaints (ftnt. 30 supra) and the definition of misconduct in Submitted Rule 3(h) (p10:L46/p11:L1-24.). Oddly enough, unlike the tables compiled under the current rules, that definition in the Revised Rules does not include the concepts of conflict of interests, neglect, and incompetence. Are judges not misconducting themselves when they rely on summary orders to avoid reading the parties' papers, researching for authorities, and citing precedent to motivate their otherwise fiat-like decisions? Cf. The Decisions of District Judge David Larimer in *DeLano* and *Pfuntner*, http://Judicial-Discipline-Reform.org/docs/J_Larimer_re_DrCordero.pdf.

handling such complaints: 'judges can do no wrong'…for if one is allowed to be found so doing, all are at risk of being found involved in it as enablers. Judicial history proves that such is their motto: In the 219 years since the creation of the Federal Judiciary in 1789 by Article III of the U.S. Constitution only 7 judges out of more than ten thousand that have served[38] have been impeached and removed from the bench[39]. This works out to only one federal judge 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. Therefore, it is responsible as based on the solid foundation of historical and current facts as well as knowledge of the human condition to affirm that the judges' inveterate riskless practice and toleration of those wrongs have generated a system of coordinated judicial wrongdoing.[40]

41. Nevertheless, the Revised Rules will counteract and terminate the dynamics of corruption. The Committee of judges drafting them has found more precise and effective advisory language to convince their peers of their evil ways and persuade them to apply the law to complaints against them as they apply it to complaints against others. The Rules will make them realize that the material and moral benefit that they gain from abusing judicial power does not justify the harm that they cause to the integrity of judicial process and to individuals, who are deprived of their rights and must either resign themselves to such deprivation or continue spending an enormous amount of effort, time, and money to try to vindicate their rights while enduring tremendous emotional distress.

42. Although the language of the current rules has proved more impenetrable than that of the Tax and Bankruptcy Codes and more difficult to apply than the laws on mergers and acquisitions or shareholders derivative suits that judges apply daily, the clearer language of the Revised Rules will finally allow them to understand how to handle judicial complaints so as to hold their peers

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[38] Ftnt. 35 and ¶37 supra

[39] The list of impeached federal judges has been compiled by the Federal Judicial Center, whose board is chaired by the Chief Justice and whose mission is to conduct judicial research and develop and implement education programs for the judicial branch (28 U.S.C. §620 et seq.); http://www.fjc.gov/history/home.nsf >Judges of the U.S. Courts>Impeachments of Federal Judges.

[40] For an example of coordinated judicial wrongdoing in its manifestation as a bankruptcy fraud scheme, see The Salient Facts of The *DeLano* Case, showing a bankruptcy fraud scheme supported or tolerated by bankruptcy, district, and circuit judges, other court officers, trustees, and debtors; http://Judicial-Discipline-Reform.org/judicial_discipline/case_summary.pdf.

accountable for their misconduct or disability. Thanks to these Rules' words, the judges will even learn at last how to identify complaints against each other and even how to set special investigative committees on each other. The text of the Rules will give them the courage to steer away from the loopholes of finding "exceptional circumstances" and proceed bravely to recommend their mutual impeachment, undaunted by the prospect of exposing themselves to criminal indictments or the loss of the lifelong above-average salary and senior judgeship sinecure. The Words of the Revised Rules will inspire them to find in themselves the way to do what they always wanted to do but did not know how: the Right Thing, to apply "Equal Justice Under Law" to their brethren and protect instead judicial process and… *What a bunch of NONSENSE!* To pretend otherwise turns the Revised Rules into a sham![41]

43. The Revised Rules have not been designed to force judges to handle judicial complaints any differently from the way they have handled them for over more than the last quarter century since the passage of the Judicial Conduct and Disability Act of 1980. Nor could they be so designed, for so long as judges are judging their peers and must look after themselves for fear of ending up self-incriminating, being incriminated, retaliated against, or outcast from the judicial old-boy network, they will handle such complaints as they always have, Revised Rules or no Revised Rules. What the drafting Committee can do is muster the courage to acknowledge that a system of judicial self-discipline, inherently biased and insulated from external review through layers of secrecy, cannot work effectively. It can only continue aggravating the appearance of lack of impartiality and abuse in self-interest as well as deteriorating public trust in the integrity both of judicial process and of those officers that took an oath upon becoming judges "to administer justice without regard to persons, and do equal right" to the layman and the judge. (28 U.S.C. §453)[42]

44. Under those circumstances, the brave and right thing to do would be for the Committee on Judicial Conduct and Disability to abstain from recommending to the Judicial Conference any Revised Rules at all. Instead, it should recommend that the Conference request that Congress abrogate the Act and enact A Citizens Board for Public Judicial Accountability and Discipline

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[41] The Draft Rules Governing the Processing of Judicial Misconduct Complaints Will Not Stop Their Systematic Dismissal by Federal Judges, Who Thus Self-exempt From Accountability for Their Coordinated Wrongdoing; http://Judicial-Discipline-Reform.org/judicial_complaints/dismissals_despite_rules.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"; http://Judicial-Discipline-Reform.org/docs/28usc453_judges_oath.pdf.

Act. The Board would consist of apolitical people of indisputable high moral character and public service credentials, proposed by public interest groups and appointed from among them by the President with the consent of the Senate, and neither related nor accountable to any officer or body of the Federal Judiciary. It would be empowered to receive and investigate with subpoena power complaints against any judicial officers predicated on their misconduct or disability, to be filed as public documents and disposed of in public proceedings. It would have the power to suspend judicial officers during the course of the investigation and/or the disposition of the complaint, to censure any of them publicly, to recommend their impeachment and removal from office, to refer complaints, any aspects thereof, or information obtained during their investigation to the U.S. Attorney General for criminal investigation, and to require that the complained-against judges or the Judiciary compensate the parties injured by the misconduct or disability complained about or any attempt to cover it up.

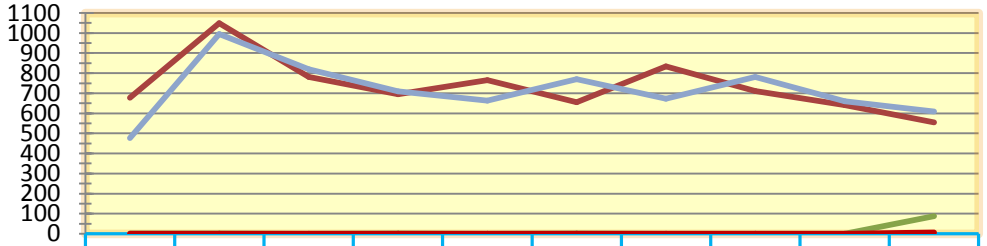
45. Fat chance!, for no group of men and women has ever given up voluntarily their power and the privileges that come with it just because they were dutybound to avoid even the appearance of impropriety and claimed integrity, fairness, and respect for the law as their distinguishing character traits. Nevertheless, the outline of some key elements of that Board and its functioning can serve to establish an enlightening contrast with the current failed system of judicial self-discipline and its inevitable continued failure in the future despite the discounted adoption of the Revised Rules.

A. Graphical presentation of the official statistical data in the Reports of the Administrative Office of the U. S. Courts of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c) [now 351-364] for the Twelve-Month Periods October-September during 1997-2006, showing the judges' systematic dismissal of misconduct and disability complaints against their peers [43]

[43] These data are collected with links to the originals in http://Judicial-Discipline-Reform.org/judicial_complaints/complaint_tables.pdf.

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

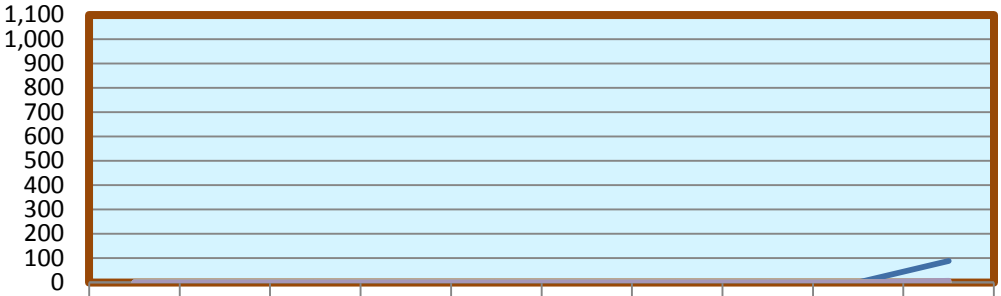
Number of complaints:



	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

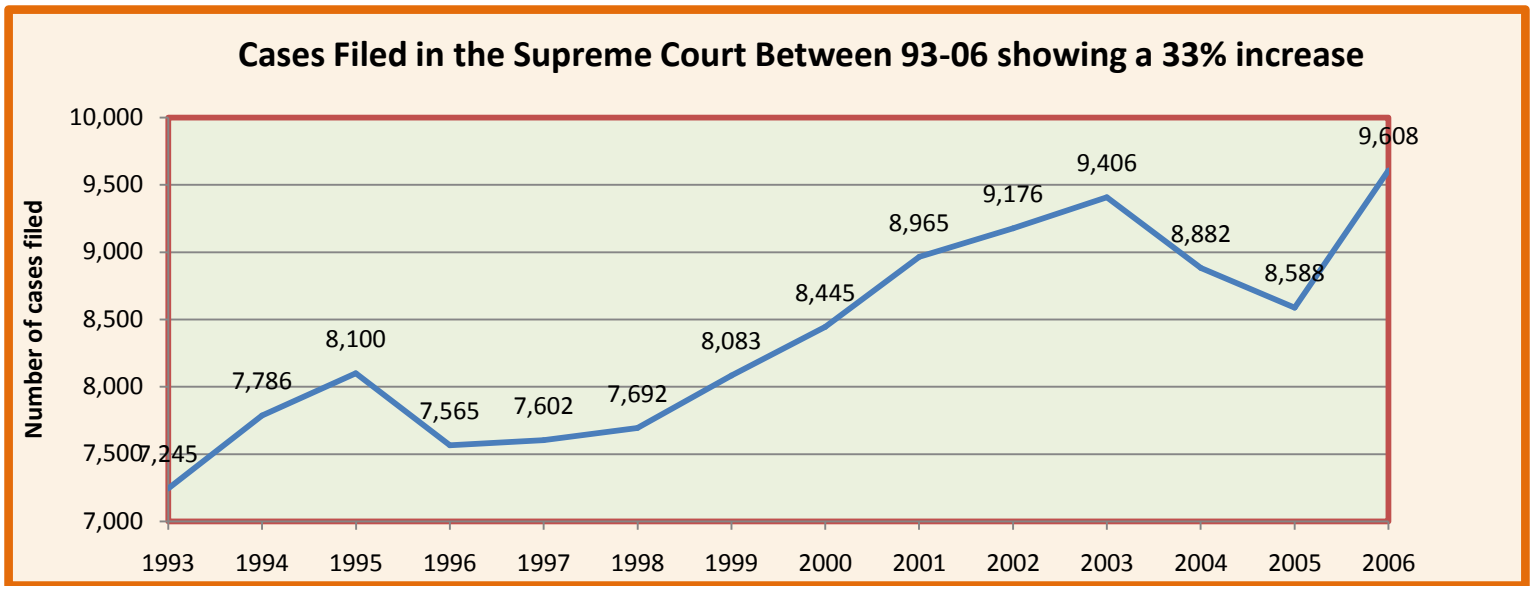
Judicial Councils' Action Against Complained-about Judges From 1997-2006

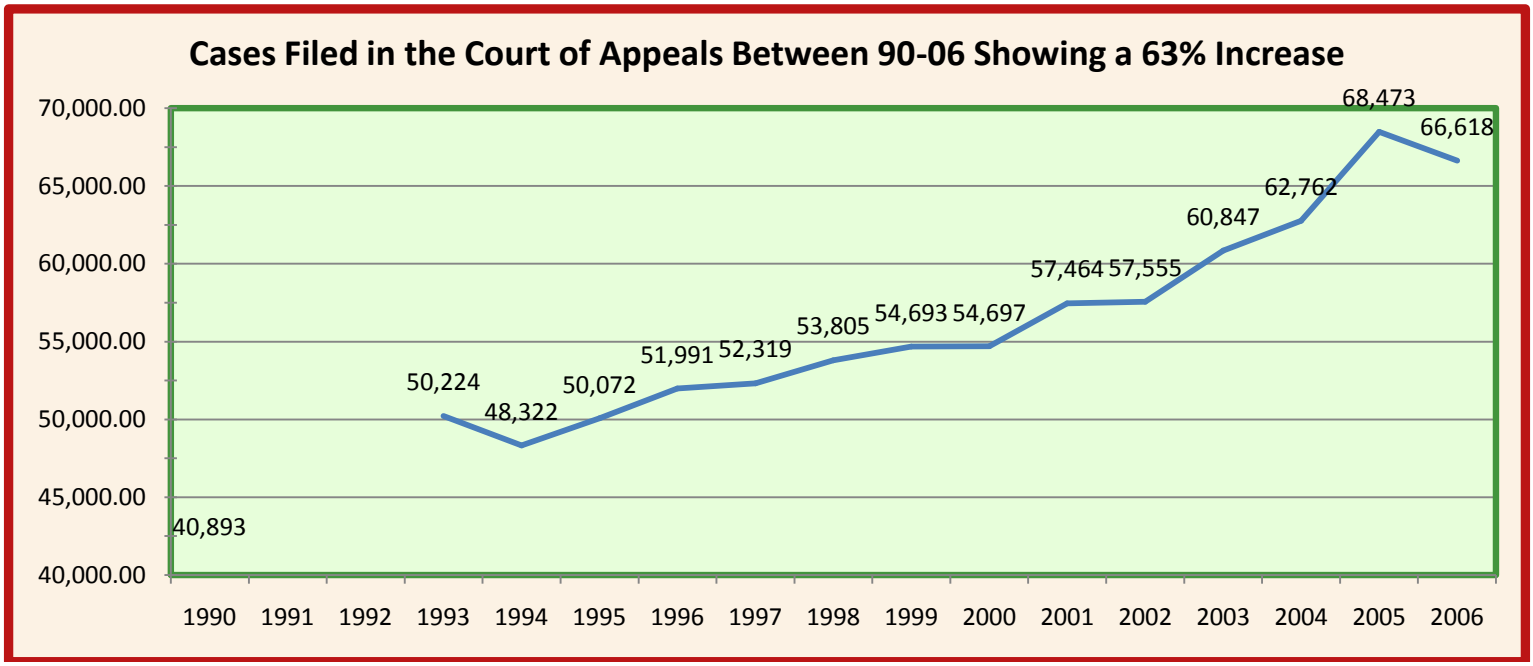
Number of complaints

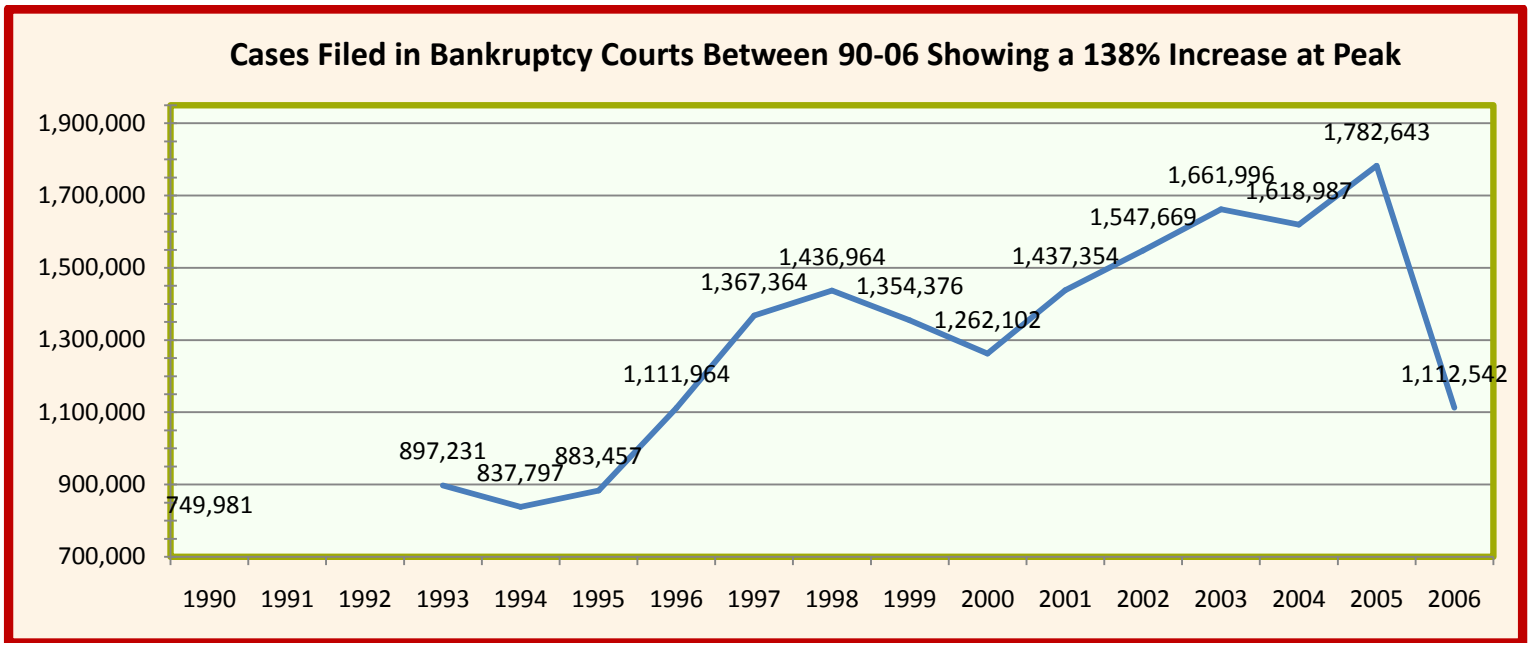


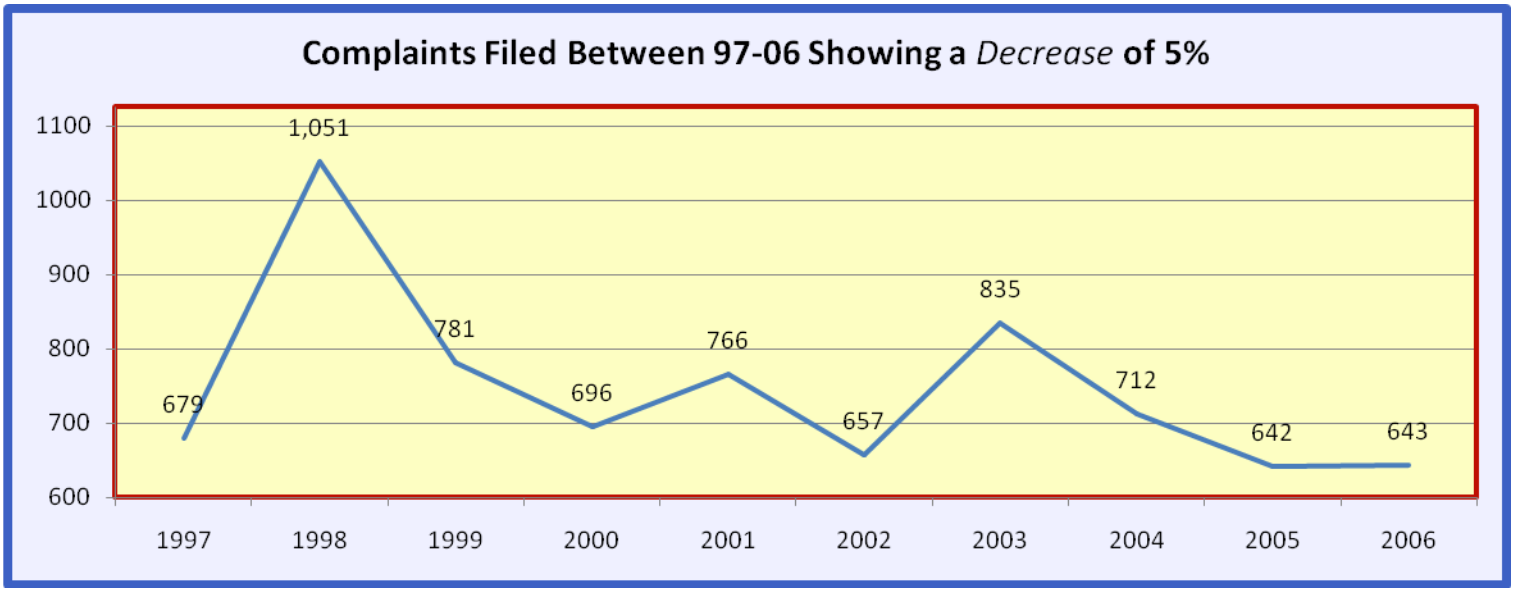
	97	98	99	00	01	02	03	04	05	06
filed by chief judges	1	2	0	1	0	1	0	0	0	88
directed chief district judge to take action (magistrate judges only)	0	0	0	0	0	0	0	0	0	1
certified disability	0	0	0	0	0	0	0	0	0	0
requested voluntary retirement	0	0	0	0	0	0	0	0	0	0
ordered temporary suspension of case assignment	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

Source: Tables of the Adm. Off. of the U.S. Courts; collected in http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_revised_rules.pdf


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]

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

* REVISED. [regarding complaints pending]

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

Source: For Tables 1, 2, and 6, Judicial Business of U.S. Courts, 1997-2006 Annual Reports of the Director, Administrative Office of the United States Courts.
For Tables 3, 4, 5, 2005-2006 Judicial Facts and Figures, Administrative Office of the U.S. Courts.

The original Tables are collected and reproduced in http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_revised_rules.pdf, wherein they are accompanied by links to the originals.

Tables 1, 2, and 6, supra, report on complaints filed and processed in the Federal Circuit, the District of Columbia, the 1st-11th circuits, the U.S. Claims Court, and the Court of International Trade. (Cf. 28 U.S.C. §§351(d)(1) and 363)

†The category "Special Investigating Committees Appointed" first appears in the 2006 Table.

These figures do not even include cases filed with Article I courts, which are part of the Executive, not the Judicial, Branch, such as the U.S. Tax Court, established in 1969 (after it was created as the Board of Tax Appeals in 1924 and its name was first changed to Tax Court of the U.S. in 1942). Another such court is the U.S. Claims Court, established as an Article I court in 1982, and renamed U.S. Court of Federal Claims in 1992. Likewise, the U.S. Court of Veterans' Appeals was established as an Article I court in 1989 and then renamed the Court of Appeals for Veterans Claims in 1998.

They too 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 in the '97-'06 decade 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 arbitrarily excluded an undetermined number of complaints. The fact that they have manipulated these statistics is also revealed by the first table above: After 9 years during which the judges filed 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! *Implausible*! Yet, the judges did not discipline a single peer, just one magistrate.

IV. By providing that "a special committee may be barred from disclosing some information about a judge's suspected criminal conduct to a prosecutor or a grand jury" but citing no authority therefore, the judges on the Rules-drafting Committee take it upon themselves to grant special committees investigating complaints against their peers a license to engage in obstruction of justice, thereby strengthening the judges' power of secrecy to mount cover ups in order to protect their unlawfully arrogated "Unequal Position Above Law"

46. It is quite astonishing that Rule 5 does not mandate the chief circuit judge to identify a complaint regardless of the gravity of the alleged misconduct or disability and instead allows him to 'resolve' it through nothing more than an informal approach and if it satisfies only him. In the system of justice handmade for persons 'Above Law', there is no need for a mandatory provision to cause the "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors" through which common people subject to "Equal Justice Under Law", like "The President, Vice President, and all civil Officers of the United States shall be removed from Office" (Const. Art. II. Sec. 4).

47. The only requirement is that "the chief circuit judge must balance the seriousness of the matter against the particular judge's alacrity in addressing the issue" (cSubR5, p17:L27-29). Speedy eagerness on the part of "the particular judge" is all is need in principle to make any "matter" or "issue" go away. So if he shows alacrity in reaching "an informal resolution", which "is one agreed to by the subject judge and found satisfactory by the chief circuit judge" (cSubR5, p17:L20-21), then even "high Crimes and Misdemeanors" can be disposed of under the rug of peerage without having to identify a complaint. Hence, the following dialogue describes a realistic situation entirely covered by the Revised Rules since it can reasonably be assumed to have been envisaged by the Committee, whose members must have heard many similar situations described at trials or read about in appellate briefs.

District Judge Robertson: Hi, Chief! Did you want to see me?

Chief Circuit Judge Gabrielli: Yes, Bob, come in. Close the door.

DJ Robertson: What's up?

CJ Gabrielli: Sit. How is your prima donna case coming along?

DJ Bob: Have you been following it?

CJ Gabrielli: Like everybody else in the City. It is showtime: Godfather on trial!

DJ Bob: I'm grateful it was assigned to me, Gaby.

CJ Gaby: You bet, old boy. I saw you talking to his lawyer.

DJ Bob: That was a good call to let cameras in. All TV newscasts open with it.

CJ Gaby: Not even Judge Judy gets as much exposure. But, I meant in the parking lot.

DJ Bob: What what do you mean? Was he there?

CJ Gaby: Wasn't that like an ex-parte contact?

DJ Bob: Oh, you mean last night. Ya, we crossed path briefly.

CJ Gaby: That late at night? Your and my court had closed for hours.

DJ Bob: You are right. He said he had come to drop some papers in the after-hours box.

CJ Gaby: It looked more like he was filing it with you. His car pulled in right next to yours and…

DJ Bob: What a coincidence! He saw me there when I…

CJ Gaby: He gave you an envelope and climbed right back in his car and drove a…

DJ Bob: Gaby, what's going on? What's all this about?

CJ Gaby: You tell me. Since when are filing papers folded into a regular envelope, not even slid into a manila one? Do you always grin from ear to ear when opposing counsel files with…

DJ Bob: I…it was dark, you couldn't have seen his my face nobody was round he's jo joker…

CJ Gaby: Easy, BobbySon. No need to come unglued. I was the one in the dark, not you…in the corner, another fight with Angie on the cellular, got distracted and out of the elevator on the wrong parking floor, where neither you nor I, none of us is supposed to park there…security, the marshals, you know. After she hung up on me, I realized I had lost my way…in more than one sense. Have you too, Bob? It wasn't a coincidence. You planned to meet him there.

DJ Bob: It is not what you think, Gaby. It was nothing.

CJ Gaby: I thought you said it was a filing. How much did that mobster lawyer file with you?

DJ Bob: Gaby! What are you saying there?!

CJ Gaby: Tell me! You can talk to me. We've known each other for more than 15 years. You can talk to me.…Come on!…Gosh, Bob, spit it out!!…*Now!!!*

DJ Bob: Fifty.

CJ Gaby: Fifty grand!? Is that all this is worth to him?! He could get life, his third strike.

DJ Bob: Not the case. A ruling, some minor evidence out.

CJ Gaby: I see. You're going to cash in on one slice at a time until there is no salami stick to beat him up with. For havens sake, Bob, you can't do that. Not once, not…

DJ Bob: Gaby, please, it is no big deal. Not like Gambino Senior killed anybody, at least not in this case. It's only dealing. A bunch of junkies! Why should we care for them when they don't care for themselves?

CJ Gaby: They are hooked! And they hook others. What about all the mischief they cause to

buy ano…But that's not the point and you know it, Bob! You just can't do that!

DJ Bob: You are not the only one that has problems at home, you hear me! I've got two boys in college and it is killing me. Ivy League. Good boys, mine. That's $41K a year…

CJ Gaby: For two in college it is not…

DJ Bob: What are you talking about?! For each! That's tuition alone. Plus room and board, not in a dinky dormitory…I have a name to maintain. They live in a hotel-like residence, for people of our standing…and security too, my boys. And a car for each. And I fly them in every time I can, need to see them. The phone bill is…Those casebooks! Even $130 each! Those authors are the real extortionists. Gaby, please, I can hardly make ends meet! It is not as if I wanted to get rich! I just need…

CJ Gaby: You're making over $150,000 a year! and with all your speeches and…But that's not the point either. You just can't rationalize anything you want! You just can't do that.

DJ Bob: This one time, Gaby, give it to me this one time.

CJ Gaby: It is never once. You too get hooked. They hook you. Then everything goes. Soon it…

DJ Bob: No, no! Just for them, my boys, while in college.

CJ Gaby: It is never for one purpose. As soon as it is possible to get more, new 'needs' appear from nowhere. I know! She does it, Bobby. It's never enough; then she complains…

DJ Bob: Not me! I promise. Just for the kids, they are good kids. You know them.

CJ Gaby: I do. Very fine young men that…

DJ Bob: Plan to go to law school, both, in my footsteps! I can't disappoint them!

CJ Gaby: That can take years!

DJ Bob: Now you've got it! I have to look ahead. I can't stomach the thought that one day they won't have enough for…Please, Gaby, give me this, for them! If you had kids, wouldn't you…

CJ Gaby: I wish! She couldn't…in vitro didn't…You put me in a bind. This is wrong. If word gets out we have a major scandal that can…

DJ Bob: Won't happen, has never happened. You know it. Never! None of us can afford to let it happen. We all have our little things. But I'll be more discreet, won't do it again here.

CJ Gaby: And never in civil cases, where a party can get hurt without…

DJ Bob: But if both are wealthy, then they won't mind a few…

CJ Gaby: No! I say no! Just the prosecution may lose. That's what I give you! And never in blood crimes. Do you hear me?

DJ Bob: Yes, Chief, I promise. You won't regret it. Thank you. Why don't you come for

dinner, with Angie, and you see my boys. They'll be home for the long weekend. Then you can quiz them again, as you used to. You'll see they are worthy it.

CJ Gaby: I'll try. I'll tell her…if I can. Hey, I have an idea. Why don't you come home for poker, I call the gang. And you see her; then you can tell me what you think.

DJ Bob: Sure, Gaby, I'll do that for you. But I am a disaster at poker.

CJ Gaby: All the better for me! You're flush, you can afford it.

DJ Bob: Yes, Sir! I can!…But you, well, what you need…He said that, the lawyer, invited me to a party, private, with company for fun. I could ask him to send them over for…

CJ Gaby: He said that?! Gosh, it has been so long! And longer since it meant anything. All this pressure at home, at work. We need it. Then it can't be at home. But Kim has a cottage by the lake. He can prepare the place nicely. We could go there, say, to fish.

DJ Bob: The old boys need it too. It can be a whole new experience!, meaningful and lasting.

CJ Gaby: I hope so! I'm glad we were able to resolve that other matter satisfactorily first.

48. When you have power to get away with anything, you can muster the imagination to justify everything. This is particularly so when there is nobody to require you to do anything you do not want to do; and what you *are* required to do, you can leave undone because you have a most effective means to do so: The power of secrecy!

49. So even "The name of the subject judge must not appear on the envelope" of a complaint filed by a complainant. (SubR6(e), (p19:L22-23; cf. SubR24(a)(1), p57:L28-31 et seq.) Likewise, the chief circuit judge can issue a complaint-disposing order as well as a non-public version of the order (cSubR11, p32:L3-5). This is so reminiscent of shadow reports in malpractice and product liability litigation, not to mention a double set of accounting books.

50. There is solid foundation for the concern about the enormous scope for abuse through cover ups of the authority to release to the public a sanitized order while issuing also a non-public version of the same order, the one that may be based on the incriminating facts found by either the chief circuit judge or the special investigative committee:

> A special committee may be barred from disclosing some information to a prosecutor or grand jury under the Act. This provision is discussed in the Commentary to Rule 23. (cRevR13, p21:L42-44)

51. What an astonishing statement! Obstruction of justice as the express policy of judges intent on covering up for their peers. The Committee did not cite any provision of the Act barring a special committee, or for that matter anybody else, from the chief circuit judge to the Judicial Conference itself, from providing truthful and complete information about a judge's criminal conduct to a prosecutor or a grand jury. On the contrary, this is what the Committee stated:

> Rule 13(b) Criminal Conduct. If the committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by 28

> U.S.C. §§ 351-364 in an effort to avoid compromising any criminal investigation. (RevR13, p21:L11-14)

52. By making a reference to the whole Act, the Committee betrayed its realization that it found no provision in it that could possibly lend support to its implication that §§351-364 may not permit a special committee to consult a prosecutor. By necessity, it declared open season on the entire Act for its peers to fish for a fair game wording that they could hook and press into service. It not only confirmed its lack of support, but also revealed its lack of straightforwardness by resorting to the pretense that "the Commentary to Rule 23" was the place where it discussed the 'provision' that "A special committee may be barred from disclosing some information to a prosecutor or grand jury under the Act". However, that Commentary contains no such discussion at all!

53. On the contrary, in the Commentary to Revised Rule 23, the Committee asked and answered thus:

> The Act applies a rule of confidentiality to "papers, documents, and records of proceedings related to investigations conducted under this chapter" and states that they may not be disclosed "by any person in any proceeding," with enumerated exceptions. 28 U.S.C. §360(a). Three questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and who is within the circle of people who may have access to information without breaching the rule? (cRevR23, p34:L24-29)
>
> With regard to the second question, Rule 23(a) applies the rule of confidentiality broadly to consideration of a complaint at any stage. (cRevR23, p34:L36-37)

54. Neither in that answer nor anywhere else in the Commentary does the Committee dare say that through §360(a) of the Act, Congress meant to provide that "a special committee **may** be barred from disclosing **some** information to a prosecutor or grand jury under the Act" (emphasis added). Neither §360 nor the Commentary provides any exception describing the circumstances under which the leeway inherent in the words **"may"** and **"some"** would come into play. Moreover, in accordance with principles of statutory construction, it is quite obvious that if Congress had wanted to discriminate in favor of federal judges, let alone special committees investigating them, by considering them a special class deserving of special protection through an exception to the Constitutional principle of "equal protection of the laws" so that they would be immune from a subpoena of a U.S. or state district attorney and exempt from having to testify before a grand jury, Congress would have had to provide therefor explicitly and state the rational basis for such special treatment in light of a compelling state interest clearly set forth. But Congress did nothing remotely akin to that anywhere in §360, or the rest of the Judicial Conduct and Disability Act, or anywhere else in the whole of the U.S. Code.

55. So where did the Committee, composed of federal judges who know better, come up with the astonishing statement that the criminal conduct of their peers can be kept secret because special committees that have obtained information thereabout may by something somewhere in the Act be "barred" and thus entitled to refuse to disclose it in defiance of a prosecutorial or grand jury

subpoena? But if a special committee member did appear before a prosecutor or a grand jury in response to their subpoena, is the Committee stating that the member could not only refuse to answer **"some"** questions, but could also simply withhold whatever information about a judge's criminal conduct the member in her unlimited discretion deemed herself "barred" from disclosing? Would the Committee recommend that the member defend herself from a charge of not only obstruction of justice, but also accessory after the fact, by invoking the whole of "the Act" as a bar to disclosing? Has the Committee lost its way too?

56. The power of secrecy is a means for judges to escape any control on their exercise of judicial power. Uncontrolled power, which can allow itself to do anything without having to account to anybody, is the hallmark of absolute power. That is the power that corrupts absolutely. While the drafting Committee of judges removed that provision from the Submitted Rules, did they attain with its statement in the Revised Rules the objective of sending to their peers a veiled instruction of how far they should exercise their power of secrecy in defense of each other?

V. The Revised Rules make no substantive change in the current rules and will be equally disregarded by judges as part of their abuse of the system of judicial self-discipline through their self-immunizing systematic dismissal of complaints since they know what the rewording of the current rules as the Revised Rules and the call for public comment on them are: a sham!

57. Why would the judges ever put at risk their arrogated "Unequal Position Above Law" 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 Revised Rules that pretend to amend the current rules for applying 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 Revised 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, nor does it make a response filed by a judge 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 in the 10-year period 1997-2006, according to the statistics of the Administrative Office of the U.S. (¶35, supra);

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

f. do not change the review-seeking discretion of circuit judicial councils, which they have abused by not submitting their decisions to the Judicial Conference Committee on Judicoal Conduct and Disability[44], thereby giving rise to the extraordinary fact that in the 28 years since the passage of the Act in 1980 the Committee has issued only 18 decisions![45]

g. do not change the indifference of the Judicial Conference, the highest appellate body under the Act's complaint procedure, which in the Act's 28-year history has not bothered to review any decision of a judicial council or of its Committee on Judicial Conduct and Disability, let alone issue a single opinion, if only to resolve a dispute about the scope of its own jurisdiction.[46]

h. 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.

i. 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 exonerate the judge;

j. 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" (¶89infra)…after all, colleagues, peers, and friends do not discipline each other. *The horror of such term!*

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[44] Ftnt. 10 supra.

[45] The 18 decisions that the Judicial Conference Committee on Judicial Conduct and Disability has issued to date can be downloaded through http://Judicial-Discipline-Reform.org/judicial_complaints/1Comm_JCond_decisions.pdf and http://Judicial-Discipline-Reform.org/judicial_complaints/2Comm_JCond_decisions.pdf. By contrast, the Supreme Court, the equivalent highest appellate body in litigation between ordinary people "Under Law" receives annually more than 7, cases (cf. 1st graph, p25 supra) and issues around 74 written opinions every year; http://Judicial-Discipline-Reform.org/judicial_complaints/SCt_yearend_reports.pdf

[46] Dr Cordero's petition of 18nov4 to the Judicial Conference to review his judicial misconduct complaints against Bankruptcy Judge John C. Ninfo, II, WBNY, and CA2 Chief Judge John M. Walker, Jr.; http://Judicial-Discipline-Reform.org/docs/DrCordero_2complaints_JConf.pdf.

58. Since the Revised 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 engage in 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 and the Revised Rules while using therefor means intentionally calculated to reach the fewest potential commentators [§I supra], for they too know what the Rules are: *a sham!*

ARTICLE I. GENERAL PROVISIONS

Rule 1. Scope

59. The Act and its rules of application are conceived as a set of housekeeping instructions for the internal management by the Judicial Branch of its personnel, the judges. Neither the Act nor its rules, whether the current or the Revised ones[47], attempt to provide a system of checks and balances on the judges' exercise of judicial power by either of the other two branches of government, that is, the Executive and the Legislative. Nor do they provide a system of compensation for the "prejudic[e] to the effective and expeditious administration of the business of the courts" (SubR1, p8:L7-8) caused by misconducting or disable judges. Yet, obtaining not only the cessation of the complained-about conduct, but also compensation for the prejudice inflicted by it, is the reasonable objective pursued by any person who bothers to write a complaint and files it at the risk of exposing himself to retaliation from the complained-against individual and his likewise powerful supporters and employer. Excluding compensation from their concerns, the chief judges simply aim to do something that is "best able to influence a judge's future behavior in constructive ways" (cSubR7, p20:L36-37). This is due to the Act's "largely based…administrative perspective". (cSubR7, p20:L32, cf. cSubR16, p40:L16-17)

60. If the Judiciary, though part of government, did not in practice hold itself above the law, it would have to proceed like the two 'lesser' branches, which are subject to the First Amendment and thus, to its provision of "the right of the people peaceably to assemble, and petition the Government for a redress of grievances". This right only exists in fact if such petitions are actually considered and acted upon effectively and expeditiously. But the judges have applied the Act through the current rules and will continue to do so through the Revised Rules to allow the chief circuit

[47] See ftnt. 7 supra.

judges to dismiss complaints systematically without any investigation and despite any alleged prejudice suffered by the complainants or others, whether they be litigants, attorneys, witnesses, or courthouse personnel, who bear the brunt of judges' abusive exercise of their decisional power over people's property, liberty, and life. They do not attempt to remedy the prejudice to even the courts and the judges' reputational interest in appearing to reasonable persons to be unbiased, impartial, and dedicated to maintaining the integrity of judicial process. They are only interested in holding themselves immune from discipline and free to exercise their judicial power as they wish. The fact that during 1997-2006 they systematically dismissed 99.88% of all complaints is there to prove it. (¶35 supra)

Rule 2. Effect & Construction (References in the format p#, L#-#, are to the Draft Rules.)

61. 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.
62. 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".
63. 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.
64. 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".
65. 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

[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.

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even to one of his bankruptcy appointees?

66. 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?

67. 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.

ARTICLE II. INITIATION OF A COMPLAINT

Rule 5. Identification of a Complaint,

68. "(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

69. 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.

70. 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?

71. 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

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

73. 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 enormous 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".

74. 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.

75. 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.

76. 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

[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.

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.

77. 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.

78. 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), ¶109 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 ¶74 above,?

Rule 7. Where to Initiate Complaints

79. "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)

80. 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.

81. 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", ¶79. 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

Rule 8(b) Distribution of Copies

82. "Rule 8 (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.

83. 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.

84. 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'.

85. The absence in Rule 8(b), ¶82 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".

86. 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.

87. 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:

Chief Circuit Judge: Hey Nicky, how are you, old boy!?

Subject Judge: 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!

88. 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?

89. 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.

90. 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.

91. 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

Rule 10(b) Orchestrated Complaints.

92. "Rule 10(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

93. 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.

94. 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.

95. 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.

96. 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.

97. 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?

98. 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.

99. 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?

100. 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?

101. 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.

102. 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".

103. 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

Rule 11. Review by the Chief Circuit Judge

Rule 11 (c) Dismissal.

104. **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' dismissible. 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.

105. 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.

106. 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'.

107. 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.

108. 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, L10.

Rule 11 (d) Corrective Action.

109. **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.

110. 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.

111. 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.

112. 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.

113. 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.

114. 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.

115. 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.

116. 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.

117. 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.

Commentary on Rule 11

118. **"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.

119. 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?

120. 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 accom-

plishment 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.

Rule 11 (e) Intervening Events.

121. **"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.

122. 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.

123. 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.

124. 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.

125. The inherent lack of impartiality, objectivity, and accountability of life-tenured insiders who can disregard and with impunity the call in outsiders' complaints to discipline themselves dooms the system of judicial self-discipline to be abused. The Revised Rules will neither force nor persuade judges to desist from systematically dismissing complaints with no investigation regardless of the seriousness of their allegations. In pursuit of their survival in office as well as material and moral benefits, they will keep leaving complainants at the mercy of misconducting

and disable judges, whereby they will intend all the harm that they know and can reasonably foresee they thus inflict upon the complainants. In a system of judges-judging-judges, no rules, however revised and reworded, will prevent judges from abusing their power absolutely and being corrupted by it absolutely. Since their knowledge and the reasonable foreseeability of all the harm that they inflict upon other people do not to deter them from acting in self-interest as a powerful class and privileged persons, it is neither self-made rules nor traditional notions of fair play that will force them to abide by the substantive principle that must guide all their action: to administer "Equal Justice Under Law".

Respectfully submitted,

Dated: February 11, 2008

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(Sample of letter sent to each member of the Judicial Conference.)

February 9, 2008

Chief Justice John G. Roberts, Jr.
Presiding Officer
Judicial Conference of the U.S.
c/o Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Chief Justice Roberts,

I am writing to you as member of the Judicial Conference, which next March 11 will consider the adoption of the Revised Rules for processing judicial misconduct and disability complaints. These Rules, just as the current ones that they are supposed to replace, are irremediably flawed as part of the inherently biased system of judges judging judges

Indeed, the official statistics on the disposition of such complaints show that during the 10-year period 1997-2006, there were filed 7,462 judicial complaints, but the judges had only 7 investigated by special committees and disciplined only 9 of their peers! This means that the judges systematically dismissed 99.88% of all complaints. The Late Chief Justice Rehnquist and the Breyer Committee knew about these statistics, yet pretended that the Act had been satisfactorily implemented. Likewise, the Committee on Judicial Conduct and Disability pretends that if only the rules are reworded, judges will handle complaints against themselves as anything other than a dismissible nuisance. Yet its Rules only authorize the continuation of such systematic dismissal by:

Rule 2(b) allowing the non-application of any rule by the judges handling complaints, thus rendering them optional rather than mandatory and ensuring their inconsistent and capricious application;
Rule 3 and its Commentary depriving the official Commentaries of any authoritative status and even the Code of Conduct for U.S. Judges and mandatory rules of any guidance value;
Rule 13 Commentary pretending that special committees may be barred from disclosing information about judges' criminal conduct to prosecutors and grand juries, thus providing for cover ups.

My comments at http://Judicial-Discipline-Reform.org/judicial_complaints/DrCordero_revised_rules.pdf show that these are but some of the most blatant provisions to ensure the Rules' ineffectiveness. They also show the Rules to be procedurally flawed, for the facts establish the intentional circumvention of the requirement of "giving appropriate public notice and opportunity for comment".

Therefore, I respectfully request that you and through you the Conference **1)** take cognizance of my comments, hereby submitted to both; **2)** not approve the Rules; **3)** in the interest of justice and the public's trust in the integrity of judicial process, call on Congress to replace the current system of judicial self-discipline inherently flawed through self-interest with an independent citizens' board for judicial accountability and discipline, neither appointed by, nor answerable to, any judges; otherwise, **4)** submit the Revised Rules to public scrutiny through appropriate notice and make public all comments thereupon submitted as well as all those already submitted by judges and others in what was supposed to be a process of public comment rather than a veiled opportunity for judges to indicate to its drafting peers and the Conference how to turn the practice of systematically dismissing judicial complaints into the official policy for defeating the Act through self-exemption from all discipline.

Looking forward to hearing from you, I remain,

yours sincerely, Dr. Richard Cordero, Esq.

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Draft Rules Governing Judicial Conduct and Disability Proceedings Undertaken Pursuant to 28 U.S.C. §§ 351-364

This is the latest working draft of the Rules Governing Judicial Conduct and Disability Proceedings Undertaken Pursuant To 28 U.S.C. §§ 351-364, adopted by the Committee on Judicial Conduct and Disability. The draft is a substantial revision of the Rules sent out for Public Comment on July 16, 2007. It is the result of the Committee's efforts to respond to the comments received during the public comment period, including testimony and other submissions at the Public Hearing held on September 27, 2007.

The draft is not yet a final product to be recommended to the Judicial Conference for adoption at its March meeting. The draft has been sent for style editing to Bryan Garner, who for many years served as the principal staff in the style project undertaken by the Committee on Rules of Practice and Procedure. The draft does represent this Committee's present position on matters of substance, although the Committee reserves the right to alter the draft further as to substance and style based on any communications received in the near future. The deadline for submitting the Rules for adoption by the United States Judicial Conference is mid-January. Therefore, any communications to the Committee should occur well in advance of that time. Such communications may be addressed to the Office of the General Counsel, Administrative Office of the U.S. Courts, One Columbus Circle NE, Washington, DC 20544.

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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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Newsletter of the Federal Courts

THE THIRD BRANCH

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Vol. 39, Number 8 — August 2007

Public Comment Invited on Judicial Guidelines

The federal Judiciary is seeking public comment on proposed rules on how the federal judicial system should deal with judicial misbehavior and disability.

Nearly 30 draft rules governing judicial conduct and disability proceedings in the federal courts have been posted on the Judiciary's Internet website for 90 days of public comment. Navigate to the proposed rules from the Judiciary's home page at www.uscourts.gov; a link to the draft rules is under "What's New." Comments on the rules may be sent to JudicialConductRules@ao.uscourts. gov. A public hearing on the draft rules will be held in New York City on September 27, 2007.

The Judicial Conduct and Disability Act of 1980 authorizes the filing of a complaint alleging that a federal judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." It also permits complaints that allege conduct reflecting a judge's inability to perform his or her duties because of "mental or physical disability."

In 2004, in the wake of Congressional criticism of how complaints against judges had been handled, the late Chief Justice William H. Rehnquist appointed the Judicial Conduct and Disability Act Study Committee to examine the Act's implementation and make recommendations.

In September 2006, the Committee, chaired by Justice Stephen Breyer, made its report to Chief Justice John Roberts, Jr. The Judicial Conference Executive Committee then asked the Conference Committee on Judicial Conduct and Disability "to undertake a prompt, comprehensive review of the Breyer Committee Report with a view toward presenting to the Judicial Conference at its March 2007 session any recommendations that may be ripe for Conference action, information on administrative and other activities related to the report and a status update . . ."

"To meet the reform goals presented by the Breyer Committee," said Judicial Conduct and Disability Committee chair Judge Ralph K. Winter, "and in order to ensure the consistent application of the Act throughout the Judiciary, our Committee concluded that a set of rules or guidelines governing the proceedings under the Act needed to be drafted and published for comment. For example, the Breyer Report noted that in many critical areas the Act provided little guidance as to the disposition of complaints filed or when chief circuit judges are themselves required to initiate complaints."

The rules proposed by the Judicial Conduct and Disability Committee and now posted for public comment would establish standards to guide decisions on the merits of complaints; standards for when chief circuit judges should initiate complaints; responsibility for credibility decisions, confidentiality and public access provisions; and procedural rules for proceedings under the Act. On the website, each proposed rule is accompanied by an explanation and/or background information.

After the public comment period, the Committee will send another draft of the rules

to the Judicial Conference with a recommendation that the Conference consider it at its March 2008 meeting. Informational and educational programs for judges and staff regarding the rules will be established after their promulgation.

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courts to continue efforts to achieve diversity in all aspects of the magistrate judge selection process. The Committee also discussed the issue of magistrate judge involvement in court governance. The Committee agreed to write to the chief judges of those circuits without a magistrate judge on the circuit council to encourage them to consider including magistrate judges on their respective circuit councils.

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 publication by on-line and print services.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders continued to monitor the status of H.R. 3892 (107th Congress), legislation to amend (in several minor respects) the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c), that was introduced on March 7, 2002.

LAW.COM

Circuits Wary of Plan for Policing Federal Bench

Dan Levine
The Recorder
11-02-2007

When it comes to proposed new rules for disciplining wayward federal judges, circuit chiefs from around the country haven't exactly been falling over themselves to publicly air their thoughts.

Indeed, the national committee in charge of fashioning those rules has decided to withhold the chiefs' critiques -- including those from a 9th Circuit committee convened by Chief Judge Mary Schroeder to weigh in.

And while Schroeder said Tuesday that she will abide by that edict and not disclose her committee's specific comments, she did highlight a concern that she said the 9th Circuit shares with others across the country.

"We have always been concerned in the 9th Circuit about maintaining the ability of our circuit to handle the issues relating to the West, and to try to avoid undue centralization in Washington," Schroeder said. "That is kind of a theme -- a tension between the role of circuit councils and the administrative office."

The raft of proposed rules comes from a committee headed by 2nd Circuit Judge Ralph Winter. The rules, issued in June as a draft, follow a report last year from a group led by U.S. Supreme Court Justice Stephen Breyer, which found that the circuit councils' handling of 5 of 17 "high visibility" misconduct cases had been "problematic."

The proposals would remove some of the discretion each circuit now has over whether and when to initiate formal proceedings against a judge accused of misconduct.

One of the biggest disciplinary cases in the 9th Circuit involved Los Angeles federal judge Manuel Real. Interestingly, the proposed new rules bear a distinct mark of the Real proceedings, says Arthur Hellman, a professor at the University of Pittsburgh School of Law and 9th Circuit watcher.

Attorney Stephen Yagman accused Real of improperly interfering in a bankruptcy case to protect a probationer he supervised. In 2004 Schroeder dismissed the complaint without appointing a special committee to investigate. A divided 9th Circuit council confirmed her decision.

In the spring of 2006, the national conduct committee decided by a 3-2 vote that it didn't have the authority to review the 9th Circuit's Real finding because Schroeder never formed a special committee. Winter wrote the dissent. With Congress weighing impeachment proceedings, Schroeder appointed a committee to investigate; the committee's recommendation that Real be censured is pending before the national Judicial Conference.

Under the proposed rules, a national conduct panel would have new authority to review cases like these, in which chief circuit judges decline to appoint a special committee to investigate a complaint. Thus it appears Winter may have the last laugh.

"You can directly trace the exercise of [national] authority in the proposed rules to the dissenting opinion in the Real case," Hellman said.

Schroeder declined to comment on how the new rules would have affected the Real proceeding.

The new rules will also rob circuit chiefs of some discretion for appointing special committees to investigate complaints. Under the proposal, the chief judge must not "make findings of fact about any matter that is reasonably in dispute." Some judges fear that this language could lead to an overly formal process for complaints that have little or no merit. And since these special committees require outside counsel, the costs could add up.

But Hellman supports the concept behind this new rule. In testimony to Winter's committee, the professor noted that a "recurring theme" in problematic high-visibility cases examined by Breyer was the failure of circuit chiefs to convene special committees when there were clear factual disputes.

Yet another possible source of contention is a requirement for the circuits to forward every complaint -- and every document gathered in the investigation of a complaint -- to the conduct committee in Washington.

On top of any policy concerns, Schroeder said the proposed rules just aren't well drafted. She hopes Winter's committee will issue a new draft for feedback before making its recommendation to the national judicial conference.

The 9th Circuit chief said the original time frame would have called for a finished draft to be ready for a conference meeting in March. But given the comments from across the country, Schroeder said she now doubts whether that date can be met.

http://www.latimes.com/news /politics/la-na-vegas8jun08,1 ,7420641.story
From the Los Angeles Times
JUICE VS. JUSTICE | A TIMES INVESTIGATION
In Las Vegas, They're Playing With a Stacked Judicial Deck
Some judges routinely rule in cases involving friends, former clients and business associates -- and in favor of lawyers who fill their campaign coffers.
By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 8, 2006

LAS VEGAS — When Judge Gene T. Porter last ran for reelection, a group of Las Vegas lawyers sponsored a fundraiser for him at Big Bear in California. Even by Las Vegas standards, it was brazen. Some of the sponsors had cases before him. One case was set for a crucial hearing in four days.

"A Lavish Buffet Dinner will be catered By Big Bear's Premier Restaurant," invitations to Porter's fundraiser said. "There will be Food, Fun, Libations … a 7:30 p.m. Sunset Cruise on the Big Bear Queen … a Zoo Tour for the Little Ones." Porter, 49, a Nevada state judge, attended. The evening blossomed into a festival of champagne, lobster and money. Organizers said guests contributed nearly $30,000, dropping much of it into a crystal punch bowl.

Some lawyers considered it protection against ill fortune. Robert D. Vannah, a sponsor of the fundraiser whose firm had the hearing scheduled in Porter's courtroom in four days, would later explain his donation this way: "Giving money to a judge's campaign means you're less likely to get screwed…. A $1,000 contribution isn't going to buy special treatment. It's just a hedge against bad things happening."

Vannah and others in his law firm, along with one of their consultants, made donations worth a total of $13,500, fundraising reports show. It was the fattest combined contribution of the night.

On the other side of the case, counsel for Michael D. Farney, then a resident of Ojai, Calif., whose company was being sued, hadn't chipped in a dime. Worried that bad things might happen to him, the lawyer, Douglas Gardner of Las Vegas, asked Porter to withdraw from the case. "The timing of the campaign gala," Gardner's motion said, "is too close."

Porter refused, protesting he had "no bias or prejudice."

At the hearing four days after the fundraiser, Gardner requested a delay.

Porter refused that too.

The case went to trial, and Porter ordered Farney's company to pay $1.5 million in damages.

The California businessman said his attorneys were appalled. " 'Hometown justice,' " Farney said they called it. "I don't plan to go back for more."

Porter's refusal to withdraw is hardly unusual in Las Vegas courts.

This is a juice town, some Las Vegas attorneys openly concede. Financial contributions "get you juice with a judge — an 'in,' " Ian Christopherson, a lawyer in Las Vegas for 18 years, said in an interview. "If you have juice, you get different treatment. This is not a quid pro quo town like, say, Chicago. This town is a juice town."

Las Vegas is one of the fastest-growing metropolitan areas in the United States. Since 1960, census figures show, its population has exploded by 1,246%. But many of its courts have not grown with it, much less grown up. At the heart of the Las Vegas court system are 21 state judges who hear civil and criminal cases, and who can be assigned anywhere in Nevada, but who are called district judges because they work out of courthouses in the judicial districts where they are elected. These state judges often dispense a style of wide-open, frontier justice that veers out of control across ethical, if not legal, boundaries. The consequences reach beyond Nevada, affecting people in other states, especially California.

Some of the effect falls upon visitors from Los Angeles who come here to gamble, flirt with sin and have a good time. More than a quarter — about 29% — of the 38.5 million visits to Las Vegas in 2005 were made by Southern Californians, including many who came here more than once. By that estimate, published by the Las Vegas Convention and Visitors Authority, Southern Californians make more than 11 million visits to Las Vegas every year.

But the effect falls, as well, upon Californians in business. Like Michael Farney of Ojai, who owned Elite Marine, a boat company that served southern Nevada and Lake Mead, an uncounted number of people from Southern California hold financial interests in Las Vegas and its surrounding metropolitan area. Of all businesses that relocate to Nevada, according to the state Commission on Economic Development, at least 36% come from California.

Whether they want to play or do business, all who come to Las Vegas, from Southern California or elsewhere across the nation, expect a fair shake, especially from its courts. Las Vegas is a town, however, where some judges, operating in a new $185-million Clark County courthouse two blocks from casinos, wedding chapels and strip clubs, routinely rule in cases involving friends, former clients and business associates, even in cases touching people to whom they owe money.

In 1990, Porter borrowed $15,000 from attorney George P. Kelesis. While he owed Kelesis the money, Porter ruled in at least six cases involving the law firm of Cook & Kelesis. A recent search found no statement in court records that he told opposing attorneys about the loan. Kelesis says he had left the firm but allowed it to continue using his name to boost its stature. Porter promised to repay the money in 1993, according to county records. But when he retired from the bench in 2003, his disclosure statements show, he still owed Kelesis at least $5,000.

Porter, who has joined a Los Angeles-Las Vegas law firm, declined to be interviewed for this story and would not respond to written questions.

Las Vegas is a town where James C. Mahan, 62, who served initially on

the state bench and is now a federal judge, awarded more than $4.8 million in judgments and fees during more than a dozen cases in which a recent search of court records found no statement that he disclosed his ties to those who benefited. Mahan, who sometimes wears a holstered semiautomatic pistol on his right hip while sitting at his desk in the U.S. courthouse, approved court fees for a former business associate who twice served as his judicial campaign treasurer and was instrumental in his federal appointment.

Mahan approved additional fees for his former law partner, who was providing free legal services for the judge's wife and the judge's executive judicial assistant and with whom he still had financial ties, including property ownership and a profit-sharing arrangement.

In an interview, Mahan said the relationships made no difference in his decisions. "I don't care who the attorneys are," he said. He denied seeing any conflict of interest and grew angry at being questioned.

Las Vegas is a town where District Judge Nancy M. Saitta, 55, running unopposed in 2002, raised a political war chest totaling $120,000. She received nearly $70,000 from 140 attorneys and law firms. All 55 lawyers or law firms giving $500 or more had cases assigned to her courtroom or pending before her, according to court and campaign records. Her campaign collected donations at fundraisers hosted by lawyers, also with cases before her.

In one instance, Saitta awarded more than $1 million in fees for a certified public accountant and his attorneys, two of whom held a fundraiser for her while she was ruling on their case.

In an interview, Saitta said, "People who appear in my courtroom are all on equal footing." She said she came up with likely contributors to invite to her fundraisers by finding out who gave readily to other judicial campaigns. Did she take names from her court docket? "Oh," she said, "I would never do that."

Las Vegas is a town where District Judge Sally Loehrer, 59, also running unopposed in 2002, collected about $80,000 in campaign funds. Of 54 attorneys and law firms contributing $500 or more, fundraising reports and court records show that 51 had cases pending before her or assigned to her courtroom. On the eve of one fundraiser, according to the reports, four law firms gave her 12 bottles of wine, a 13-inch TV, two DVD players, a gas grill, dinner for four at Zefferino's restaurant, two theater tickets, two golf lessons and a pool float with two beach towels. All four firms, court records show, had cases pending before her.

In response to written questions, Loehrer said: "I do not keep a list of persons who have contributed in my head, in my desk nor on my computer…. My decisions are based solely upon my understanding of both the facts and the law at the time of the decision and nothing more." She said the wine, beach towels and other items were given away as door prizes.

Loehrer publicly donated $3,300 of her campaign contributions to other candidates, records show. They included candidates for district attorney and attorney general, both of whom try cases before her.

Nevada judicial canons say judges shall not "publicly endorse" another candidate.

She responded that her "best analysis" of the canons and a subsequent advisory ruling by Nevada's Standing Committee on Judicial Ethics and Election Practices was that judges may buy tickets to campaign functions regardless of cost. She did not say whether her donations, ranging from $150 to $900, were for tickets.

But the ethics committee noted that any donation of more than $100 had to be reported publicly. Hence, it said, if a ticket cost more than $100, then buying it constituted "a public endorsement" and was "in violation of the Nevada Code of Judicial Conduct."

Las Vegas is a town where District Judge Joseph S. Pavlikowski, 78, officiated on May 4, 1969, at the wedding of Frank "Lefty" Rosenthal, notorious as a front man for the Chicago mob — and then accepted a discounted wedding reception for his own daughter at a casino where Rosenthal was a top boss. Pavlikowski subsequently ruled for Rosenthal in three cases when authorities attempted to bar him from running a casino.

Today, Pavlikowski is a senior judge, commissioned by the Nevada Supreme Court to serve at its pleasure without accountability to the voters.

He declined to be interviewed and would not respond to written questions.

Las Vegas is a town where District Judge Donald M. Mosley, 59, gave unspent campaign funds to a girlfriend. He called it a loan. She said it was a gift. Canon 7 of the state Code of Judicial Conduct said a judge or a candidate for judicial office "should not use … campaign contributions for purposes unrelated to the campaign." Mosley acknowledged six years ago in a deposition that he provided her with $10,000 of his political money. Mosley said it was restored to his campaign fund, but his girlfriend said she did not repay it.

Mosley's campaign fundraising reports leave the matter unresolved. They show that the money was neither withdrawn nor paid back.

In a written statement, Mosley said he had been subjected to absurd and unsupported allegations by political opponents and by the girlfriend, with whom he eventually fought for custody of their child. "Neither these individuals nor their attacks," he said, "deserve the dignity of a response."

Judicial campaign rules vary from state to state. The Nevada Supreme Court, the top court in the state, whose justices collect money from lawyers and casinos for their own campaigns, allows district judges to accept campaign donations from people who might appear before them. State judicial canons encourage the judges to solicit and accept the donations through campaign committees, but the canons also allow the judges to do it personally.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say judges must avoid even the appearance of impropriety and should reveal on the record anything that they think anyone in court

could reasonably consider relevant to disqualification — even if the judges do not think they should withdraw.

Nevada, however, does not require judges to reveal when their donors appear before them.

When lawyers in California and Nevada, along with a number of Nevada district judges, both sitting and retired, were asked about how this affected justice in Las Vegas, many spoke openly about its pernicious effects — particularly about how lawyers and their clients sometimes must pay to play on a level field.

They also told how the effects of judicial corruption seep from Nevada across the state line into California.

Federal and state rules are often ignored, some lawyers said. They cited a good-old-boy culture of cronyism and chumminess that accepted conflicts of interest as "business as usual" and as part of Nevada's maverick history of government-sanctioned prostitution, gambling, drive-through marriages and quickie divorces.

"The common excuse is that this is the way it's always been done — fast and loose — the wild, wild West," said Las Vegas attorney Charles W. Bennion. "But the people making those excuses are the only ones that benefit, and they want it to stay that way."

A common perception among a dozen out-of-state lawyers interviewed about their experiences in Nevada courtrooms is that justice in Las Vegas is just another form of legalized gambling.

"I don't think what goes on in Nevada bears any resemblance to a justice system," said John C. Kirkland, a Santa Monica attorney. He said he had clients who were victimized in Las Vegas courts. "It's an old-boy network. It's not a legal system."

Justice in Nevada, conceded Cal Potter III, a veteran Las Vegas lawyer, is such that "outside law firms just don't trust Nevada courtrooms."

Many blame the campaign funding practices of district judges who have to run for office. "There should be a provision in the law prohibiting judges from directly soliciting a campaign contribution," said state Judge Brent Adams of Reno. "The one standard for a judicial candidate in Nevada today is, 'How much money can you raise?' "

During the most recent Nevada election in which all district judgeships in Las Vegas were on the ballot, 17 incumbents raised more than $1.7 million in campaign funds, collecting much of it from lawyers and casinos with cases pending before them, campaign financial reports and court records show. At least 90% of all contributions for the election, held Nov. 5, 2002, came from lawyers and casinos.

Frequently, a donation was dated within days of when a judge took action in the contributor's case, the records show. Occasionally the contribution was dated the same day.

"It can seem like a shakedown," conceded Jeffrey Sobel, a judge who lost his seat — and that was the point. Sobel collected donations of

$1,000 to $5,000 each from 39 attorneys or law firms while their cases were pending in his courtroom, records show. The Nevada Commission on Judicial Discipline investigated him after learning that he had discussed campaign contributions during a conference on a case pending before him. Commission records show Sobel told one attorney that "he was f---ed because he hadn't contributed while others had."

Sobel later said he was joking, but the commission ruled last July that he had violated the state Code of Judicial Conduct, censured him publicly and "permanently barred [him] from serving as an elected or appointed judicial officer in Nevada." The commissioners recommended that "judges should avoid, even during normal campaign activities, soliciting campaign help from attorneys" with cases pending before them, and even from attorneys with "the reasonable likelihood of future litigation" in their courts.

Nonetheless, the commission allowed Sobel to continue to mediate and arbitrate cases, which comprised the majority of his law practice, and it allowed him to continue to be appointed as a special master, who investigates claims in lawsuits and makes recommendations to judges.

Because of campaign contributions from lawyers and casinos appearing before them, said Don Chairez, a former Las Vegas state judge, "Nevada judges find themselves losing or bargaining away their integrity or independence."

Some lawyers, said Steve Morris, a prominent Nevada attorney with 35 years of experience, "are in almost terror of not giving" to judges seeking campaign contributions. His law firm spread about $7,500 in contributions among 11 candidates in the 2002 election, fundraising reports show.

"If it's a close call," Morris said, "asking judges to treat lawyers who contribute money the same as lawyers who don't is asking for the superhuman. When judges come around and say, 'I need money,' it's a nasty bit of business."

At the very least, some lawyers said, pay-to-play can get them favorable court dates on crowded dockets.

Each state judge in Las Vegas handles more than 2,700 cases a year. A contribution of $500 to $1,000 might not "get you a favorable ruling, [but] it can grease the skids … get your case called first," said former prosecutor Ulrich Smith, in private practice since 1995.

Bucking this system can be the "kiss of death," some lawyers said. "If you speak out, certain judges take it personally," said Grenville Pridham, a state deputy attorney general for 11 years who is now in private practice in Las Vegas. "You'll pay dearly when you visit their courtroom."

In 2002, Pridham ran for district judge. During his campaign, he denounced fundraising by judges. He accepted no donations.

He lost by more than 160,000 votes.

It got worse, Pridham said. Since the election, he said, regardless of when his cases are scheduled, some judges "call the lawyers around me,

even if it's out of order, until I'm the last private attorney left in the courtroom."

Some lawyers are particularly critical of the way judges use leftover campaign money.

Thirteen of the 17 incumbent judges in 2002 ran unopposed, but they collected $967,000 anyway, in both cash and checks, according to fundraising reports. After the election, 11 of the unopposed judges reported they were sitting on a total of about $634,000 in unspent contributions.

"It's scandalous how much unused campaign money is allowed to pile up," said Sobel, the former judge who was defeated. "There's no limit on how much you can keep…. There is no watchdog and no real definition of what exactly is or isn't proper. You can return [unspent money], or save it for a future campaign, or you can give it to a charity, or spend it for some political purpose.

"That leaves a good deal of room for interpretations of all kinds. You could argue that [having] dinner on the Strip gives you a chance to talk to waiters and maitre d's — so, technically, you're campaigning."

Disclosing the size of an unspent bankroll is mandatory, said Dean Heller, Nevada's secretary of state and chief elections officer. But the requirements for specifying what happens to it, he said, are vague. "It's pathetic … a system designed by politicians to work for them."

Heller said the Legislature gave him only seven people to monitor elections and the campaign reporting of up to 1,000 candidates statewide. Worse, he said, legislators "won't give us authority to audit or even look for reporting irregularities unless we receive a complaint in writing. We get a lot of complaints over the phone, but not many want to put it in writing."

He said the Legislature had rejected his attempts to toughen requirements to disclose unspent contributions. "They want to raise as much money as possible," Heller said, "and tell the public as little as possible."

The public information officer for state courts in Las Vegas, Michael Sommermeyer, advised judges to say nothing in response to questions from The Times. "My recommendation is for all of the judges to refuse to comment," he said in an April 28 memo to Saitta.

Saitta was among three state judges who chose to ignore Sommermeyer's memo. "My job as a public servant has to be open to scrutiny by the public," she said. "I have to be answerable and subject to that scrutiny. I can't hide. I don't have anything to hide."

Case Study

Gene Porter

The lawyers who filled the crystal punch bowl with money at Judge Gene

Porter's fundraiser at Big Bear certainly had reason to believe that he would not hesitate to hear their cases.

A Times review of lawsuits that came before Porter during his eight years on the bench shows that 61 presented possible conflicts of interest. In 50 of them, there is no statement in court records that he withdrew or disclosed the possibility of a conflict.

The 61 cases were found in a review of more than 2,000 legal actions involving members of his former law firm as well as his former legal clients, political allies, business associates and creditors.

One example involved Desert Springs Hospital in Las Vegas. Porter's law firm had listed the hospital as one of its "representative clients" in the Martindale-Hubble legal directory the year Porter was appointed to the bench. Porter had been the hospital's attorney of record in at least three lawsuits, court records show.

When six cases naming Desert Springs as the plaintiff or defendant came before Porter as a judge, there is no statement in court records that he revealed his former relationship to the hospital.

In a seventh case, in January 1997, he withdrew, saying, "Because this court represented Desert Springs at the time of this incident … this court hereby disqualifies itself."

But Porter did not withdraw from the other cases.

Similarly, in at least 15 cases, Porter did not disclose his longtime friendship with attorney Matthew Callister when he presided over Callister's cases. He and Callister had been friends since high school, and Callister became his close political ally when they served together in the state Assembly. Callister also served as a resident agent for a real estate company formed by Porter's wife.

In a lawsuit involving two business executives from California, Porter appointed Callister as a $200-an-hour receiver, or caretaker of assets. One of the executives, Irenemarie Kennedy of Laguna Niguel, had sued Ashik Patel of Orange, her partner in Seaspan Inc., a hotel management firm incorporated in Nevada.

Porter instructed Callister to run the company during the dispute, replacing another receiver appointed two weeks earlier by another judge. "I wasn't happy," Patel said in an interview. Soon, Patel said, he learned "that the judge and Callister were buddies." Then, Patel said, he made another discovery: "Callister had an association with the other side."

According to court documents submitted by Patel's lawyer and records in the Nevada secretary of state's office, while Callister was serving as receiver in the Seaspan suit, he or his law firm were resident agents for two other corporations and a partnership formed by Kennedy — and he had been doing legal work for Kennedy and her family lawyer.

Patel's lawyer, Samuel B. Benham, asked Porter to allow Callister to withdraw. Court records show that Porter denied the request without comment.

Callister declined to be interviewed and did not respond to written questions.

Kennedy did not return phone calls. Instead a man identifying himself as "Mike Walker, an advisor to the Kennedys," responded, saying: "I don't know if the relationship between Callister and the judge was disclosed at the time, but afterward we did learn they had a relationship. But I met with Callister at least five times, and he was objective and is doing a good job."

In 2002, Porter was reelected to a six-year term. In a campaign fundraising report filed Jan. 10, 2003, he said he still had $32,816 "cash on hand." Porter resigned that September, saying financial considerations forced him from the bench.

As of this week, Secretary of State Heller said, Porter had not met a requirement to file an accounting of his unspent campaign money.

Licensed to practice in Nevada and California, Porter has joined a Las Vegas-Los Angeles law firm and serves as a private judge for Alternative Resolution Centers, a mediation and arbitration firm that provides settlement and fact-finding services in Las Vegas and Los Angeles.

Case Study

Nancy Saitta

The fight was over a company with a subsidiary that made a liposuction machine, which guzzles fat from loins, necks, thighs and waists.

The company was Medical Device Alliance Inc., incorporated in Nevada but whose subsidiary was based in Carpinteria, Calif. Minority shareholders said Donald McGhan, its founder and chief executive officer, should be removed. McGhan fought back. The dispute landed in the courtroom of Judge Nancy M. Saitta.

In June 1999, she appointed George C. Swarts, a certified public accountant, as a receiver — someone to run the company while it was embroiled in the dispute.

Within six months, McGhan and a second, separate group of stockholders filed complaints that Swarts' decisions were biased, lacked expertise and often were unauthorized by Saitta.

Privately, attorneys expressed dismay. "George [Swarts] had inordinate power" with the judge, Alfred E. Augustini, a Los Angeles attorney and legal advisor to McGhan, said in an interview. Swarts "would threaten us, tell us, 'The judge will do anything I ask, whatever I present to her.' George was running the case. We had to yield to George … comfort George … agree with George. He was God … the great pooh-bah … the big Jabba the Hutt."

What Swarts wanted most of all, Augustini said, was "to keep the meter running." The case was in limbo, he said, and "limbo was paying very well."

Swarts' fees were mounting.

"We tried to get Saitta to fire Swarts," Augustini said, "but that only made things worse."

McGhan tried to disqualify Saitta from the case.

"Judge Saitta has publicly pronounced McGhan guilty three times without hearing the evidence or the testimony of witnesses," said his Nevada attorneys, Steve Morris and Todd L. Bice, in a motion filed in August 2000. "By passing judgment … without a trial, Judge Saitta can no longer be considered a fair and neutral arbiter…. Under the law, she is required to step aside."

Swarts' attorneys countered that the real target of the attack was Swarts.

The request to remove Saitta went before Lee Gates, the chief judge in Las Vegas at the time.

But Gates had a possible conflict. An attorney from the Frank Ellis law firm, which often represented Swarts, was defending Gates' wife, Yvonne Atkinson Gates, a county commissioner, against a recall, including a lawsuit that court records show was on appeal before the state Supreme Court.

A recent search found no statement in court records that Judge Gates disclosed the relationship or similar relationships in two other cases involving his wife and the Ellis law firm.

Within two weeks, he denied the motion to disqualify Saitta, declaring that she "is not biased or prejudiced concerning any party."

By now, Saitta had come under attack for refusing to let anyone examine paperwork supporting the first bill submitted by Swarts and his lawyers: $524,680 in fees from June 29, 1999, to May 30, 2000.

"Unconscionable … exorbitant … outrageously excessive," said lawyers for McGhan and one of the stockholder groups. Attorney Matthew Callister, who represented a second group of stockholders, said in a motion that if Saitta did not deny Swarts' fee or require him to account for its size, then "a great injustice will occur in this case."

Nonetheless, Saitta approved Swarts' request for $524,680, as well as a second request, this one for fees totaling $662,411 for him and his attorneys covering June 2000 through September 2001, court records show.

Attorney Daniel J. McAuliffe, representing McGhan and other defendants, complained in a motion that Swarts had filed the second request 13 months late, "in violation of this court's order."

In yet another motion, Swarts asked that fees be doubled for his attorneys through 2001 and requested 18% interest on unpaid fees since his appointment in 1999.

McGhan's attorneys protested that Swarts' requests "provide for the looting of [the company] to line the pockets of various and numerous

counsel — all with no accountability." The request for 18% interest, they said, was "astonishing…. Even Visa and MasterCard charge less."

Nonetheless, Saitta approved both of those requests as well.

In 2002, according to a report McGhan entered into court records, she approved $588,000 for Swarts and $630,000 for his lawyers.

When she was asked about the fees during her interview, Saitta said: "I handle 2,400 cases a year. You're asking me for details on one case. I don't have time to go back and look up every case."

Neither Swarts nor Judge Gates responded to written questions.

In 2002, an election year, Saitta announced that she would seek another term on the bench. Nevada judges seeking reelection historically try to scare off potential opponents by raising large war chests quickly. By March, however, Saitta had raised less than $5,000, campaign records show.

She got help from J. Randall Jones, one of Swarts' attorneys in the ongoing Medical Device Alliance case.

With major decisions in the case still pending, Jones, of Harrison, Kemp & Jones, held a fundraiser for her. The fundraiser was set for May 2 at Jones' home in Las Vegas. Invitations said, "Minimum Suggested Contribution: $500." A cohost was Mark James, an attorney for Medical Device Alliance shareholders. James had played a key role in persuading Saitta to appoint Swarts.

In the 60 days leading up to the fundraiser, Jones, as Swarts' lawyer and a Saitta defender against the accusations of bias, appeared before her at least four times and received favorable rulings, which included her approval of a hotly contested $4-million "good faith settlement" sought by Jones' and James' clients against Wedbush Morgan Securities, based in Los Angeles.

During the fundraiser, Saitta personally greeted about two dozen contributors. Court and campaign records as well as interviews show that at least 18 of the contributors were lawyers with one or more cases pending before her at the time.

The event collected about $20,000 on her behalf.

At election time, she ran unopposed.

Jones and James were asked in separate telephone interviews why they held the fundraiser.

"I think it is incumbent upon attorneys to support good candidates for the bench and retain qualified judges," James said. He added, "That's all I have to say."

Jones said, "I have nothing to say to you." He hung up.

In her interview, Saitta said Jones "asked if he could do the party." Attorneys attended from both sides of the Medical Device Alliance case, she said. "As a candidate, you just show up. You meet with the

people. You shake their hands. There's a bowl for the checks."

She said her campaigns do not accept cash. If anyone tries to hand her a check personally, she said, an aide standing beside her takes it instead. "I don't want anything to do with the money."

Saitta and Swarts served as judge and receiver in the case until Medical Device Alliance was sold in January 2004 for $60 million and all claims were settled, court records show.

When Swarts and his lawyers originally persuaded Saitta to name him the receiver, they dismissed predictions that the "costs of Mr. Swarts' appointment would be in excess of $1 million." Such claims, they said, were "hyper-alarmist arguments" and were "grossly over-exaggerated."

In fact, the cost of Swarts' receivership topped $1 million within its first three years, court records show.

Case Study

Donald Mosley

Donald Mosley, the judge who turned over $10,000 of his unspent campaign money to his girlfriend, testified in 1999, nine years after he did it, that it was "the only cash I had available at the time."

He said he did not seek any legal opinions about the legality of what he did.

"I don't know that it's a direct violation to borrow against [campaign funds] on occasion and return the money plus interest," Mosley said during a deposition in an unrelated defamation suit and counterclaim. "I'm not too concerned about that as an infraction of ethics."

Mosley said he gave the money to Terry Figliuzzi (who later changed her name to Mosley). "The situation was that it was early in December and her parents were coming out from Minnesota to visit us … [and] she wanted to buy Christmas gifts and show her parents a good time."

Mosley said he loaned his girlfriend the money because she expected to win a lawsuit over an unpaid real estate commission of more than $600,000. "It was thought at the time that it was just a matter of several weeks or a month or so and she would have this enormous judgment and so the money would be available."

Eventually, the judge said, the $10,000 was restored to his campaign fund when he received $20,000 from a claim against the judgment.

In an interview, Terry Mosley disputed the judge's version, saying that she had regarded the $10,000 as a gift — "Christmas money. He brought it home in cash and tossed it on the table. It wasn't a loan. I never signed anything."

She said the $20,000 was unrelated to the gift. "I never paid Don back for that — not to this day."

Judge Mosley's campaign funding reports do not resolve the conflicting versions. His 1990 reports say he raised $56,811 and spent $27,573 — leaving $29,238 unspent, but the reports show no $10,000 withdrawal or loan.

The reports he filed in 1996, before his next campaign — one year after Terry Mosley won her $606,877 judgment — reflect no loan repayment.

In 1990, the year Mosley said he withdrew the money from his campaign fund, Canon 7 of the Nevada Code of Judicial Conduct held that a judge or candidate for judicial office "should not use … campaign contributions for purposes unrelated to the campaign."

Today, the question is covered by Canon 5, which says judicial candidates "shall not use or permit the use of campaign contributions for the private benefit of the candidate or others."

Since 1991, Nevada state law has banned personal use of campaign donations by any state or local candidate. In its most recent formulation, Nevada Revised Statute 294A.160 states: "It is unlawful for a candidate to spend money received as a campaign contribution for his personal use."

Apart from what Mosley did with his campaign money, his girlfriend's real estate lawsuit entangled him in a conflict from which he did not withdraw.

To provide her with a $100,000 security bond for her suit, Mosley put up his house as collateral — giving him a direct stake in the outcome of her case. He arranged for his girlfriend to hire attorney Jason G. Landess, who was appearing before him in another case. While Landess represented Mosley's girlfriend, court records show the judge made several rulings favoring Landess' other client.

The opposing attorney in that case, Richard McKnight, said in an interview that he was never informed about Mosley's stake in Landess' case on Terry Mosley's behalf. "I kept getting my brains beat out in Mosley's court," he said. "It felt sometimes like Mosley and Landess were teaming up against me."

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From the Los Angeles Times
JUICE VS. JUSTICE

A Judge Who Isn't Playing by Fast and Loose Rules
By Michael J. Goodman
Times Staff Writer

June 8, 2006

LAS VEGAS — Judge John S. McGroarty did it differently.

In the last Nevada election in which all district judgeships in Las Vegas were on the ballot, 13 incumbents ran unopposed. Unlike others, McGroarty returned his unspent campaign contributions.

"I sent the money back. It wasn't mine to keep," McGroarty said in an interview. "I didn't have an opponent, so I didn't need it. I don't want slush funds … money burning a hole in my pocket."

Particularly, McGroarty said, when the money comes from those who are likely to appear in court before him. "It can seem like a quid pro quo," he said.

Not every state judge in Las Vegas plays fast and loose with conflicts of interest. McGroarty, 64, has been a state judge since 1982.

He retired as a regular judge this year and was commissioned as a senior judge to fill in and ease the caseload. He says he does his best to avoid conflicts.

It is not always easy. Being a judge in Las Vegas, McGroarty said, "puts personal integrity to the test."

"This is a fast track, a fast town — very fast," he said. "This isn't Des Moines, Iowa." He rubbed his thumb and forefinger together to indicate money. "This is a juice town," he said. "Go out there and start messing with that juice, and it will come back and get you.

"There are crosscurrents. Go out there with impunity, and you will get burned."

McGroarty said he would never knowingly seek a campaign contribution from anyone with a case pending in his courtroom.

When that sort of thing happened, he often found out. "Somehow," he said, "the big contributor is always brought to your attention." Then, McGroarty said, "I'll take extra time, do more research" to make absolutely certain that all of his decisions in the case are well-supported by the facts.

The 2002 judicial election illustrated how far McGroarty was willing to go to avoid conflicts of interest. The 13 unopposed incumbents, including McGroarty, raised a total of nearly $1 million in contributions well before any challengers could file papers to run against them.

At least 90% of their cash came from lawyers, law firms and casinos that frequented their courtrooms, according to a comparison of court and campaign records. Some of the judges collected contributions, the records show, even while they were deciding a contributor's case.

The incumbents, including McGroarty, spent part of their campaign

money for early displays of determination to scare off potential competitors. "I put up signs around town right away," McGroarty said, "like everybody else."

When the filing period closed, all 13 remained unopposed.

Their victories were assured.

But they all had leftover campaign funds. In their campaign filings after the election, other unopposed judges reported that they were still holding a total of $634,000.

McGroarty was the only one who gave his leftover money back.

"Don't get me wrong. If I had an opponent, I'd use the money," McGroarty said. "I know other judges keep the money, and that's their business."

McGroarty had received 96 contributions, ranging from $20 to $5,000, for a total of $31,666, campaign records show. That was a comparatively small amount of money. Seven unopposed judges had amassed war chests ranging from $69,531 to $166,401, the records show.

McGroarty listed campaign costs totaling $14,759, largely for fundraisers, advertising, campaign staff and office expenses. He reported that he had $16,907 left when the filing deadline passed and he was unopposed.

The following month, he returned his leftover campaign contributions, prorating the returns to each of his 96 contributors. "I think it worked out," McGroarty said, "that everybody got back about 56 cents on the dollar."

A $20 contributor, for example, was refunded $14. McGroarty's lone $5,000 contributor, Coast Hotels and Casinos, was refunded $2,800, records show.

McGroarty said he returned his leftover contributions in 1996, as well, when he also ran unopposed.

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http://www.latimes.com/news /politics/la-na-vegas9jun09,1 ,7879395.story
From the Los Angeles Times
JUICE VS. JUSTICE | A TIMES INVESTIGATION
For a Vegas Judge and His Friends, One Good Turn Led to Another
James Mahan got his jobs on the state and federal benches through the connections of old pal George Swarts. Things turned out well for Swarts too.
By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 9, 2006

LAS VEGAS — Without help from a friend, James Mahan might never have

become a Las Vegas state judge. Certainly he wouldn't have gotten one of the top judicial jobs in town: a lifetime appointment to the federal bench.

Then again, without Mahan, his friend George Swarts would never have gotten to run an Internet porn business, a hotel-casino hair salon or a Southern California software company. Indeed, the careers of Judge James C. Mahan, 62, and his friend George C. Swarts, also 62, whom he appointed again and again as a receiver to manage troubled businesses, might be the ultimate example of how juice replaces justice in Las Vegas courtrooms.

In this town, people speak reverently of having juice, or an "in," and Mahan — bearded, likable but sometimes caustic — has made it a striking feature in his courtroom. First as a state judge and now as a federal judge, he has approved more than $4.8 million in judgments and fees during more than a dozen cases in which a recent search of court records found no statement that he disclosed his relationships with those who benefited from his decisions.

On the state bench for three years, and since his appointment as a U.S. District Court judge four years ago by President Bush, Mahan has approved many of these fees for Swarts, a certified public accountant who had served as his judicial campaign treasurer and whose political connections got him appointed. Mahan approved additional fees for Frank A. Ellis III, 51, a former law partner with whom the judge still owned property and participated in a profit-sharing plan. Ellis also provided free legal services for Mahan's family and for his executive judicial assistant.

Mahan, like a number of Las Vegas judges, has taken on cases despite state and federal prohibitions against such apparent conflicts. Some Las Vegas judges have ruled in cases involving their friends, even those to whom they owe money.

The practice harms visitors and business people alike, especially Californians, who come here in large numbers to work and play. They fall victim to an untamed style of justice, blatantly tangled in clashing local interests.

Las Vegas is a town of instant millionaires, 60-second weddings, six-week divorces and a sly wink at conflicts of interest, to say nothing of the abuses that go with them. Some California lawyers view Las Vegas justice as just another crapshoot. When they are pressed about it, some Nevada lawyers openly condemn the system. The excuse, says Las Vegas attorney Charles W. Bennion, "is that this is the way it's always been done — fast and loose."

Even in Las Vegas, however, Judge James Cameron Mahan stands out.

When owners fight over a business, judges often appoint someone independent as either a special master, to investigate the dispute, or as a receiver, to run the business until the differences are settled.

On 13 occasions in state and federal court, Mahan has installed Swarts, a large man in a business suit who tells people how to spell his name — "think of 'wart' with an 's' on each end" — or his son, Curtis, 41, taller and more often casually dressed, at up to $250 an

hour, to be a special master or receiver in cases that come before him.

Mahan has then given his approval when George Swarts hired Ellis, low-key and quiet-spoken, or his firm, at up to $250 an hour, to represent Swarts in nine of these cases. In all, Mahan ordered plaintiffs and defendants to pay Swarts and Ellis more than $700,000, the records show.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say: "A judge should disclose on the record information that the judge believes the parties [in a case] or their lawyers might reasonably consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

A recent search of court records in the 13 cases involving Swarts or Ellis, as well as interviews with litigants and their attorneys, found no disclosure of Mahan's relationship with either of the two men. Complaints of excessive fees and inaction occasionally united opposing sides to implore him to remove Swarts. In case after case, he refused.

Mahan's judicial power and soaring reputation silenced many of those who suspected or knew of his undisclosed ties, according to lawyers. He was southern Nevada's top-rated state judge in 2000 and 2002 in a biennial survey of attorneys by the state's largest newspaper, the Las Vegas Review-Journal.

In an interview with The Times, Mahan acknowledged that he routinely did not disclose personal relationships. He dismissed them as insignificant and bristled at being questioned.

Face flushed and jabbing a forefinger in anger, Mahan said he appointed receivers in lawsuits based upon their ability and experience. He said he had named Swarts as a receiver for those two reasons and not because of any favoritism.

Mahan also said he had never influenced Swarts to choose Ellis to represent him as receiver's counsel.

"I don't see any conflict of interest," Mahan said.

At one point during the interview in his chambers at the Las Vegas federal courthouse, Mahan moved in his chair, and a holstered semiautomatic pistol became visible on his right hip. In written questions submitted for this story, Mahan was asked about the pistol. He did not respond.

In a separate interview, Swarts said his appointments from Mahan were proper. "I don't think that is a problem," he said. "In fact, if you were going to put someone in a position of responsibility, why wouldn't you put in someone you know, someone you trust … somebody you knew had integrity?"

When he was asked if Mahan was favoring him with lucrative court assignments, Swarts replied: "Me and Judge Mahan? That's amazing. That's crazy! That's the craziest thing I've ever heard…. Judge Mahan's only appointed me two or three times."

When he was told that Mahan had in fact appointed him in a dozen or more cases, Swarts replied: "No way! No way! I know what you guys are going to do. You're just trying to make us look bad. I don't see any reason to talk to you…. Judge Mahan? He's a fine person. I can't believe you're looking at him."

Ellis was given written questions about his relationship with Mahan and cases in Mahan's court. He did not respond.

One Las Vegas attorney willing to speak out about Mahan, P. Sterling Kerr, who represented two clients in a case before him, said the judge appointed Swarts simply "to give his friends some business."

Kerr called it "a travesty of justice."

Chapter 1

The Lee Case

Mahan has been dismissive of conflicts from the start.

He came to Las Vegas as a lawyer in 1973 and went to work for John Peter Lee, a veteran Nevada attorney. Seven years later, Lee hired Frank A. Ellis III. Two years after that, Mahan and Ellis set out on their own.

Within six months, Mahan sued Lee, claiming that Lee had stiffed him on a profit-sharing bonus. Lee sued back, claiming that Mahan took office furniture, including a desk, and left behind an interest-free IOU, payable only when he got his bonus.

With Ellis representing him, Mahan pursued the matter to the Nevada Supreme Court. It ruled in Lee's favor and ordered Mahan to pay for the furniture — desk and all. "I was surprised at [Mahan's] deep-seated resentment," says attorney Richard McKnight, who had spent five years with him at Lee's firm.

Seventeen years later, when Mahan became a state judge in Las Vegas, Lee asked that he disqualify himself "from all of our firm's [cases] due to past problems between you and the firm … so we may protect our clients."

Court records show Mahan wrote back: "I have instructed court administration to recuse me from all of your cases."

Mahan did disqualify himself shortly afterward during a case in which Lee was an attorney, court records show. But in another case seven months later, Mahan refused to withdraw when Lee and his son James, also an attorney, asked him to when they appeared in his courtroom as co-counsel, according to court records and interviews.

The Lees were representing a woman in a palimony suit over a $35-million estate.

A jury ruled against the Lees' client. The Lees asked Mahan to order a new trial, saying, among other things, that he had wrongly instructed

the jurors. Court records show that Mahan denied the request.

"It was improper," John Peter Lee said in an interview. "I still feel that way."

When he was asked why he did not withdraw, Mahan said in an interview: "I decided I was going to hear that case. Judges are supposed to hear cases."

Asked about the desk and other furniture he took from Lee's law firm, Mahan shrugged, smiled and patted an unremarkable but ample wooden desk in front of him.

"This is the desk," he said.

Chapter 2

Swarts and Rogich

Many of Mahan's undisclosed relationships were with Swarts, a politically connected businessman who grew up in Las Vegas.

His financial relationship with Mahan began as early as 1988, when the law firm of Mahan & Ellis formed the first of at least 12 companies or joint ventures for Swarts, several in partnership with Frank Ellis' father, according to Nevada secretary of state records. Often either Mahan or the younger Ellis — or both — served as resident agents or directors.

One such project drew Swarts and the elder Ellis into a lawsuit against investors in a development deal. Court records show that Ellis and Swarts were represented by Mahan and another attorney.

During the 1990s, Mahan expanded his ties with Swarts.

A booming Nevada economy gave him the opportunity. The boom attracted entrepreneurial opportunists with more brass than bankroll. Business disputes and bankruptcies began choking the Nevada courts. In some cases, judges appointed receivers to protect investors, preserve assets and manage troubled businesses while the conflicts dragged on.

Like special masters, receivers are independent, neutral officers of the court, answerable only to the judges who appoint them and typically give them absolute control over the businesses in dispute. Receiverships are easily abused. Historically, state and federal courts appoint receivers only as a last resort.

In contrast to California's rules, Nevada's requirements for receivers are loose. In both states, receivers are governed by court orders. In Nevada, lawyers write the orders and judges sign them, sometimes changing them as they see fit. But in Los Angeles County, for instance, judges begin with standardized orders and use or rewrite them. Steve Morris, a prominent Las Vegas trial lawyer with 35 years of legal experience in Nevada, said, "Rules for receivers here are short, ambiguous and elastic."

By the mid-1990s, Swarts had become a receiver in both state and

federal courts. He brought in his son, Curtis, also a CPA. In 1996, the law firm of Mahan & Ellis incorporated them as Swarts & Swarts.

With increasing frequency, Swarts asked judges to let him hire his own counsel at the expense of the parties in dispute. Most often, he chose Mahan & Ellis.

In 1998, Mahan decided to become a state judge.

His decision put him in Swarts' debt for two favors. In Nevada, state judges are elected. Mahan ran for a judgeship in Las Vegas, and as the first favor, Swarts, seasoned in local politics, agreed to be his campaign treasurer.

Mahan lost the election.

"I decided not to stop," he said in an interview. Two state judges from Las Vegas had won seats on the Nevada Supreme Court, creating a pair of vacancies. Newly elected Gov. Kenny Guinn, a Republican, would fill them after his inauguration in January 1999. "I began 'running for appointment,' " Mahan said.

In this quest, Mahan needed only one vote — that of Nevada power broker Sig Rogich, a Republican fundraiser and media specialist who had been a consultant to Presidents Reagan and George H.W. Bush. It was Rogich who was responsible for the elder Bush's TV ad showing Democratic opponent Michael S. Dukakis perched on a tank with a helmet dwarfing his head.

More important to Mahan, Rogich had masterminded Guinn's gubernatorial election. Guinn had never run for public office.

Rogich was part of old Las Vegas. By contrast, Mahan was a newcomer, but he knew an insider: Swarts. He and Rogich had been friends since grade school.

Indeed, while Swarts had been Mahan's campaign treasurer, Rogich had entrusted him with keeping the books for Guinn's $6-million campaign as well. Records show that Swarts donated his time.

Now, in the second of the two favors, Swarts spoke to Rogich on Mahan's behalf.

"I put [Mahan's] name in with Sig," Swarts said in an interview. "And why did I do that? Because I believe Jim Mahan is one of the finest people I have ever known…. I'd put his name in again."

Mahan was summoned to Rogich's office. "He wanted to meet me," Mahan said in an interview. After the meeting, said a participant who requested anonymity, Rogich promised to "go to the governor."

It worked.

On Feb. 22, 1999, during his second month in office, Guinn appointed Mahan to the bench in the state's 8th Judicial District in Las Vegas.

In an interview, Rogich refused to discuss the matter publicly.

Seventeen days after the appointment, Mahan was assigned to decide the

appeal of a lawsuit that Rogich won in Justice Court against Phillip Crenshaw, a Las Vegas store owner, over a damaged stereo.

Despite the canons demanding that judges disqualify themselves when their impartiality might reasonably be questioned, Mahan sat in judgment on the appeal.

He reduced Rogich's $3,449 award by $90, but decided in his favor.

R. Clay Hendrix, the attorney for Crenshaw, said he was unaware of Mahan's connection to Rogich until after the case ended, when he received an invitation from Rogich to a Mahan fundraiser. Hendrix was asked how he felt when he found out about Mahan's ties to Rogich. He shrugged and looked away.

This was, after all, Las Vegas.

Mahan was given written questions about this and other cases in this story. He did not respond.

Chapter 3

Elkind-Wilson Case

When Mahan became a state judge, he left Mahan & Ellis. But the law firm did not exactly leave him. He remained a part owner and landlord of the law firm property and continued to draw interest from the Mahan & Ellis profit-sharing plan, according to land records and financial disclosures required of state and federal judges.

The disclosures show that he received income from the law office building until June 2001 and from the profit-sharing plan until mid-December 2002, when his share of the proceeds was rolled over into an IRA.

Meanwhile, the financial fortunes of his former law firm were tied in part to the fortunes of one of its most active clients — George Swarts. On the eve of Mahan's appointment to the bench, court records show, the law firm represented Swarts in three receiverships involving combined legal fees of about $150,000.

During the first weeks of his judgeship, Mahan acknowledged a conflict if he were to preside over a case involving Ellis, court records show. On March 26, 1999, he disqualified himself from a case "to avoid the appearance of impropriety and implied bias" because Ellis was his former law partner.

But 2 1/2 weeks later, in his second month as a judge, Mahan recommended and then appointed Swarts as a $200-an-hour caretaker in a business dispute — and then approved Ellis as Swarts' attorney, according to court records.

The case involved Stuart Matthews Wilson, a hairstylist who finally struck gold: The Desert Inn hotel-casino on the Las Vegas Strip had selected him to take over its exclusive four-star spa.

The Desert Inn wanted him to expand. He didn't have the money, so he took on a partner, Abbott Elkind, a contractor and client who chipped in about $400,000 for 51% ownership.

Right away, they fought. Soon they sued each other.

In an interview, Wilson recalled their first hearing: "We get to the courtroom and this guy, George Swarts, is already there, waiting. Out of the blue, Judge Mahan has this guy come in as a receiver to take over our beauty salon."

There was a glitch. Wilson's attorney, James Lee, said appointment of a receiver would violate the salon's lease with the hotel-casino. So Mahan decided to call Swarts a special master.

Lee would later write into the court record that, "in fact, Swarts was appointed to be a receiver … [and] to act as a receiver in every sense of the word."

At the start, according to court minutes, Mahan promised Wilson and Elkind that they would "be included in [Swarts'] business decisions." Within a month, however, Robert Goldstein, Elkind's lawyer, said in a court filing that they were no closer to a buyout — and that Swarts, in effect, had frozen Elkind out of the business.

In response, Mahan wrote that Swarts "shall run the salon business as he sees fit."

That August, court records show, Ellis billed $4,694 for three months, and Swarts presented a three-month bill for $95,928. "My lawyer and I looked at each other in disbelief," Wilson recalled. "Swarts was charging $30,000 a month for basically having somebody pick up the salon's receipts each night."

Both sides filed motions pleading with Mahan to remove Swarts and sell the business before there was nothing left. They said a bookkeeper or payroll service could do for $1,000 a month what Swarts was doing for 30 times that amount.

But Mahan refused to remove him.

In March, a year after Mahan appointed Swarts, Wilson filed for bankruptcy in federal court. "Swarts and Judge Mahan … destroyed everything I built up in this town for 20 years," Wilson said. "Nobody — lawyers, anybody — wanted to go up against Judge Mahan or Swarts.

"Anything Swarts wanted from the judge, Swarts got."

The Desert Inn closed in August 2000. Elkind, 66, died in January 2002. Wilson now works at a beauty salon in another hotel on the Strip.

When asked about the propriety of appointing his friend Swarts, Mahan responded, "I appoint receivers based on their backgrounds and the job at hand." Citing another case, he added, "I know George [Swarts] has done securities work before, so I picked him for a securities case."

Mahan said Swarts was just one of several receivers he had used. He

named two others. "I just want someone who is competent. I knew [Swarts] was competent. That's why I appointed him."

When asked about the propriety of approving Ellis, his former law partner, to represent Swarts, Mahan responded angrily: "It's up to the receiver to pick his own attorney. I never select them. Receivers select their own attorney. I've never imposed an attorney on any receiver. I don't care who the attorneys are."

Regarding his financial interests with Ellis, Mahan said he made no profit from the income listed on his financial disclosure report as rent from the Ellis office building, because it equaled his share of the mortgage payment. He noted that he sold his interest in the building to Ellis in June 2001.

By then, however, Mahan had been on the bench for two years and had involved Swarts and Ellis in at least seven cases and approved their fees.

As for the Mahan & Ellis profit-sharing plan, Mahan continued to receive interest from it for 18 months after selling his property ownership, his financial reports show — and during that period, court records reveal, Mahan appointed Swarts as a receiver and approved fees for Ellis' law firm as Swarts' counsel in at least five additional cases.

Swarts, in an interview, said there had never been anything improper about his court appointments from Mahan or any other judge. "I don't hobnob with judges…. I don't solicit cases. But when a judge calls, I respond."

Swarts was given written questions about the details of this and other cases in this story. He did not respond.

Chapter 4

The Topless Case

Three people from Detroit wanted to open a topless bar in Las Vegas.

Ronald Sweatt, his wife, Lydia, and investor Robert Katzman formed a 50-50 partnership, called Motor City III. In 1997, they bought an empty lounge near the Strip and began turning it into a cabaret with bare-breasted dancers. Their investment totaled nearly $1 million.

Felony tax evasion convictions ended the Sweatts' chances for licensing in Nevada. So they put the lounge up for sale.

Katzman sold his interest to Ed Gardocki, also of Michigan. The Sweatts accused Katzman and Gardocki of dealing in secret and sued them in Michigan.

They, in turn, sued the Sweatts in Las Vegas.

The case was assigned to Mahan.

He appointed George Swarts as receiver. Mahan said, however, that Swarts' son, Curtis, would handle the matter because he would bill at a lower rate, according to court minutes. "No one loses if a receiver is appointed," Mahan said. Both sides "will be looking at a pile of money, not a piece of property."

Swarts hired the law firm of Alverson, Taylor, Mortensen, Nelson & Sanders to represent him. Two and a half years passed, and the topless lounge still was not sold. Moreover, according to court records, the tab for Swarts and his attorneys had climbed to more than $100,000.

Both sides tried to get rid of Swarts. Mahan refused.

• On one side: Attorney P. Sterling Kerr, who represented the Sweatts, said in court documents that the fee for Swarts and his attorneys "shocks the conscience" because their only job was selling an empty building.

"Those guys raped my client," Kerr said in an interview. "Mahan was looking for an excuse to give his friends some business."

• On the other side: Katzman and Gardocki said Swarts and his attorneys had been paid out of partnership funds without court approval and had failed to pay county taxes on the lounge "to the point where the property itself is in jeopardy."

A month later, Swarts reported that he had paid the taxes.

Attorney Peter Christiansen, who represented Katzman and Gardocki, reminded Mahan that he had promised that Swarts' son, Curtis, would handle the receivership and charge less. Instead, Christiansen said, "George Swarts did the overwhelming majority of the work."

Swarts and his lawyers have "treated this case as a cash cow," Christiansen said. If attorneys on both sides combined and quadrupled their fees, he said, they wouldn't approach what Swarts and his attorneys were charging.

Some charges, Christiansen said, were for duplicate services, services not rendered and services negligently rendered.

Records show that George Swarts billed $200 an hour.

A review of resumes and contemporaneous cases shows that four other Nevada receivers charged $150 to $175 an hour. A year earlier, court records show, Swarts had charged $150 an hour.

Swarts and his attorneys told the court that attacks against them were laced with distortions, sometimes fabricated, sometimes absurd and often as "appalling as they are incorrect." They accused both sides of opposing their every move and of creating unnecessary, baseless and frivolous litigation.

As for whether Swarts was running the receivership and not his less-expensive son, Swarts said that Mahan had set the same fee for both of them.

By 2005, the topless lounge was still unsold. On July 25, Swarts said

his fees had reached $285,000. Michael Hall, an attorney representing Katzman, was asked what his client and others in the case thought about Swarts' fees. He replied, "They thought it was ridiculous."

State Judge Michelle Leavitt, who replaced Mahan when he went on the federal bench, discharged Swarts as the receiver. On July 27, Leavitt signed an order "approving sale" of the property and said Swarts' fee "comes off the top."

The property finally sold for $1.9 million, Hall said. After fees for Swarts and the attorneys, the pile of money promised by Mahan had vanished.

In an interview, Swarts was asked to explain how partners so divided could be so united in their criticism of him.

"Well, Sterling Kerr hates me," he said, referring to the Sweatts' lawyer. "I have a thankless job. You've got to be crazy to do this. It's not possible to do this job and not have someone get mad at you. I've had lawyers come across the table at me…. When I come in, both parties hate each other, and in the end, both parties hate me."

Chapter 5

Adult On-Line Case

Andrea Norman retired from the escort business when she was 26.

In April 2000, she said, she and her then-fiance invested $500,000 in Las Vegas Adult On-Line Productions Inc., a website marketing prepaid cards to anonymously view or buy Internet pornography.

"It was a great idea," she said in an interview at her gated town house near the Strip. It was late morning. She wore a nightgown, an anklet and rings on her left hand and the second toe of her right foot.

Norman and her fiance put their $500,000 investment into a corporate account.

One day, she said, she got a call from the bank. "I just about s---. There was $16,832 left."

Norman sued her two stockholder-managers.

Meanwhile, Mahan ran to keep his seat on the bench. Swarts served for the second time as his campaign treasurer. Mahan won without opposition, and in June 2000, midway through the race, Norman's lawsuit went to his court. While Swarts was still his treasurer, Mahan appointed him as the receiver for Adult On-Line.

Norman recalled the first hearing. "George [Swarts] was already there in court. Bam-pow! He was in as receiver. No discovery. No questions. [Mahan] just put in a receiver. It was pre-decided … pre-set. My mouth hit the floor."

Mahan assured Norman that he saw "potential value here and that [the]

asset should be preserved," court minutes show. "Mr. Swarts … will keep the business running."

Swarts chose the Ellis law firm, where Mahan had been a partner, to represent him, and Mahan approved the appointment. Mahan was still receiving what he described as rent, or "investment income," from the law firm office building, as well as interest from the Mahan & Ellis profit-sharing plan, according to the financial reports he would file from the federal bench.

Three months after the suit was filed, the two stockholder-managers complained to Mahan, saying they feared that Las Vegas Adult On-Line Productions Inc. was "being bled dry." They said Swarts had frozen or emptied their accounts, would not pay creditors, had broken financing promises and would communicate only through attorneys charging up to $250 an hour.

Unless Mahan intervened, they wrote, they would "be headed into bankruptcy."

But Mahan allowed the receivership to continue.

A month later, court records show, Ellis told Mahan at a hearing, "There is little money" left.

Mahan ended the receivership in December, records show, and approved fees of $15,525 for Swarts and $19,293 for the Ellis law firm for the three months of July 3 to Oct. 9.

"In the end, whatever funds were in the account went to pay the receiver," Norman said. "If I ever see [Mahan] on the street, I'm going to spit in his f------ face."

Chapter 6

The NetSol Case

On June 11, 2001, dissident stockholders, escorted by armed guards, took over the offices of NetSol International Inc., a software company in Calabasas.

Although NetSol was based in California, it had been incorporated in Nevada, and its deposed managers sought assistance there. They sued in Las Vegas state court, and the case was assigned to Mahan.

"The judge, right out of the blue, said: 'Maybe we should get a receiver…. I know a guy who is perfect for this,' " John C. Kirkland, a Santa Monica attorney for the dissidents, said in an interview.

Mahan ordered a recess, Kirkland said, and Swarts appeared in the courtroom. "Right away," Kirkland said, local attorneys told him that Mahan and Swarts "were best friends, had barbecues … were very close…. We were told in no uncertain terms: This is the 'judge's receiver,' and we were going to have to live with him."

Again, Swarts chose the Ellis law firm, where Mahan had been a partner, to represent him in the receivership, court records show.

By now, Mahan had sold his interest in the law firm real estate. But according to his financial disclosure statements, he was still receiving interest from the Mahan & Ellis profit-sharing plan.

Todd L. Bice, a Las Vegas attorney for NetSol management, said in a telephone interview that he had been unaware of any relationship between Mahan and Swarts. "I don't remember that the issue ever came up in court."

A month later, records show, Kirkland, the dissidents' counsel, accused Swarts of devaluing the firm. "What once was a multimillion-dollar company is now a penny stock," Kirkland said, adding that NetSol was doomed.

In August 2001, Mahan ended the receivership. He ordered NetSol to pay Swarts and the Ellis law firm $65,000 for two months' work.

Although many computer-based companies suffered during the technology bust, NetSol's plunge was dramatic. In March 2000, its stock traded at $75 a share. By October 2002, the stock had fallen to a nickel a share.

This week, it closed at $1.86 a share.

Kirkland scoffed at the Las Vegas justice system. "It's the most corrupt system I've ever seen," he said. "They hometown everyone."

Chapter 7

A Federal Judge

By February 2001, the second anniversary of his appointment to the state bench, Mahan's name had surfaced for possible nomination to the federal bench by George W. Bush, the newly elected president.

Sig Rogich had been the finance chairman of Bush's Nevada campaign. When he learned that Bush would nominate two judges in the state, he made three telephone calls on Mahan's behalf, according to a political insider who requested anonymity.

One call was to Sen. John Ensign, the Nevada Republican who would recommend potential appointees to Bush.

"I nominated Judge Mahan," Ensign said, "because of his outstanding record and reputation. Throughout his career, he has demonstrated a careful and deliberative nature, and a commitment to fairness and the proper application of the law."

The second call was to the screening panel for the Senate Judiciary Committee.

The third was to the White House.

Mahan won Ensign's approval, as well as the endorsement of Nevada's veteran Sen. Harry Reid, a Democrat.

"Sen. Reid joined Sen. Ensign in supporting the nomination," said Reid's spokesman, Jim Manley, "because he felt Judge Mahan had the qualifications necessary to serve as a U.S. District Court judge."

Bush nominated Mahan on Sept. 10, 2001, to be one of the five U.S. District Court judges then in Las Vegas. The Senate confirmed him without controversy, and he joined the federal bench on Jan. 30, 2002, a lifetime post.

Mahan's confidants, allies and business pals were not far behind. As his executive judicial assistant, he hired Jeri Winter, a former member of his campaign staff who had been his executive judicial assistant when he was a state judge.

Within little more than a month, he approved the hiring of the law firm of his former partner, Ellis, in a federal case while Ellis was representing Winter at no charge in a bankruptcy. Only five months before, Ellis had represented Mahan's wife in a family probate, also for free.

The federal case was over E-Rex Inc., developer of the Dragonfly, a portable printer-fax with Internet capability. Dissident shareholders had sued executives, accusing them of mismanagement, according to court records.

Mahan appointed Swarts, this time as a special master, to investigate the accusations, the records show. According to court minutes, Mahan ordered the dissidents to pay Swarts an advance of $5,000 and an overall fee of $250 an hour.

Mahan approved hiring Ellis' law firm to represent Swarts at $210 an hour.

"We had no idea that the federal judge, Judge Mahan, had a relationship to Swarts or his attorney," Ruben F. Sanchez, a Woodland Hills lawyer representing E-Rex, said in an interview. "That was never disclosed."

Sanchez said E-Rex hired Harold Gewerter, a Nevada attorney. Gewerter was asked in a telephone interview if he knew at the time about Mahan's relationships with Swarts and Ellis. He replied: "I heard indirectly that — I have no knowledge of any relationship. Judge Mahan did a fine job."

Mahan awarded Swarts $17,267 and the Ellis law firm $1,582 for work during March, April, May and June, the court records show.

In July 2002, Mahan dismissed the lawsuit.

The dissidents appealed. In January 2004, a three-judge panel of the U.S. 9th Circuit Court of Appeals reversed Mahan's dismissal in part, saying he had erred by denying the shareholders an opportunity to amend their complaint. The appeals court sent the case back to Mahan.

In April 2005, Mahan granted a change of venue to Florida. The case was appealed again. It remains an open case.

Chapter 8

Interstate Mortgage

One month after he appointed Swarts in the E-Rex case, Mahan was assigned a federal lawsuit accusing Interstate Mortgage Group Inc. of Las Vegas and its former owner and president, David Ferradino, of fraud, breach of contract and breach of fiduciary duty, court records show.

Two and a half years earlier, Swarts had been appointed conservator, or custodian, of Interstate Mortgage, the records show, and then had been appointed receiver of the firm, which had been seized by the Nevada Financial Institutions Division, a state agency that regulated mortgage brokers.

The suit was filed by Robert and Ruby Rogers of Phoenix, who demanded the return of $110,000 lost through what they called "fraudulent acts" by Ferradino and his company — plus $5 million to punish them. The suit meant the firm Swarts was managing had become a defendant in Mahan's court, and Swarts was a defense witness.

Mahan had vouched for Swarts a month earlier by appointing him special master in the E-Rex case.

Now he was sitting in judgment upon a firm Swarts was managing in a case accusing the company of fraud.

Representing Swarts and Interstate Mortgage in Mahan's courtroom was the Ellis law firm, where Mahan had been a partner and where Ellis had represented Mahan's wife in a probate and was still providing free legal counsel for Mahan's executive assistant in her bankruptcy case.

"We were never told Mahan [had] any connections with Swarts or his attorney," said plaintiff Robert Rogers in a telephone interview.

Mahan dismissed Interstate Mortgage as a defendant, records show. That left Ferradino as the sole defendant. He was ordered to make restitution.

Rogers said he settled with Ferradino in 2003 for $82,000.

Chapter 9

The Bulloch Case

Less than a month after dismissing Interstate Mortgage and its conservator Swarts from the case, records show, Mahan decided a lawsuit in favor of Howard Bulloch, a longtime Las Vegan, and awarded him more than $4 million.

Mahan and Bulloch were former business associates.

In July 1997, Mahan, then a partner in Mahan & Ellis, and Bulloch, a Las Vegas real estate agent, were on a receivership team to sell 89.07 acres in Laughlin, Nev.

At the time, the judge in the case appointed Swarts as receiver. Swarts had hired Mahan as his lawyer and recruited Bulloch to sell the property. Mahan's billings, filed in 1998 court records, show how closely Mahan and Bulloch had worked together.

Jan. 20: "Review letter … to Howard Bulloch." Jan. 22: "Review letter … to Bulloch." Jan. 30: "Review proposed flyer from Bulloch. Telephone call with Bulloch: proposed revisions." Feb. 5: "Review proposed purchase and sale agreement from Howard Bulloch; revise and return to Howard." Feb. 10: "Telephone calls with Howard Bulloch." Feb. 12: "Conference telephone call with Howard Bulloch … incorporate my suggestions and revisions, which I faxed to Howard yesterday. Conference with client; Howard Bulloch." Feb. 13: "Review marketing efforts documentation from Howard Bulloch." Feb. 19: "Telephone call … Howard Bulloch's office." Feb. 24: "Review information from Howard Bulloch."

That March, the property was auctioned for $1.25 million, Mahan reported to the judge.

Five years later, Bulloch appeared in Mahan's federal courtroom.

He was suing Michael Shustek, a mortgage broker. According to court records, Bulloch contended that Shustek had wrongfully collected a $3.8-million fee on loans to buy land on the edge of Las Vegas.

In March 2003, at the end of a weeklong trial during which Mahan served as judge and jury, he ruled in Bulloch's favor, saying Shustek's fee was excessive and unlawful.

Mahan refunded the fee to Bulloch, plus interest — for a total of $4.12 million.

A recent search found no statement in court records that the judge had revealed their prior relationship. Bulloch said in a telephone interview that it was disclosed.

Shustek's attorney, Steve Morris, was asked in an interview if he knew that Mahan had a prior relationship with Bulloch.

"I'm astounded," Morris replied angrily.

Six weeks later, the Nevada Financial Institutions Division, which regulated mortgage brokers, said that Shustek's fee had been lawful and appropriate.

Shustek appealed Mahan's decision. A three-judge panel of the U.S. 9th Circuit Court of Appeals decided in November that Mahan did not have jurisdiction to hear the case.

The 9th Circuit ruling is being appealed to the Supreme Court.

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Times researcher Nona Yates contributed to this report.

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http://www.latimes.com/news /politics/la-na-vegas10jun10,1 ,6561749.story
From the Los Angeles Times
JUICE VS. JUSTICE | A TIMES INVESTIGATION
How Some Nevada Judges Stay Under the Radar
Senior judges are exempt from some rules of accountability. The careers of three jurists reflect the ethical questions that can result.
By Michael J. Goodman and William C. Rempel
Times Staff Writers

June 10, 2006

LAS VEGAS — One Nevada judge was nearly indicted on blackmail charges. Another ruled repeatedly for a casino corporation in which he held more than 10,000 shares. Still another overruled state authorities and decided in favor of a gambling boss who was notorious as a mob frontman, and whose casino did the judge a $2,800 favor.

Yet the Nevada Supreme Court has conferred upon these judges a special distinction that exempts them from some of the common rules of judicial practice and reduces their accountability. They are among 17 state judges whom the high court has commissioned as senior judges.

Unlike regular judges, senior judges are not answerable to the voters, but serve at the pleasure of the high court, and that can mean for life. Unlike regular judges, they can reject assignments until they are given a case they want to try. Unlike regular judges, they cannot be removed from a case by peremptory challenge. And until last year, they did not have to disclose their financial interests.

With this exceptional flexibility, they could try lawsuits in which they had a personal stake without revealing it. And because they cannot be removed by peremptory challenge, which normally permits a one-time replacement of a judge at the beginning of any case simply for the asking, it is possible for litigants to be stuck with senior judges, their conflicts of interest and their decisions.

The judge who was nearly indicted is James A. Brennan. He resigned as a state judge to avoid being charged by a federal grand jury with blackmail. After the state Supreme Court returned Brennan to the bench and then named him a senior judge, he presided over at least 16 cases involving participants in his real estate deals. A recent search found no statement in court records that Brennan publicly disclosed those relationships.

The judge who ruled for a casino corporation in which he held stock is Stephen L. Huffaker. He owned 12,000 shares of the corporation while the case was before him. In addition, he presided over cases involving another casino corporation whose foundation gave his son a partial scholarship to Yale University. A recent search found no statement in court records that Huffaker publicly disclosed the scholarship at the time.

The judge who ruled in favor of the gambling boss is Joseph S. Pavlikowski. In 1969, he officiated at the wedding of Frank "Lefty" Rosenthal, known as a frontman for the Chicago mob. Pavlikowski then accepted a discounted wedding reception for his daughter at a casino where Rosenthal was a top executive. He subsequently ruled for Rosenthal in three cases when authorities tried to take action against him.

Senior judges, including Brennan, Huffaker and Pavlikowski, are on call statewide to fill in temporarily at any level of the state courts in which they have previous experience. Sometimes they are brought in when local judges disqualify themselves from sensitive and thorny cases.

The Supreme Court, the highest-ranking court in the state, created senior judges in 1977 to ease a workload that has since grown to an average of 2,700 cases for each regular judge in Las Vegas per year.

The high court acted independently of the Legislature. It wrote its own rules for the senior judges, said Ronald R. Titus, the state court administrator. "Nothing in the statutes," Titus said, "talks about senior judges."

The Legislature, however, controls their budget. At one time it was limited to $340,000 annually, and at one point senior judges numbered as few as half a dozen. But since then, more senior judges have been added. The Legislature budgeted $1.5 million last year. Their number may continue to grow along with southern Nevada.

In response to written questions, Robert E. Rose, chief justice of the Supreme Court, said senior judges were accountable because their decisions might be appealed to the Supreme Court. It is, however, the same court that appointed them.

"We must rely on the senior judge to recuse himself or herself in conflict-of-interest situations," Rose said, "or at least bring [the conflict] to the attention of the parties [involved in the case]. And any party can file a motion to disqualify a judge for cause."

Unlike a peremptory challenge, however, removal for cause is not automatic and must be decided by another judge.

Rose also said court administrators monitored the performance of senior judges.

"Many senior judges have had long and distinguished careers," Rose said. "History has shown that judges have the ability to rule fairly and impartially on cases, based on the facts and the law…. To date, no application to become a senior judge or justice has been denied….

"Senior judges are a tremendous asset to the judiciary and the citizens," Rose said. "They are often among the most experienced judges around. They serve only when needed, thus providing a great resource at a bargain price. Without senior judges, it would be necessary to add full-time judges at a cost of millions of dollars.

"Senior judges simply provide the best bang for the buck."

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James A. Brennan

Chapter 1

Threat of Indictment

Judge Brennan almost wound up in the dock himself.

In 1988, a friend, Ada Livingston, died. She had been living with Brennan's mother. The judge and his mother found $56,000 worth of savings bonds in her suitcase. The bonds were issued to Livingston and her granddaughter, Marianne Catelli, who lived in Long Branch, N.J., according to court records.

"Brennan said he would send me the bonds, but then I had to cash them and give him half the money," Catelli, now 61, said in a telephone interview. She said Brennan did not tell her the total value of the bonds. "He said he would mail me a few bonds to cash, and then, when I paid him, he would send me more."

Catelli went to the FBI. William A. Maddox, then the U.S. attorney in Las Vegas, said in an interview that he took the matter to a grand jury and determined that Brennan and his mother could be indicted "for blackmail under federal law." Maddox, now a state judge in Carson City, Nev., said his goal was not to indict but "to force Brennan to resign and to keep him from being a judge again."

"I didn't like what he did," Maddox said. "That's not the kind of thing a judge should do."

Brennan agreed to resign and not run for reelection for at least 18 months, Maddox said. "We figured the 18 months would put Brennan beyond the next judicial election [in 1990], and then, by the next judicial election [in 1996], he would have been out of the public eye for eight years." Together with the investigation, Maddox said, this passage of time would "make it pretty hard [for him] to get elected."

In March 1989, Brennan announced that he was stepping down. It was not long, however, before he was back on the bench.

When his 18-month hiatus ended, 16 Las Vegas state judges signed a resolution of support — whereupon the Supreme Court appointed him to a 58-day temporary judgeship, beginning Jan. 2, 1991, to ease the caseload in his old judicial district. The appointment was continued for a year, and in 1992 the Supreme Court commissioned Brennan as a senior judge.

He is in his 14th year without having had to face election.

Maddox said: "Our goal was to make sure Brennan wouldn't run — never serve on the bench again. What can I say?"

The news did not reach Catelli until March 2004, when a Times reporter called. "Isn't that cute!" she said. "I was told he wouldn't get back in office. If it were you or me, we'd be in jail. They said they were going to keep him out of the next election. Well, isn't that cute! It's all about who you know, isn't it?"

Brennan was given written questions about this and other cases in this story. He did not respond.

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Chapter 2

A Testimonial

The letter praised a man accused of smuggling drugs.

Judge Brennan wrote it to a federal magistrate in Tampa, Fla., vouching for Benjamin Barrington, then 48, of Las Vegas, who was under indictment on charges of running a cocaine smuggling ring in Nevada, Texas and Florida. Barrington was appearing before the magistrate for bail.

A transcript of the bail hearing shows that Brennan's letter was one of three from judges who vouched for Barrington. The others, according to the transcript, were from Charles Springer, then the chief justice of the Nevada Supreme Court, and from Dan Ahlstrom, then a Las Vegas justice of the peace.

The case received wide publicity. Court records and a report in the Las Vegas Review-Journal newspaper show that Brennan's letter, dated Nov. 21, 1985, was the most effusive.

"For the last couple of years," Brennan wrote, "I have been a guest in Ben's home, where I have had the opportunity and the pleasure to observe a very dedicated husband and father. Ben's son, Benjie, and his wife idolize Ben, and a team of horses could not separate Ben from his family. On numerous occasions, Ben and I have gotten together for 'intelligent' conversations over cocktails, and I unequivocally state that Ben is a man who will make every court appearance which is required of him."

In a recent interview with The Times, the Florida magistrate, Thomas G. Wilson, recalled being troubled. "I thought right away it was a violation of judicial ethics. So when we broke from the hearing, I went right to the judicial ethics codes, and it said in plain English a judge is not to voluntarily lend the weight of his office to support someone's interest like this."

Wilson denied bail for Barrington. He received a lengthy sentence, according to a spokeswoman for the Federal Bureau of Prisons, and he died in custody. Wilson said the Nevada judges who vouched for Barrington "gave the impression the bench was a good-old-boys group. It didn't raise my opinion of the Nevada judiciary."

Springer, now a Reno attorney, told The Times, "I shouldn't have written that letter." Ahlstrom, now the public administrator for Clark County, including Las Vegas, said that in hindsight "a judge would be well advised not to write such a letter."

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Chapter 3

The Venetian

After Brennan was returned to the bench and named a senior judge, the way he handled one major case came under particular attack.

The case involved a breach-of-contract dispute between the $1.5-billion Venetian casino and resort and its builder, Lehrer McGovern Bovis Inc. Brennan appointed his former law clerk, Erika Pike Turner, as special master to conduct hearings.

Venetian lawyers said Turner was inexperienced and that her law firm represented four clients who had interests in the case. Moreover, they said, Brennan had given her such sweeping authority that "essentially nothing remains for [him] to do but enter judgment."

When Brennan did not remove her, the Venetian complained to the Supreme Court about Turner — and said that Brennan, as an appointee under the senior judge program, had not been independently elected. Venetian lawyers also pointed out that he had been forced to resign years earlier to avoid indictment.

The Supreme Court did not rule on the senior judge issue, but said that Brennan had abused his discretion by giving Turner such broad authority.

One justice, Deborah Agosti, said Brennan had been appointed to ease the court caseload, but then had appointed someone to relieve him of his caseload. He "ought to handle this case himself," she said.

A jury awarded Lehrer McGovern Bovis $44.2 million — but also awarded the Venetian $2.3 million for shoddy workmanship.

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Chapter 4

Conflicts of Interest?

Judge Brennan's financial dealings tell a story of power in Las Vegas. He has been in business with some of the most influential people in town.

He and his Brennan Family Limited Partnership and the James A. Brennan Family Revocable Trust have appeared in at least 180 recordings of land and financial transactions in southern Nevada since his return to the bench in 1991.

His partners and co-investors number more than 300 and include some of Nevada's most powerful political and gambling figures.

Since 1997, for example, Brennan has participated in at least 45 real estate transactions in Las Vegas with Gov. Kenny Guinn, now in his second term, and with Guinn's family. Many of the transactions were made through the Kenny C. Guinn IRA; the Guinn Family Trust; the governor's son, Jeffrey; and the son's mortgage company, Aspen Financial Services, county land records show.

Nevada Lt. Gov. Lorraine Hunt also appears with Brennan in several transactions.

Aside from the governor, an array of longtime casino bosses, developers, lawyers, financiers, contractors, real estate agents, bankers and mortgage brokers often have been named in land records as repeat real estate partners and co-investors with Brennan over the years. Some are lawyers.

Many have had cases before him.

Sometimes he has withdrawn, but rarely said why.

Without disclosing his relationships, Brennan has ruled in at least 16 lawsuits since 1991 that involved one or more of his real estate or investment partners or their attorneys, according to a review of land and court records.

U.S. and Nevada judicial canons say judges should withdraw from cases where their impartiality might reasonably be questioned. Nevada canons also say judges must avoid even the appearance of impropriety and should reveal on the record anything that they think anyone in court could reasonably consider relevant to disqualification — even if the judges do not think they should withdraw.

For senior judges, including Brennan, disclosing all financial relationships has been voluntary until 2005. Now disclosure is required yearly. Historically, however, few if any senior judges ever revealed their financial interests. That made it hard for those appearing before them to know whether the judges had a conflict of interest.

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Joseph S. Pavlikowski

Chapter 1

'Lefty' Rosenthal

The first whiff of possible conflict came at a wedding.

It was 1969. The groom was Frank "Lefty" Rosenthal, whose Las Vegas exploits as a casino boss for the Chicago mob would be portrayed by Robert De Niro in the movie "Casino."

Pavlikowski, then a justice of the peace, performed the ceremony.

The wedding was at Caesars Palace hotel and casino on the Strip. In an interview with The Times, Rosenthal said that Pavlikowski's services, along with the band and a catered reception, were "comped," or provided without cost, compliments of Caesars Palace.

By 1974, Pavlikowski had been elected a state judge in Las Vegas, and the Stardust hotel and casino, under Rosenthal's control, did Pavlikowski a favor. His daughter held a wedding reception at the Stardust, and it gave him a "comp" worth $2,800 on the $4,000 tab.

The comp was revealed by The Times 2 1/2 years later in a series of

stories about Las Vegas. Pavlikowski first said, "I paid that bill." Then he said he paid only $1,200 and sent another $1,000 to the Stardust afterward, but that his check was returned. He said the bill "was padded" to help waiters with their tips.

The second and third whiffs of conflict came in the mid-1970s when, in highly publicized actions, the state Gaming Commission and the Licensing Board of Clark County, which includes Las Vegas, tried to deny Rosenthal's bid for licensing as a key employee at the Stardust.

He appealed the Gaming Commission's action to state court. Under rules calling for random selection among the 12 state judges then in Las Vegas, Rosenthal drew Pavlikowski to hear his case.

A recent search found no statement in court records that Pavlikowski publicly disclosed his role in Rosenthal's wedding or that he had accepted a $2,800 comp from a Rosenthal-controlled casino.

Pavlikowski ruled in his favor.

On Feb. 3, 1977, the state Supreme Court overturned the ruling.

While the case was still on appeal, however, Rosenthal filed a separate court action to prevent denial by the county licensing board.

That case was assigned to Pavlikowski as well.

Again, a recent search found no statement in court records that he publicly disclosed his ties to Rosenthal.

And again, Pavlikowski ruled for Rosenthal, granting a temporary restraining order as well as subpoenas to depose board members.

Rosenthal agreed to drop all but one of the board members from the case: Robert Broadbent, who said in an affidavit that Pavlikowski was biased in Rosenthal's favor.

The case was transferred to another judge.

In 1989, Rosenthal found reason to go back to court again. The Gaming Commission had put him on its List of Excluded Persons, known as the Black Book, a mug-shot catalog of notorious cheaters and mob associates that barred them from Nevada casinos.

His lawyers removed the judge assigned to his case and, again, under rules mandating random selection, Rosenthal drew Pavlikowski.

And again, Pavlikowski ruled in Rosenthal's favor, ordering that he be removed from the Black Book.

In his ruling, Pavlikowski said he had disclosed that he was the judge who had decided the gaming license disputes. James J. Rankl, the deputy attorney general who handled the Black Book case, said, however, that he could not recall such a disclosure.

"I think," Rankl said, "that is something I would have remembered."

At the time, Pavlikowski was not yet a senior judge, and he could have

been removed with a peremptory challenge. But Dan Reaser, chief deputy state attorney general for gaming at the time, said there was no need. "I knew we would prevail at the Supreme Court."

Reaser was right. The high court reversed Pavlikowski. The Black Book banned Rosenthal from Nevada casinos. On its "exclusion/ejection list," the state said Rosenthal "was suspected of overseeing a Las Vegas casino on behalf of organized crime."

In an interview with The Times, Rosenthal was asked: "You're the expert handicapper, Frank. What were the odds that you'd draw the same judge each time?"

Rosenthal paused.

"I didn't even know about" the Black Book case, he said.

He was shown copies of Pavlikowski's ruling and the Supreme Court reversal. "I'll be damned," he said. "You're telling me something I didn't know. I should drop [Pavlikowski] a line. Is he still living?"

A transcript of the Black Book proceedings shows that Rosenthal had flown in from Florida for the case, was present in Pavlikowski's courtroom and identified himself to the judge by name.

Pavlikowski was given written questions about this and other cases in this story. He did not respond.

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Chapter 2

Drunk Drivers

Arrested for drunk driving? Call John Watkins.

That's who Pavlikowski's son turned to when he lost his driver's license after a drunk-driving arrest in July 1986. The son, Joseph P. Pavlikowski, was 23 at the time. At an administrative hearing, he sought a reversal, and John G. Watkins represented him.

Watkins had been Pavlikowski's law clerk — one of several who became his friends. As private attorneys, they remain fiercely loyal to Pavlikowski and to one another, according to Andrew S. Myers, who is one of them. Pavlikowski, in turn, is loyal to them, Myers said. "It's like a club … a network."

Watkins fought 16 months to regain driving privileges for Pavlikowski's son. In March 1988, he won. A state court returned the driver's license.

During that time, according to court records and interviews with two former prosecutors, Pavlikowski signed 29 orders temporarily returning driving privileges for Watkins' other clients, even though their drunk-driving cases were being heard by other judges.

A recent search of court records found no statement from Pavlikowski that he asked for or received approval from the judges — or publicly

disclosed his relationship with Watkins.

Grenville Pridham, who spent 11 years as a state prosecutor, said he discovered that many of Pavlikowski's orders were never sent to the Department of Motor Vehicles. Hence, Pridham said, the DMV was crediting drunk drivers with serving their suspensions when, in fact, they were still driving.

The Supreme Court said Pavlikowski had acted improperly and that Watkins' failure to inform the DMV was "reprehensible." The court fined Watkins $500.

In some cases, Pavlikowski restored driving privileges for people facing their second or third drunk-driving convictions.

In April 1997, Watkins asked Pavlikowski to let Paulette O. Riggs drive while she appealed her second drunk-driving conviction in four years. This conviction had involved an accident. A prosecutor said Riggs' blood-alcohol level was more than 2 1/2 times the legal limit in one conviction and nearly four times in the other.

Pavlikowski allowed her to drive anyway, pending review of her case.

After five months, Riggs' case was transferred to another judge. He revoked her driving privileges.

"Pavlikowski did favors for Watkins that no judge would do for other attorneys," said Pridham, the former state prosecutor.

In frustration, prosecutors exercised peremptory challenges in 1994, 1996 and 1997 to remove Pavlikowski from cases involving Watkins.

At Watkins' request, Pavlikowski refused to remove himself.

That might have been a first, according to state Judge Peter Breen of Reno, who retired in 2005 after 31 years on the bench. "I can't remember any [other] judge trying to strike down a peremptory challenge" in favor of himself.

Watkins was given written questions about these and other cases in this story. He did not respond.

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Chapter 3

Favoritism?

A Times examination of court records shows that during the decade before 1999, when he became a senior judge, Pavlikowski determined the outcome of at least 72 cases in which Watkins or his firm defended clients accused of drunk driving or other criminal activity.

A recent search of court records found no statement from Pavlikowski that he publicly disclosed their relationship. In 66 of the cases, or nearly 90%, Pavlikowski ruled in favor of Watkins' clients by reducing, dismissing or reversing charges or other actions filed against them, the records show.

Thirty of those cases were appeals by clients whose driving privileges had been revoked by DMV hearing officers after drunk-driving arrests. In 26 of the 30 cases, or more than 86%, Pavlikowski granted the appeals, restoring driving privileges.

By contrast, 19 of 21 such appeals to Las Vegas state judges, or more than 90%, normally are denied, according to a recent 12-month survey by the DMV. "Chances of getting a reversal in [state] court are 1 in 10," said Randall Pike, a longtime Las Vegas criminal defense attorney.

In California, "your chances for such a reversal are 1 in 50," said Anthony Scott, a Redondo Beach attorney, who said he had handled about 1,500 drunk-driving cases in the last 14 years.

How did Watkins fare before other judges?

A Times review of 209 DMV license revocations that Watkins appealed to 10 other judges shows they ruled against his clients in 176 cases — and for them in 33. Hence, his success rate was 16%.

As for the success rate of Watkins' fellow attorneys before Pavlikowski, a Times examination of 317 drunk-driving appeals shows that while Pavlikowski granted nearly 90% of Watkins' appeals, he approved three of 18, or not quite 17%, of the appeals from other lawyers.

Prosecutors who appealed Pavlikowski's rulings favoring Watkins almost always succeeded.

In 12 of 14 instances since 1983 in which the state appealed Pavlikowski's rulings against the DMV in favor of Watkins' clients, the Nevada Supreme Court reversed Pavlikowski unanimously. The other two appeals were dismissed.

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Chapter 4

Appointing Proteges

Pavlikowski's commission as a senior judge in 1999 gave him no pause in appointing his former law clerks as defense attorneys in criminal cases.

For one case, budget-strapped Nye County, northwest of Las Vegas, paid two of his former clerks tens of thousands of dollars — and remodeled a public library into a courtroom for Pavlikowski.

Pavlikowski was assigned to the case in October 2000. On trial were Robert "Red" Dyer, Nye County's former public administrator, and his wife, Jennette. They were charged with stealing from estates of the deceased while the assets were under their jurisdiction. Dyer had named his wife as his deputy.

Pavlikowski appointed two of his former clerks, Andrew Myers and Martin Hastings, to defend them. Records show Pavlikowski had

appointed Hastings in at least 15 other cases.

A recent search of court records found no statement from Pavlikowski that he publicly disclosed his relationships with Myers and Hastings, but their connection was no secret. "We knew they were 'Pav's' former law clerks," Robert S. Beckett, the Nye County prosecutor, recalled. "Still, I was optimistic…. We have a tight budget and didn't want this to drag. We felt 'Pav' would move this case along."

Instead, Beckett said, it became one of the longest and most expensive cases in Nye County history. By the time it ended, court records show, Pavlikowski had ordered the county to pay Myers' fees totaling about $52,000 and Hastings' fees totaling about $61,000.

And then there was the courtroom.

Neither Myers nor Hastings wanted to drive the 120-mile round trip from Las Vegas to the tiny town of Pahrump and back every day on a two-lane road clogged with trucks, Myers said in an interview.

Beckett said: "We knew 'Pav' didn't want to drive out here" either.

As the trial neared, the official courtroom was closed to remove mold suspected of causing bloody noses, hair loss, fatigue, memory loss, rashes and sore throats, according to county records and interviews.

In its place, a corrugated metal building on a rocky lot was converted into a crude, temporary courtroom.

Pavlikowski balked.

"So we decided to build a courtroom for 'Pav,' " Beckett said. The county spent about $10,000 to renovate the library. "We even made a plaque for him."

But, Beckett said, "they still wanted to get the case to Vegas."

Myers and Hastings argued that the Dyers could not get a fair trial in Pahrump.

Beckett, however, produced a survey that said the "majority of the public has not formed an opinion" on guilt or innocence.

Pavlikowski let jury selection begin, but prosecutors complained that he granted Myers and Hastings twice the legal number of peremptory challenges for disqualifying jurors — and the jury pool ran dry.

Two more alternates were needed.

Chief Deputy Dist. Atty. Kirk Vitto asked Pavlikowski "to send out for additional jurors," court transcripts show. "The sheriff is standing by and will serve those people. We can have them here after lunch…. We are so close."

But Pavlikowski said no.

Publicity, he said, made it impossible to summon more jurors who were impartial.

He declared a mistrial.

Moreover, Pavlikowski said, he already had booked a courtroom in Las Vegas.

"We were devastated," Beckett said.

In Las Vegas, five weeks of trial produced 139 witnesses and 800 exhibits for the prosecution. "We were getting the hell beat out of us," defense attorney Myers recalled. Then the next-to-last prosecution witness, Terry Rusheen, took the stand.

A former friend of the Dyers, Rusheen said he had been "self-employed with macaws and cockatoos as a bird trainer and entertainer." The record shows he blurted: Jennette Dyer "told me to kill her…."

Lawyers for both sides jumped up and shouted, and Pavlikowski ordered jurors to disregard the statement.

Myers and Hastings demanded a mistrial. Prosecutor Vitto asked Pavlikowski to poll the jurors on whether they had heard what Rusheen said.

But Pavlikowski granted the mistrial without asking the jurors anything.

He set a new trial date.

When the defense requested a delay, Vitto objected. And before Pavlikowski could rule, Jennette Dyer disappeared.

Now Myers had no client. Court records show Pavlikowski appointed him co-counsel, along with Hastings, for Robert Dyer, the remaining defendant. Pavlikowski ordered that Myers be paid the "customary rate of $75 per hour."

Robert Dyer pleaded guilty, then asked to withdraw the plea. Hastings said Dyer had not been thinking clearly because of oxygen deprivation caused by jailhouse rules limiting use of his pocket inhaler for asthma.

Dist. Atty. Beckett said Dyer submitted no evidence to support the claim.

But Pavlikowski granted Hastings' request.

He also reversed himself on the difficulty of picking an impartial jury in Pahrump and returned the case to Nye County, where a new state judge had been trying Dyer on separate charges of attempting to bribe and intimidate a witness.

With that, Hastings withdrew as Dyer's lawyer. Pavlikowski approved.

Myers, for his part, said he never drove back to Pahrump to appear on Dyer's behalf. He said he did not know that Pavlikowski had appointed him co-counsel.

In the end, Robert Dyer pleaded no contest to theft and possessing stolen property, records show. He was sentenced in June 2004 to two to five years in prison.

The sentence was in addition to a 1- to 2 3/4 -year sentence for

witness tampering.

His wife remains a fugitive.

Hastings did not respond to written questions about the case.

**

Stephen L. Huffaker

Chapter 1

Casino connections

Downtown casinos and the city of Las Vegas sued Carol Pappas and her sons.

A 63-year-old widow, she and her two boys owned a corner strip mall. A casino consortium, with the city on its side, wanted the land to build a parking garage as part of downtown redevelopment. The suit claimed eminent domain.

It went to Huffaker's court in November 1993. He let the consortium bulldoze the property.

Pappas filed a counterclaim saying the city and the casinos conspired to take her property improperly and to violate her civil rights.

Huffaker presided over the high-visibility case for 21 months. His 1994-95 financial disclosure statements showed only that he was receiving a "small interest on stock dividends." But in August 1995, he revealed in court that he held 12,000 shares of Elsinore Corp., owner of the downtown Four Queens hotel and casino, which had a major stake in the redevelopment.

Grant Gerber, an attorney for Pappas, told Huffaker in a letter: "For you to preside over this case violates [judicial] canons." Two days later, Huffaker withdrew.

But he had been issuing rulings for 21 months.

The attorneys for Pappas asked for dismissal of all Huffaker rulings.

Request denied.

They asked to question Huffaker under oath: Did he have other conflicts of interest in the case?

Request denied.

Their concern about other possible conflicts appeared to be valid. A nonprofit foundation sponsored by Mirage Resorts Inc., which owned the Golden Nugget, another casino involved in downtown redevelopment, had given Huffaker's son, Stephen, an $11,000 scholarship to Yale in 1994, according to court records.

Casino mogul Stephen A. Wynn owned Mirage at the time.

The year the scholarship was awarded, The Times found, Huffaker was

presiding over the Pappas case and four other lawsuits involving the Golden Nugget.

A recent search of court records found no statement from Huffaker that he publicly disclosed the scholarship at the time. Nor did he reveal it in his annual financial disclosure statements.

The Pappas lawsuit ended in August 2004 when the city settled for $4.5 million, according to court records and an interview with Gerber.

Huffaker did reveal his son's scholarship in 1994 in another case involving Wynn's casino interests. Moreover, in his financial disclosure statements for 1994 through 1997, he said his son had worked at Wynn's Treasure Island hotel and casino, his Shadow Creek golf club and at the law firm of Schreck, Jones, Bernhard, Woloson & Godfrey, which represented Wynn's interests.

At various times during those years, Huffaker presided over five lawsuits involving the law firm or Wynn's casinos, according to court records.

In a sixth case, Huffaker presided for nearly a year before Schreck attorney James R. Chamberlain reminded him that his "son is employed as a runner for the summer months at the firm," court minutes show.

The opposing lawyer had no objection, according to the minutes.

In a seventh case, a lawyer objected to a similar conflict. The lawyer represented Joseph Canterino, then a 40-year-old New York dockworker who sued the Mirage. Canterino said he suffered mental illness after being savagely beaten and robbed of $70,000 while he stayed at the hotel in 1992.

Canterino blamed lax security.

A jury awarded Canterino $5.8 million, court records show.

Huffaker called the judgment "absolutely shocking," according to the records.

He reduced it to $1.5 million.

In an affidavit, Canterino's lawyer, Eckley M. Keach, said Huffaker had failed during the case to disclose Stephen Huffaker's scholarship.

Huffaker replied that he had told Keach and a Mirage attorney about the scholarship.

Both said they could recall no such disclosure.

In 2002, the case was settled for an undisclosed amount.

By then, Huffaker had announced he would not seek reelection, and the Supreme Court commissioned him as a senior judge.

He was given written questions about these cases by The Times, but he did not respond.

Huffaker received the senior judge commission despite being one of the

most avoided state judges in Las Vegas.

During 2001, for instance, the year before he was appointed, attorneys dodged his courtroom 163 times by exercising one-time peremptory challenges to remove a judge without explanation, court records show.

Now, as a senior judge, Huffaker is immune from peremptory challenge.

*

Times researcher Nona Yates contributed to this report.

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Appeals court dismisses complaint against judge

Panel says that despite The Times' allegations of favoritism in judgments and fees, the jurist's ties didn't affect his impartiality.

By Ashley Powers, Los Angeles Times Staff Writer
December 11, 2007

LAS VEGAS -- The U.S. 9th Circuit Court of Appeals has dismissed a complaint against a federal judge who awarded more than $4.8 million in judgments and fees to people with whom he had long-standing political and business ties.

U.S. District Judge James C. Mahan of Las Vegas, who was featured in a 2006 Los Angeles Times investigation into the Nevada judiciary, was cleared of allegations that he had personal connections with those involved in cases he heard.

Many of those relationships "were not of the nature or extent alleged" and didn't affect the judge's impartiality, the 9th Circuit Judicial Council said.

A special committee that interviewed more than 30 witnesses, got 16 affidavits and reviewed media coverage and court transcripts unanimously recommended that the complaint be dismissed.

Mahan, appointed to the federal bench in 2002, declined to comment. He told the Las Vegas Review-Journal in October that he was "very heartened" by the findings. "All a judge has is his integrity," Mahan said. "This whole thing was an attack on my integrity, and frankly, I felt like it was an attack on the Nevada judiciary."

The court launched its investigation after The Times' series detailed how Mahan's decisions in more than a dozen cases had benefited his former law partner, his former judicial campaign treasurer or the former treasurer's son.

On several occasions, the judge appointed George Swarts, his former treasurer, or Swarts' son to be a special master or receiver of businesses embroiled in legal disputes. The men were paid up to $250 an hour.

Swarts -- who was assigned to either investigate the business disputes or run the companies until they were settled -- often hired Frank A. Ellis III, Mahan's former law partner, as his attorney. Rulings Mahan made from the bench instructed various parties to pay Swarts and Ellis a total of more than $700,000.

Mahan denied any wrongdoing in not disclosing his relationships with the men and said he appointed receivers based on their ability.

Mahan was one of several current and former Nevada judges featured in The Times' report, which has prompted the state to reexamine how its judges are selected.

After the series, U.S. District Judge Terry J. Hatter Jr. of Los Angeles urged an investigation by the 9th Circuit., which oversees nine Western states including Nevada and California. Hatter could not be reached for comment.

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

http://judiciary.house.gov/

News Advisory

For immediate release
April 27, 2006

Contact: Jeff Lungren/Terry Shawn
202-225-2492

Sensenbrenner, Grassley Introduce Legislation Establishing an Inspector General for the Judicial Branch

WASHINGTON, D.C. – House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.) and Senator Charles Grassley (R-Iowa), a Member of the Senate Judiciary Committee, today introduced legislation establishing an independent Inspector General for the Judicial Branch. Rep. Lamar Smith (R-TX), Chairman of House Judiciary's Subcommittee on Courts, the Internet, and Intellectual Property is an original co-sponsor of the House legislation, H.R. 5219 "The Judicial Transparency and Ethics Enhancement Act of 2006."

Chairman Sensenbrenner stated, "Integrity and accountability are the hallmarks of a public servant's trust with the public. It's my hope an independent Inspector General for the Judicial Branch will help restore some of this trust with the public that has been damaged by the actions of some Federal judges who have carelessly ignored the ethical guidelines established. In addition, an IG will serve as a public watchdog to root out waste, fraud, and abuse and ensure the Third Branch's taxpayer-funded resources are utilized in an appropriate manner, just as IGs do throughout the Executive Branch.

"Let me be clear – this independent Inspector General will not have any authority or jurisdiction over the substance of a judge's opinions. Judicial independence of opinions is a sacred foundation of our constitutional form of government of checks and balances and separation of powers that must not be tampered with.

"Two years ago, I expressed my concerns before the U.S. Judicial Conference regarding the Judicial Branch's lack of effort in recent years to police its Members' behavior. As I explained then, Congress provided much deference to the Judicial Branch in 1980 by essentially allowing it to self-police the conduct of its members with little input from Congress, who the Framers entrusted with oversight of the Judiciary.

"I was pleased that the late Chief Justice Rehnquist took these concerns seriously and in May of 2004 appointed 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. Justice Breyer has updated me on the Commission's progress and I'm hopeful the Commission's recommendations will complement nicely this legislative effort to establish an Inspector General for the Judiciary."

"However, I was troubled to read recently in a Washington Post article that a number of federal judges have continued to violate applicable ethical rules and others have failed to make proper disclosures for travel to resorts on expense-paid trips. These are exactly the concerns that I have expressed before about the self-policing enforcement system governing federal judges. Such behavior undermines the public's perception of our judicial system and the fairness and respect that are needed to instill confidence in our judiciary.

"Given this poor record of performance in self-policing, I am proposing to create an independent Inspector General who will be responsible for reporting to both the Chief Justice and to Congress on a number of relevant issues, including compliance with ethical and financial disclosure requirements, so that we can assess whether the judicial self-policing system actually works.

Summary of The Judicial Transparency and Ethics Enhancement Act of 2006 Introduced in the House:

- Establishes the Office of Inspector General for the Judicial Branch, who shall be appointed by the Chief Justice of the Supreme Court.
- The duties of the Inspector General are: (1) to conduct investigations of possible misconduct of judges in the judicial branch (other than the Supreme Court) that may require oversight or other action by Congress; (2) to conduct and supervise audits and investigations; (3) to detect waste, fraud and abuse; and (4) to recommend changes in laws or regulations governing the Judicial Branch.
- The powers of the Inspector General are: (1) to make investigations and reports; (2) to obtain information or assistance from any Federal, State or local agency, or other entity, or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial council of circuits, the administrative office of United States courts, and the United States Sentencing Commission; (3) to require, by subpoena or otherwise, the attendance for the taking of testimony of any witnesses and the production of any documents, which shall be enforceable by civil action; (4) to administer or to take an oath or affirmation from any person; (5) to employ officers and employees; (6) to obtain all necessary services; and (7) to enter into contracts or other arrangements to obtain services as needed.
- The Inspector General is required: (1) to provide the Chief Justice and Congress with an annual report on the Inspector General's operations; (2) to make prompt reports to the Chief Justice and to Congress on matters which may require further action; and (3) to refer to the Department of Justice any matter that may constitute a criminal violation.

####

109TH CONGRESS
2D SESSION

H. R. 5219

To amend title 28, United States Code, to provide for the detection and prevention of inappropriate conduct in the Federal judiciary.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Mr. SENSENBRENNER (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend title 28, United States Code, to provide for the detection and prevention of inappropriate conduct in the Federal judiciary.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Judicial Transparency and Ethics Enhancement Act of 2006".

SEC. 2. INSPECTOR GENERAL FOR THE JUDICIAL BRANCH.

(a) **CREATION AND DUTIES.**—Part III of title 28, United States Code, is amended by adding at the end the following:

"CHAPTER 60—INSPECTOR GENERAL FOR THE JUDICIAL BRANCH

“§ 1021. Establishment

“There is established for the judicial branch of the Government the Office of Inspector General for the Judicial Branch (hereinafter in this chapter referred to as the ‘Office’).

“§ 1022. Appointment of Inspector General

“The head of the Office shall be the Inspector General, who shall be appointed by the Chief Justice of the United States after consultation with the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives.

“§ 1023. Duties

“With respect to the Judicial Branch, other than the United States Supreme Court, the Office shall—

> “(1) conduct investigations of matters pertaining to the Judicial Branch, including possible misconduct in office of judges and proceedings under chapter 16 of this title, that may require oversight or other action within the Judicial Branch or by Congress;
>
> “(2) conduct and supervise audits and investigations;
>
> “(3) prevent and detect waste, fraud, and abuse; and
>
> “(4) recommend changes in laws or regulations governing the Judicial Branch.

“§ 1024. Powers

“In carrying out the duties of the Office, the Inspector General shall have the power—

> “(1) to make investigations and reports;

"(2) to obtain information or assistance from any Federal, State, or local governmental agency, or other entity, or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial councils of circuits, the Administrative Office of the United States Courts, and the United States Sentencing Commission;

"(3) to require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence memoranda, papers, and documents, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by civil action;

"(4) to administer to or take from any person an oath, affirmation, or affidavit;

"(5) to employ such officers and employees, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

"(6) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code; and

"(7) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the duties of the Office.

"§ 1025. Reports

"(a) **WHEN TO BE MADE**.—The Inspector General shall—

"(1) make an annual report to the Chief Justice and to Congress relating to the activities of the Office; and

"(2) make prompt reports to the Chief Justice and to Congress on matters that may require action by them.

"(b) **SENSITIVE MATTER**.—If a report contains sensitive matter, the Inspector General may so indicate and Congress may receive that report in

closed session.

"(c) **DUTY TO INFORM ATTORNEY GENERAL.**—In carrying out the duties of the Office, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

"§ 1026. Whistleblower protection

"(a) **IN GENERAL.**—No officer, employee, agent, contractor or subcontractor in the Judicial Branch may discharge, demote, threaten, suspend, harass or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding any possible violation of Federal law or regulation, or misconduct, by a judge or any other employee in the Judicial Branch, which may assist the Inspector General in the performance of duties under this chapter.

"(b) **CIVIL ACTION.**—An employee injured by a violation of subsection (a) may, in a civil action, obtain appropriate relief.".

(b) **CLERICAL AMENDMENT.**—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following new item:

"60. Inspector General for the Judicial Branch.".

109TH CONGRESS
2D SESSION

S. 2678

To amend title 28, United States Code, to provide for the detection and prevention of inappropriate conduct in the Federal judiciary.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2006

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 28, United States Code, to provide for the detection and prevention of inappropriate conduct in the Federal judiciary.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Judicial Transparency and Ethics Enhancement Act of 2006''.

SEC. 2. INSPECTOR GENERAL FOR THE JUDICIAL BRANCH.

(a) ESTABLISHMENT AND DUTIES.—Part III of title 28, United States Code, is amended by adding at the end the following:

"CHAPTER 60—INSPECTOR GENERAL FOR THE JUDICIAL BRANCH

"§ 1021. Establishment

''There is established for the judicial branch of the Government the Office of Inspector General for the Judicial Branch (in this chapter referred to as the 'Office').

"§ 1022. Appointment of Inspector General

''The head of the Office shall be the Inspector General. The Inspector General shall be appointed by the Chief Justice of the United States after consultation with the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives.

"§ 1023. Duties

''With respect to the Judicial Branch, the Office shall—

''(1) conduct investigations of matters pertaining to the Judicial Branch, including possible misconduct in office of justices and judges and proceedings under chapter 16 of this title, that may require oversight or other action within the Judicial Branch or by Congress;

''(2) conduct and supervise audits and investigations;

''(3) prevent and detect waste, fraud, and abuse; and

''(4) recommend changes in laws or regulations governing the Judicial Branch.

''§ 1024. Powers

''In carrying out the duties of the Office, the Inspector General shall have the power to—

''(1) make investigations and reports;

''(2) obtain information or assistance from any Federal, State, or local governmental agency, or other entity or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial councils of circuits, the Administrative Office of the United States Courts, and the United States Sentencing Commission;

''(3) require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memoranda, papers, and documents, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by civil action;

''(4) administer to or take from any person an oath, affirmation, or affidavit;

''(5) employ such officers and employees, subject to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

''(6) obtain services as authorized by section 3109 of title 5 at daily rates not to exceed the equivalent rate prescribed for a position at level IV of the Executive Schedule under section 5315 of title 5; and

''(7) the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the duties of the Office.

''§ 1025. Reports

''(a) SUBMISSION.—The Inspector General shall—

''(1) submit an annual report to the Chief Justice and to Congress relating to the activities of the Office; and

''(2) submit prompt reports to the Chief Justice and to Congress on matters that may require action by the Chief Justice or Congress.

''(b) SENSITIVE MATTER.—If a report contains sensitive matter, the Inspector General may so indicate and Congress may receive that report in closed session.

''(c) DUTY TO INFORM ATTORNEY GENERAL.—In carrying out the duties of the Office, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

''§ 1026. Whistleblower protection

''(a) IN GENERAL.—No officer, employee, agent, contractor, or subcontractor in the Judicial Branch may discharge, demote, threaten, suspend, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding any possible violation of Federal law or regulation, or misconduct, by a judge or any other employee in the Judicial Branch, which may assist the Inspector General in the performance of duties under this chapter.

''(b) CIVIL ACTION.—An employee injured by a violation of subsection (a) may, in a civil action, obtain appropriate relief.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following:

''60. Inspector General for the Judicial Branch.''.

○

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

http://judiciary.house.gov/

News Advisory

For immediate release
June 28, 2006

Contact: Jeff Lungren/Terry Shawn
202-225-2492

Crime Subcommittee Hearing Thursday on Bill Establishing a Judicial Branch Inspector General

What: **Legislative Hearing on H.R. 5219, the "Judicial Transparency and Ethics Enhancement Act of 2006"**
Who: **Subcommittee on Crime, Terrorism and Homeland Security - Rep. Howard Coble (R-N.C.), Chairman**
When: **11:30 a.m. Thursday, June 29, 2006**
Where: **2141 Rayburn Building**

The Constitution gives Congress oversight responsibility for both the executive and judicial branches. In 1980, Congress enacted the Judicial Councils Reform and Judicial Conduct and Disability Act to allow citizens to file complaints against federal judges for misconduct. The law permits the federal Judiciary to judge its own, in that complaints are reviewed by the chief judge of the relevant circuit, and in more serious cases, judicial councils within the circuit. Sanctions can range from restrained responses to a Judicial Conference recommendation that an offending judge be impeached.

PROBLEMS...

- ✓ **Conflict of interest and federal recusal statutes** – The two federal recusal statutes are rarely used. In 2003, federal appeals court judges presided over at least seven lawsuits while they or their spouses owned stock in a company involved in the case or had other financial ties to one of the parties. Practicing attorneys and litigants anecdotally suggest they fear offending a presiding judge who may retaliate in future legal proceedings.
- ✓ **Disclosure of private travel** – Numerous Federal judges are not complying with Federal law which requires judges to disclose annually private gifts of more than $250.
- ✓ **Waste, Fraud and Abuse** – Congress appropriates hundreds of millions of dollars each year for the Federal Judicial Branch, yet there is little transparency and information about how this money is spent.

THIS LEGISLATION WOULD...

- ✓ Establish an independent Inspector General (IG) for the Judicial Branch, modeled after Inspector Generals that exist for various executive branch departments. **The Judicial IG would not have any authority or jurisdiction over the substance of a judge's opinions.**
- ✓ Proscribe the IG's duties to include: 1) conducting investigations of matters relating to the Judicial branch (other than the Supreme Court), including possible judicial misconduct that may require oversight or other action by Congress; 2) conducting and supervising audits and investigations; 3) preventing and detecting waste, fraud, and abuse; and 4) recommending changes in laws or regulations governing the Judicial Branch.

WITNESSES: **Sen. Charles Grassley**, (R-Iowa); **Mr. Ronald Rotunda,** Professor of Law, George Mason University School of Law; **Mr. Arthur Hellman**, Professor of Law, University of Pittsburgh School of Law; and **Mr. Charles Geyh,** Professor of Law, Indiana University School of Law at Bloomington.

#####

Statement of Chairman Howard Coble Subcommittee on Crime, Terrorism, and Homeland Security Legislative Hearing on H.R. 5219, "The Judicial Transparency and Ethics Enhancement Act of 2006" June 29, 2006

Good morning. I want to welcome everyone to this important hearing before the Subcommittee on Crime, Terrorism and Homeland Security to examine H.R. 5219, the Judicial Transparency and Ethics Enhancement Act of 2006, introduced by the Chairman of the Judiciary Committee, Mr. Sensenbrenner.

Integrity and accountability within our federal courts is a critically important issue for me and has been for some time. In 2001, as Chairman of the Courts, Internet and Intellectual Property Subcommittee, I chaired a hearing on the operation of the Judicial Conduct and Disability Act of 1980 and the relevant recusal statutes.

The 1980 Act created a decentralized framework of self-regulation whereby complaints of judicial misconduct are reviewed by the chief judge of the relevant circuit or, in more serious cases, judicial councils within the circuit. We learned from the hearing that the complaint process was largely un-publicized and that transparency issues persisted, particularly with regards to conflicts of interest.

As a follow-up to the 2001 hearing, Representative Berman and I wrote to Chief Justice William Rehnquist offering several recommendations to improve the application of the 1980 Act and the recusal statutes. The Judicial Conference responded to two of these recommendations in its September 2002 report.

In recent years, there have been disturbing reports that a number of federal judges are continuing to violate ethical rules, including disclosure requirements, or are engaging in judicial misconduct. Equally troubling is the lackluster response from the circuits in self-policing this behavior. It is clear that we can no longer rely on the 1980 Act and I share the Chairman's concern on this issue.

H.R. 5219 establishes an independent Inspector General within the Judicial Branch who is appointed by and reports directly to the Chief Justice of the United States. The Inspector General will conduct investigations of complaints of judicial misconduct, conduct and supervise audits, detect and prevent waste, fraud, and abuse, and recommend changes in laws or regulations governing the Judicial Branch.

The creation of an Inspector General is not a radical idea. Inspectors General exist in over 60 Executive agencies, boards and commissions, and Congress as well. They shine a light on the internal operations of these entities in order to prevent fraud and improve efficiency and accountability. There is no reason why the Judicial Branch should be exempt from this type of oversight.

As Chairman Sensenbrenner emphasized when he introduced this bill, the Inspector General will not have any authority or jurisdiction over the substance of a judge's opinion. Judicial independence in rendering decisions is a critical component of the separation of powers that must not be tampered with. However, unethical behavior and misconduct must be taken seriously to maintain the public's confidence in the judiciary.

I look forward to hearing from today's witnesses. I now yield to the ranking Member of this Subcommittee, the gentleman from Virginia, Mr. Bobby Scott.

TESTIMONY OF
SENATOR CHUCK GRASSLEY
BEFORE THE HOUSE JUDICIARY COMMITTEE
ON THE
JUDICIAL TRANSPARENCY AND ETHICS ENHANCEMENT ACT OF 2006, JUNE 29, 2006

Chairman Coble, it's a pleasure for me to be here today to discuss HR 5219, the Judicial Transparency and Ethics Enhancement Act of 2006. I introduced the companion bill in the Senate. I'm hopeful we can move forward with this legislation, because it'll go a long way in helping restore the American people's trust in our judicial system.

The federal judiciary is supposed to engage in self regulation on ethics issues. But ever since I chaired the Senate Judiciary Subcommittee on Administrative Oversight and the Courts in the early 1990s, concerns have been raised about compliance with the judicial ethics rules and whether the judiciary can adequately police itself on these matters. Concerns about alleged ethics violations, conflicts of interests, and appearances of impropriety by judges continue to be reported by the press.

Now, I don't know whether or not these lapses were intentional. I don't know whether these instances were violations of the judicial ethics rules, the ethics statute, or the judicial code of conduct. But it doesn't look like the judiciary is acting fast enough to show us that judges are crossing all their "T"s and dotting all their "I"s, or that the rules work as well as they should. I'm sorry to say that these allegations don't instill much confidence in me, and I'm sure that they don't instill much confidence in the American people. I know that mistakes happen, but there are enough questions out there for me to conclude that some sort of action is necessary. In my mind, the judiciary hasn't done enough to reassure the public that it is doing all that it can to address what are perceived to be cracks in the system.

The bottom line is that no one is above the law. The President isn't above the law. Congressmen and Senators aren't above the law. And our judges aren't above the law either.

The facts do show us that the institution of the Inspector General has been crucial in detecting, exposing and deterring problems within our government. The job of the Inspector General is to be the first line of defense against fraud, waste and abuse. In collaboration with whistleblowers, Inspectors General have been extremely effective in their efforts to expose and help correct wrongs.

That's why, during my 30 years on Capitol Hill, I've worked hard to strengthen the oversight role of Inspectors General throughout the federal government. I've come to rely on IGs and whistleblowers to ensure that our tax dollars are spent according to the letter and spirit of the law. And when that doesn't happen, we in Congress need to know about it and take corrective action.

I truly believe that an Inspector General is just the right kind of medicine that the federal judiciary needs to ensure that it is complying with the ethics rules. An independent IG, one with integrity and courage, will help root out waste, fraud and abuse. And the reality is that if we establish internal controls, those controls can help make sure that these problems don't happen in the first place.

Now, I know that some people think that there is no need for a judiciary IG. They believe that the current system of self policing is adequate. In addition, some believe that we can just legislate certain rules for the judiciary, and that will fix the problems that we are seeing. But, legislation is one thing; ensuring accountability is another.

The judiciary's current self policing system is just not up to snuff. There are too many questions about how conflicts and financial interests are reported and how recusal lists are compiled and kept up to date. There are too many questions as to whether the judiciary's current policy – which I understand is not uniform throughout the courts – is as effective as it can be. Transparency can only make the system better and make our judges more accountable to the people. But there isn't a lot of transparency with the current system. I agree with some of my colleagues that one way to ensure that the ethics rules are being followed is to allow more transparency with respect to a judge's financial holdings and conflicts. Improved access to judges' financial information, as well as judges' recusal lists, would promote transparency and place a check on the judiciary.

But beyond that, an independent office of Inspector General within the judicial branch can do a lot to keep the federal judiciary on its toes and up to par with the standards that are expected of it.

And the proof is in the pudding. The institution of the IG in various agencies has significantly increased accountability to the public. Based on their oversight role, as well as oversight activity by the Congress and the GAO, many agencies have improved internally and have prevented more waste, fraud and abuse from happening. An internal Inspector General is a simple, commonsense internal control and check on internal impropriety. An internal watchdog also acts as a deterrent for improper activity.

Further, an Inspector General's Office can do a better job when it has the cooperation of employees who aren't afraid to raise concerns about internal misconduct. Whistleblowers help strengthen and keep the public trust. Whistleblowers who step forward and put their careers and reputations on the line in defense of the truth deserve to be protected, not retaliated against. Providing whistleblower protections to judicial branch employees will only help our judiciary function better.

The Judicial Transparency and Ethics Enhancement Act is a straightforward bill. It would establish an Office of Inspector General for the judicial branch. The IG would be appointed by the Chief Justice of the Supreme Court, in consultation with the House of Representatives and the Senate. The IG's responsibilities would include conducting investigations of possible judicial misconduct, investigating waste fraud and abuse, and recommending changes in laws and regulations governing the federal judiciary. The bill would require the IG to provide the Chief Justice and Congress with an annual report on its activities, as well as refer matters that may constitute a criminal violation to the Department of Justice. In addition, the bill establishes whistleblower protections for judicial branch employees.

Ensuring a fair and independent judiciary is critical to our Constitutional system of checks and balances. Judges are supposed to maintain an appearance of impartiality. They're supposed to be free from conflicts of interest. An independent watchdog for the federal judiciary will help judges comply with the ethics rules and promote credibility within the judicial branch of government. Whistleblower protections for judiciary branch employees will help keep the judiciary accountable. The Judicial Transparency and Ethics Enhancement Act will not only ensure continued public confidence in our federal courts and keep them beyond reproach, it will strengthen our judicial branch.

Again, I want to thank Chairman Coble and his colleagues for allowing me to testify on this important bill.

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

http://judiciary.house.gov/

News Advisory

For immediate release
September 27, 2006

Contact: Jeff Lungren/Terry Shawn
202-225-2492

Judiciary Committee Overwhelmingly Approves Legislation Establishing an Inspector General for the Judicial Branch

Independent IG Would Address Waste, Fraud, and Abuse and Investigate Alleged Misconduct

WASHINGTON, D.C. – The House Judiciary Committee today overwhelmingly approved legislation establishing an independent Inspector General (IG) for the Judicial Branch by a 20-to-6 vote. The Judicial IG, though more limited in power than the more than 60 IGs currently serving in agencies and other places, would be charged with identifying waste, fraud, and abuse in the Federal Judiciary's $6 billion annual budget as well as investigating alleged misconduct under the "Judicial Conduct and Disability Act of 1980." H.R. 5219 "The Judicial Transparency and Ethics Enhancement Act of 2006," now moves to House floor for consideration.

House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-Wis.), the sponsor of H.R. 5219, stated, "**An overwhelming number of my colleagues today recognized that an independent Judicial IG will improve the spending, operations, and integrity of the Federal Judiciary.** Currently there is no auditor for how the Federal Judiciary spends its money. An independent IG can help the courts eliminate wasteful spending and more efficiently administer the judiciary's six billion dollar budget."

"As the Breyer Committee reported last week, the Judicial Branch has mishandled close to 30 percent of its high-profile complaints, including four complaints referred by the Judiciary Committee following extensive oversight. In recent years, there have been numerous disturbing reports that Federal judges have violated ethical rules, including disclosure and recusal requirements for conflicts of interest, or engaged in judicial misconduct. These violations threaten a foundation of our judicial system: an unbiased, impartial arbiter. An IG will bolster this foundation by ensuring better compliance," added Chairman Sensenbrenner.

The Committee adopted by voice vote a substitute amendment offered by Chairman

Sensenbrenner to clarify the role of the Inspector General. **The legislation now explicitly prohibits the Inspector General from investigating or reviewing the merits of a judicial decision.** The substitute also significantly narrows the investigatory powers of the Inspector General to only alleged misconduct under the "Judicial Conduct and Disability Act of 1980." The bill originally authorized the IG to investigate all "matters pertaining to the Judicial Branch."

The legislation approved today delays an IG investigation until **after** the judiciary has conducted its review of an ethical complaint under the 1980 Act. This will prevent simultaneous and potentially burdensome investigations. Finally, the substitute establishes a specific term of service for the Inspector General, gives the Chief Justice express authority to remove the IG from office, and emphasizes the IG's reporting function by prohibiting the IG from punishing or disciplining a judge or court.

Summary of The Judicial Transparency and Ethics Enhancement Act of 2006:

- Establishes the Office of Inspector General for the Judicial Branch, who shall be appointed by the Chief Justice of the Supreme Court.
- The duties of the Inspector General are: (1) to conduct investigations of possible misconduct of judges in the judicial branch (other than the Supreme Court) that may require oversight or other action by Congress; (2) to conduct and supervise audits and investigations; (3) to detect waste, fraud and abuse; and (4) to recommend changes in laws or regulations governing the Judicial Branch.
- The powers of the Inspector General are: (1) to make investigations and reports; (2) to obtain information or assistance from any Federal, State or local agency, or other entity, or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial council of circuits, the administrative office of United States courts, and the United States Sentencing Commission; (3) to require, by subpoena or otherwise, the attendance for the taking of testimony of any witnesses and the production of any documents, which shall be enforceable by civil action; (4) to administer or to take an oath or affirmation from any person; (5) to employ officers and employees; (6) to obtain all necessary services; and (7) to enter into contracts or other arrangements to obtain services as needed.
- The Inspector General is required: (1) to provide the Chief Justice and Congress with an annual report on the Inspector General's operations; (2) to make prompt reports to the Chief Justice and to Congress on matters which may require further action; and (3) to refer to the Department of Justice any matter that may constitute a criminal violation.

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FEDERAL COURTS

Judges impose secrecy on ethics-rules revision

Secrecy on the rewriting of federal misconduct rules is only deepening suspicions among critics who say judges have failed to police themselves adequately.

By MARISA TAYLOR
mtaylor@mcclatchydc.com

WASHINGTON --
Judiciary Committee, calling a mistake the decision to keep rule-change comments secret

As the federal judiciary embarks on a historic revision of its rules against judicial misconduct, the panel of judges that is overseeing the drafting of new regulations refuses to disclose the public comments that could help shape the overhaul.

After requesting public comments about the proposed rules, the Committee on Judicial Conduct and Disability refuses to say how many responses it received, who commented or what was said.

"I have never heard of public comments being made confidentially," said Abner Mikva, a retired chief judge of the U.S. Court of Appeals for the District of Columbia Circuit. ``I'm trying to think of an explanation, but this strikes me as very strange."

What's known is that several chief circuit judges across the country are among those who weighed in, sparking speculation that the judiciary is debating the merits of the proposed rules, which would impose unprecedented oversight over how federal courts handle complaints.

BEHIND CLOSED DOORS

Legal experts said they weren't surprised by the reticence to release the information. By tradition and necessity, the federal judiciary often weighs some of its most important decisions behind closed doors and without public input.

Such secrecy, however, threatens to overshadow what's supposed to be the most sweeping tightening of federal judicial-misconduct policies in a quarter of a century.

Some watchdog groups questioned whether the panel's decision to withhold the comments was intended to prevent the disclosure of details of misconduct or to hide unhappiness among judges about having to comply with new rules.

The proposed rules provide strict oversight from Washington and require judges to leave much more detailed paper trails explaining their decisions about whether to investigate misconduct, experts said.

HABIT OF SECRECY

The judiciary previously has been criticized for imposing secrecy in matters that would more appropriately be discussed openly.

Earlier this year, court officials initially refused to disclose details about the sponsors of expenses-paid trips for judges, as new ethics rules require.

"It shows how difficult it is to wean the judiciary off its habits of confidentiality and keeping things to themselves," said Arthur Hellman, a professor who specializes in federal judicial ethics at the University of Pittsburgh School of Law. 'It's so deeply engrained that their first reaction is always, `No, no, that's not for public circulation.' "

The decision to keep the written responses under wraps comes as the judiciary is under growing pressure from Congress to provide a better public explanation of how it handles misconduct complaints.

Legislators, advocacy groups and legal experts said that withholding the written responses would only add to suspicions about the often-secretive misconduct proceedings.

Rep. James Sensenbrenner of Wisconsin, a Republican member of the House Judiciary Committee, called the decision a mistake.

"By releasing them, the judicial branch would have credibility that it is responding to the failure of its own procedures," he said.

The changes come in response to criticism that federal judges have failed to police themselves adequately. Last year, a panel overseen by Supreme Court Justice Stephen Breyer concluded that judges who handled five of 17 high-profile complaints had failed to investigate them properly, although it didn't find the problem to be systemic.

COMPLAINTS REJECTED

In the last five years, the judiciary closed 3,532 complaints but took action against judges in only four cases. In defending the high dismissal rate, judges point out that a large number of misconduct complaints are filed by people who misunderstand or abuse the process. Often, litigants who have lost their cases file misconduct complaints when they should be appealing the decisions to higher courts. Accusations of conflict of interest also are generally handled separately in recusal requests.

But critics said they thought that the judiciary might be failing to punish some judges either because the threshold for misconduct was too low or because matters weren't being investigated thoroughly.

Sensenbrenner and Republican Sen. Charles Grassley of Iowa have proposed legislation to create an inspector general's office that would independently investigate allegations of judicial misconduct. The judiciary opposes the idea, which Grassley said demonstrated that some judges ``see themselves like gods who are above criticism.''

INCOMPLETE DETAILS

Pittsburgh's Hellman praised the new rules but told the committee that they don't go far enough in requiring details about complaints.

In several cases, circuit courts have provided few details or written vague opinions about judges who are punished for misconduct. In September, the 5th U.S. Circuit Court of Appeals reprimanded U.S. District Judge Samuel B. Kent in Galveston, Texas, but didn't specify his punishment or detail what he did wrong. Publicly, at least one female court employee has accused him of sexual harassment.

Report of the National Commission on Judicial Discipline and Removal

Robert W. Kastenmeier (Chair)
1993, 210 pages
(Out of Print: Archival Copy on File)

In 1990, Congress created the National Commission on Judicial Discipline and Removal, who's charge included investigation of problems related to the discipline and removal of life-tenured federal judges, and evaluation of alternatives to current arrangements for judicial discipline and removal, including statutory and constitutional amendments. The Commission was instructed to submit its findings and recommendations to the President, Congress, and the Chief Justice of the United States. The Commission held six public hearings during 1992 and 1993, and submitted its final report on August 2, 1993.

The Federal Judicial Center serves as repository for the Commission's published materials. Although paper copies of the Commission's final report are no longer available, the report is reprinted at 152 Federal Rules Decisions 265 (1994).

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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

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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

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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

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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

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Probation and Parole in the United States, 2006

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The number of adult men and women in the United States who were being supervised on probation or parole at the end of 2006 reached 5,035,225, up from 3,757,282 on December 31, 1995. These data were collected in the Bureau of Justice Statistics' (BJS) 2006 Annual Probation Survey and 2006 Annual Parole Survey.

Probationers are criminal offenders who have been sentenced to a period of correctional supervision in the community in lieu of incarceration. Parole is a period of conditional supervised release following a prison term.

In 2006 the combined probation and parole populations grew by 1.8% or 87,852 persons. The growth in 2006 was slower than the average annual increase of 2.2% since 1995. Over the past 11 years, the total population under community supervision increased by over 1 million offenders, based on comparable reporting agencies. It excludes 236,014 probationers under the supervision of agencies added since 1995. (See *Methodology*.)

More than 8 in 10 offenders under community supervision were on probation at yearend 2006

About 84% of the community supervision population was on probation at yearend 2006. Since 1995 (82%) the proportion of offenders on probation increased as a percentage of the total community supervision population.

During 2006 the probation population grew by 1.7% which represented an increase of 70,266 probationers. This was the largest growth since 2002 when the population increased 2.3% or 92,336 probationers.

Annual probation population and entries to probation, 1995-2006

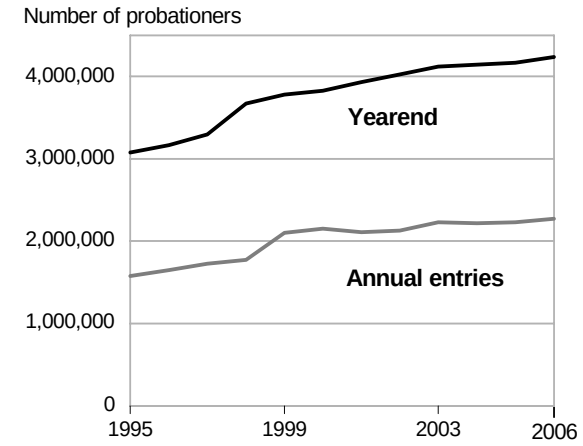

Figure 1

Probation population grew by 923,100 persons since 1995

The probation population increased from 3,077,861 in 1995 to 4,237,023 in 2006 (figure 1). Based on comparable reporting agencies from 1995 to 2006, the probation population grew by 923,100 persons or 30%.

Between 1995 and 2006 the number entering probation supervision exceeded the number exiting and the probation population continued to grow. Entries increased from 1.6 million in 1995 to 2.3 million in 2006. Exits rose from 1.5 million to 2.2 million during this same 11-year period. Both entries and exits increased an average of 3.4% annually between 1995 and 2006.

Nearly a quarter of probationers who entered supervision during 2006 received a probation sentence combined with incarceration

Seventy percent of the estimated 2.3 million probationers who entered supervision during 2006 were sentenced to probation without a term of incarceration. Nearly a quarter of probationers received a combined probation and incarceration sentence.

Indiana reported detailed data for type of entry in 2006, but not in 2000. Based on comparable reporting methods in 2000 and 2006, almost 8 in 10 probationers entered supervision without incarceration while 1 in 6 received a sentence to probation combined with incarceration in both years.

	Percent of adults entering probation		
		2006	
Type of entry	2000	Reported	Comparable
Without incarceration	79%	70%	78%
With incarceration	16	24	16
Other types	5	6	6
Total estimated entries	2,153,300	2,272,300	2,272,300

Nearly 1 in 5 probationers who exited from supervision in 2006 were incarcerated

Since 2000 the total estimated number of probationers exiting supervision annually increased from 2,095,200 to 2,201,800 in 2006 (table 1). During this same time, the percentage of probationers who completed their full-term sentence or were discharged early declined, from 60% in 2000 to 57% in 2006.

Eighteen percent of probationers who exited supervision during 2006 were incarcerated. Nine percent were incarcerated due to a rule violation and 4% were incarcerated because of new offense.

	Percent of adults exiting probation	
Type of exit	2000	2006
Completions	60%	57%
Incarceration	15	18
With new sentence	3	4
With the same sentence	8	9
Other/Unknown	4	5
Absconder	3	4
Discharge to custody, detainer, or warrant	1	1
Other unsatisfactory	11	12
Death	1	1
Other	9	6
Total estimated exits	2,095,200	2,201,800

Over 7.2 million persons on probation or parole or incarcerated in jail or prison at yearend 2006

During 2006 the total Federal, State, and local adult correctional population — incarcerated or in the community — grew by 159,500 persons to over 7.2 million. The growth of 2.3% during the year was about the same as the average annual increase in the correctional population since 1995 (2.5%). About 3.2% of the U.S. adult population, or 1 in every 31 adults, were incarcerated or on probation or parole at yearend 2006.

Since 1995 the jail population was the fastest growing correctional population, with an average annual increase of 3.8%, followed by prison (3.0%), probation (2.4%), and parole (1.5%). Based on data from comparable reporting agencies, between 1995 and 2006 the correctional population increased by over 1.6 million offenders or 31%. Probationers accounted for more than half (57% or 923,100 offenders) of the growth. As a percentage of the correctional population, offenders under community supervision accounted for 69% of the total in 2006, while those incarcerated accounted for 31%. These percentages were almost unchanged from 1995 (70% and 30%, respectively).

Number of persons under correctional supervision, 1995, 2000-06

Year	Total estimated correctional population[a]	Community supervision		Incarceration	
		Probation	Parole	Jail	Prison
1995	5,342,900	3,077,861	679,421	507,044	1,078,542
2000	6,445,100	3,826,209	723,898	621,149	1,316,333
2001	6,581,700	3,931,731	732,333	631,240	1,330,007
2002	6,758,800	4,024,067	750,934	665,475	1,367,547
2003	6,883,200	4,073,987	774,588	691,301	1,390,279
2003 (revised)[b]	6,924,500	4,120,012	769,925	691,301	1,390,279
2004	6,995,100	4,143,792	771,852	713,990	1,421,345
2005	7,051,900	4,166,757	780,616	747,529	1,448,344
2006	7,211,400	4,237,023	798,202[c]	766,010	1,492,973
Percent change, 2005-2006	2.3%	1.7%	2.3%	2.5%	3.1%
Average annual percent change, 1995-2006[d]	2.5%	2.4%	1.5%	3.8%	3.0%

Note: Counts of probationers, parolees, and prisoners are for December 31. All jail counts are for June 30. Jail and prison counts include inmates held in private facilities. Totals in 2005 and 2006 exclude probationers and parolees held in jail or prison. Totals in 2000 through 2004 only exclude probationers held in jail or prison.

[a]Because some offenders may have multiple statuses, totals were rounded to the nearest 100.

[b]Due to changes in reporting, total probation and parole counts include estimated counts for Massachusetts, Pennsylvania, and Washington based on reporting methods comparable to 2004.

[c]Illinois did not provide data for 2006; therefore, all data for Illinois were estimated. See *Methodology*.

[d]Percent change is based on comparable reporting agencies, excluding 236,014 probationers from agencies added since 1995. See *Methodology*.

Table 1. Adults on probation, 2006

Region and jurisdiction	Probation population, 1/1/2006	2006 Entries Reported	2006 Entries Imputed[a]	2006 Exits Reported	2006 Exits Imputed[a]	Probation population 12/31/2006	Percent change, 2006	Number on probation per 100,000 adult residents, 12/31/06
U.S. total	4,166,757	1,846,224	2,272,300	1,780,590	2,201,800	4,237,023	1.7%	1,868
Federal	25,473	12,462	12,462	13,415	13,415	24,491	-3.9%	11
State	4,141,284	1,833,762	2,259,800	1,767,175	2,188,400	4,212,532	1.7	1,857
Northeast	699,933	195,542	260,500	201,456	262,000	698,428	-0.2%	1,657
Connecticut[b]	52,835	29,959	29,959	28,283	28,283	54,511	3.2	2,027
Maine	8,052	3,457	3,457	3,590	3,590	7,919	-1.7	760
Massachusetts	167,960	86,944	86,944	85,382	85,382	169,522	0.9	3,396
New Hampshire	4,615	3,845	3,845	3,870	3,870	4,590	-0.5	450
New Jersey	139,091	24,896	24,896	31,351	31,351	132,636	-4.6	1,995
New York	125,314	33,767	33,767	35,663	35,663	123,418	-1.5	834
Pennsylvania[c]	167,520	2,391	67,400	2,136	62,700	172,184	2.8	1,784
Rhode Island[b]	25,613	5,794	5,794	5,390	5,390	26,017	1.6	3,142
Vermont[b]	8,933	4,489	4,489	5,791	5,791	7,631	-14.6	1,554
Midwest	975,228	483,825	636,600	463,939	619,700	992,920	1.8%	1,981
Illinois[b,c]	143,136	**	60,600	**	62,800	141,000	-1.5	1,461
Indiana[b]	117,960	96,356	96,356	93,895	93,895	120,421	2.1	2,533
Iowa	23,404	14,716	14,716	15,498	15,498	22,622	-3.3	993
Kansas	15,010	19,835	19,835	19,327	19,327	15,518	3.4	748
Michigan[c]	180,290	78,534	137,300	78,521	135,000	182,650	1.3	2,398
Minnesota	118,878	88,735	88,735	80,324	80,324	127,289	7.1	3,243
Missouri[b]	53,614	24,116	24,116	22,767	22,767	54,963	2.5	1,237
Nebraska	18,468	15,338	15,338	15,075	15,075	18,731	1.4	1,410
North Dakota	4,085	2,947	2,947	2,729	2,729	4,303	5.3	875
Ohio[b,c]	240,706	113,645	147,000	107,990	144,600	243,956	1.4	2,799
South Dakota	5,308	3,440	3,440	3,087	3,087	5,661	6.7	959
Wisconsin	54,369	26,163	26,163	24,726	24,726	55,806	2.6	1,311
South	1,685,782	745,553	928,900	728,171	911,200	1,702,430	1.0%	2,060
Alabama[b,d]	48,607	23,658	23,658	16,499	16,499	55,766	14.7	1,592
Arkansas	30,735	10,349	10,349	9,576	9,576	31,508	2.5	1,478
Delaware	18,462	14,951	14,951	16,455	16,455	16,958	-8.1	2,592
District of Columbia	7,006	5,031	5,031	5,154	5,154	6,883	-1.8	1,480
Florida[b,c]	279,613	233,833	251,300	240,502	257,900	272,977	-2.4	1,925
Georgia[b,c,e]	414,409	54,793	213,600	44,681	205,200	422,790	2.0	6,059
Kentucky[b,c]	37,030	16,170	23,200	14,038	19,100	41,162	11.2	1,279
Louisiana	38,366	13,687	13,687	13,996	13,996	38,057	-0.8	1,186
Maryland	75,593	38,583	38,583	38,478	38,478	75,698	0.1	1,773
Mississippi	23,864	8,690	8,690	8,447	8,447	24,107	1.0	1,116
North Carolina[b]	111,626	62,752	62,752	63,959	63,959	110,419	-1.1	1,632
Oklahoma[b]	28,996	13,582	13,582	15,163	15,163	27,415	-5.5	1,016
South Carolina	39,308	14,401	14,401	15,356	15,356	38,353	-2.4	1,160
Tennessee[b]	48,631	26,761	26,761	21,811	21,811	52,558	8.1	1,136
Texas	430,301	179,448	179,448	177,782	177,782	431,967	0.4	2,515
Virginia[b]	45,589	27,951	27,951	25,396	25,396	48,144	5.6	820
West Virginia[b,c]	7,646	913	1,000	878	1,000	7,668	0.3	536
West	780,341	408,842	433,800	373,609	395,400	818,754	4.9%	1,579
Alaska	5,680	1,350	1,350	935	935	6,095	7.3	1,239
Arizona[b,c]	71,115	38,580	39,200	36,580	37,100	73,265	3.0	1,591
California[b]	388,260	203,747	203,747	190,300	190,300	401,707	3.5	1,486
Colorado[b,c]	56,438	30,328	33,700	24,071	27,100	63,032	11.7	1,743
Hawaii	16,825	6,453	6,453	4,680	4,680	18,598	10.5	1,870
Idaho[b,f]	43,712	39,836	39,836	34,939	34,939	48,609	11.2	4,482
Montana[b,c,d]	8,316	3,985	4,100	3,501	3,700	8,770	5.5	1,201
Nevada	12,616	6,683	6,683	6,091	6,091	13,208	4.7	699
New Mexico[b,c,d]	14,982	5,422	7,100	4,989	5,600	16,493	10.1	1,131
Oregon	43,606	18,185	18,185	16,541	16,541	45,250	3.8	1,580
Utah	10,083	5,403	5,403	5,060	5,060	10,426	3.4	586
Washington[b,c]	103,882	45,990	65,100	43,441	60,900	108,076	4.0	2,202
Wyoming	4,826	2,880	2,880	2,481	2,481	5,225	8.3	1,319

Note: Because of nonresponse or incomplete data, the probation population for some jurisdictions on December 31, 2006, does not equal the population on January 1, plus entries, minus exits. Rates were computed using the estimated adult resident population in each state on January 1, 2007. See *Methodology*.

**Not known.

[a]Details may not sum to totals because of rounding.

[b]Some or all detailed data were estimated.

[c]Data for entries and exits were estimated for non-reporting agencies. See *Methodology*.

[d]Due to a change in reporting, data are not comparable to previous years.

[e]Counts include private agency cases and may overstate the number of persons under supervision.

[f]Counts include estimates for misdemeanors based on admissions.

5 States accounted for over half of the growth in the probation population during 2006

Five States had an absolute increase of 4,500 or more in their probation population during 2006. California experienced the largest increase (13,400), followed by Minnesota (8,400), Alabama (7,200), Colorado (6,600), and Pennsylvania (4,700). These same 5 States accounted for 57% of the growth in the population during the year.

State	Absolute increase of 4,500 or more*	Percent of absolute increase, 2006
U.S. total	70,266	100%
Total	40,275	57
California	13,447	19
Minnesota	8,411	12
Alabama	7,159	10
Colorado	6,594	9
Pennsylvania	4,664	7

*Excludes Georgia which included probation case-based counts for private agencies, and Idado which estimated misdemeanors based on admissions.

Majority of probationers were male and white

At yearend 2006, 76% of probationers were male, down from 79% in 1995 (table 2). Since 1995 women have accounted for a larger percentage of the probation population (21% in 1995 compared to 24% in 2006).

The racial composition of the probation population has remained nearly stable since 1995. In both 1995 (53%) and 2006 (55%) the majority of probationers were white. Twenty-nine percent were black in 2006, nearly unchanged from 31% in 1995. Hispanic probationers comprised 13% of the population in 2006; 14% in 1995.

More than 7 in 10 probationers were non-violent offenders

Nearly three-quarters (73%) of probationers under supervision on December 31, 2006 were supervised for a non-violent offense, including more than a quarter for a drug law violation and a sixth for driving while intoxicated. Sixteen percent of probationers were convicted of a violent offense, including 3% for sexual assault, 4% for domestic violence, and 9% for assault other than domestic violence and sexual assault. Eleven percent of probationers were supervised for other unspecified offenses.

Parole population grew by 17,586 during 2006

At yearend 2006 a total of 798,202 adult men and women were on parole or mandatory conditional release following a prison term (table 3). The population grew by 17,586 parolees during the year or 2.3%. This was greater than the average annual increase of 1.5% since 1995.

Table 2. Characteristics of adults on probation, 1995, 2000, and 2006

Characteristic	1995	2000	2006
Total	100%	100%	100%
Gender			
Male	79%	78%	76%
Female	21	22	24
Race/Hispanic origin			
White*	53%	54%	55%
Black*	31	31	29
Hispanic or Latino	14	13	13
American Indian/Alaska Native*	1	1	1
Asian/Native Hawaiian/other Pacific Islander*	--	1	1
Two or more races*	...	...	--
Status of probation			
Direct imposition	48%	56%	58%
Split sentence	15	11	10
Sentence suspended	26	25	23
Imposition suspended	6	7	9
Other	4	1	1
Status of supervision			
Active	79%	76%	71%
Residential/other treatment program	...	...	1
Financial conditions remaining	...	...	2
Inactive	8	9	7
Absconder	9	9	9
Supervised out of State	2	3	3
Warrant status	...	...	6
Other	2	3	2
Type of offense			
Felony	54%	52%	49%
Misdemeanor	44	46	49
Other infractions	2	2	2
Most serious offense			
Sexual assault	...	...	3%
Domestic violence	...	...	4
Other assault	...	...	9
Burglary	...	...	5
Larceny/theft	...	...	13
Motor vehicle theft	...	...	1
Fraud	...	...	5
Drug law violations	...	24	27
Driving while intoxicated	16	18	16
Minor traffic offenses	...	6	6
Other	84	52	11

Note: Each characteristic includes persons of unknown type. Detail may not sum to total because of rounding.
--Less than 0.5%.
...Not available.
*Excludes persons of Hispanic origin.

Table 3. Adults on parole, 2006

Region and jurisdiction	Parole population, 1/1/06	2006 Entries Reported	2006 Entries Imputed[a]	2006 Exits Reported	2006 Exits Imputed[a]	Parole population, 12/31/06	Percent change, 2006	Number on parole per 100,000 adult residents, 12/31/06
U.S. total[b]	780,616	485,882	536,200	469,768	519,200	798,202	2.3%	352
Federal	86,852	41,922	41,922	39,230	39,230	89,438	3.0%	39
State[b]	693,764	443,960	494,300	430,538	480,000	708,764	2.2	313
Northeast	152,033	53,581	68,000	53,793	67,600	152,563	0.3%	362
Connecticut	2,571	2,845	2,845	2,849	2,849	2,567	-0.2	95
Maine	34	1	1	4	4	31	-8.8	3
Massachusetts[c]	3,579	4,619	4,619	5,120	5,120	3,223	-9.9	65
New Hampshire	1,402	628	628	409	409	1,621	15.6	159
New Jersey	13,874	10,373	10,373	9,842	9,842	14,405	3.8	217
New York	53,533	23,422	23,422	23,954	23,954	53,001	-1.0	358
Pennsylvania[d]	75,678	10,853	25,300	10,742	24,600	76,386	0.9	791
Rhode Island	302	379	379	317	317	364	20.5	44
Vermont[c,e]	1,060	461	461	556	556	965	-9.0	197
Midwest[b]	131,283	66,166	102,100	66,736	102,300	131,037	-0.2%	261
Illinois[c,f]	34,576	**	35,900	**	35,600	**	:	:
Indiana	7,295	7,555	7,555	6,900	6,900	7,950	9.0	167
Iowa	3,560	2,381	2,381	2,363	2,363	3,578	0.5	157
Kansas[e]	4,666	5,785	5,785	5,565	5,565	4,886	4.7	235
Michigan	19,978	10,713	10,713	12,205	12,205	18,486	-7.5	243
Minnesota	4,007	5,427	5,427	5,003	5,003	4,431	10.6	113
Missouri[c]	18,374	13,214	13,214	12,525	12,525	19,063	3.7	429
Nebraska	662	1,037	1,037	902	902	797	20.4	60
North Dakota	302	859	859	791	791	370	22.5	75
Ohio	19,512	9,712	9,712	11,621	11,621	17,603	-9.8	202
South Dakota	2,444	2,054	2,054	1,731	1,731	2,767	13.2	469
Wisconsin	15,907	7,429	7,429	7,130	7,130	16,206	1.9	381
South	235,061	108,255	108,255	105,356	105,356	237,821	1.2%	288
Alabama[c]	7,795	3,599	3,599	2,736	2,736	8,658	11.1	247
Arkansas[c]	16,666	8,731	8,731	6,992	6,992	18,405	10.4	863
Delaware	600	367	367	423	423	544	-9.3	83
District of Columbia	4,926	2,256	2,256	1,795	1,795	5,387	9.4	1,158
Florida[c]	4,785	6,474	6,474	6,469	6,469	4,790	0.1	34
Georgia	22,851	11,580	11,580	11,473	11,473	22,958	0.5	329
Kentucky[c]	10,162	7,034	7,034	5,329	5,329	11,867	16.8	369
Louisiana	24,072	13,689	13,689	13,098	13,098	24,663	2.5	769
Maryland	14,271	7,491	7,491	7,411	7,411	14,351	0.6	336
Mississippi	1,970	953	953	1,024	1,024	1,899	-3.6	88
North Carolina[c]	3,101	3,608	3,608	3,473	3,473	3,236	4.4	48
Oklahoma[c]	4,329	843	843	2,100	2,100	3,072	-29.0	114
South Carolina	3,072	773	773	1,110	1,110	2,735	-11.0	83
Tennessee[e]	8,630	4,443	4,443	3,232	3,232	9,702	12.4	210
Texas	101,916	33,308	33,308	35,171	35,171	100,053	-1.8	583
Virginia	4,499	1,979	1,979	2,500	2,500	3,978	-11.6	68
West Virginia	1,416	1,127	1,127	1,020	1,020	1,523	7.6	107
West	175,387	215,958	215,958	204,653	204,653	187,343	6.8%	361
Alaska	973	705	705	634	634	1,044	7.3	212
Arizona[c]	6,213	12,256	12,256	12,006	12,006	6,463	4.0	140
California[e]	111,744	169,625	169,625	163,428	163,428	118,592	6.1	439
Colorado	8,196	7,927	7,927	6,572	6,572	9,551	16.5	264
Hawaii	2,119	798	798	601	601	2,316	9.3	233
Idaho	2,482	1,527	1,527	1,277	1,277	2,732	10.1	252
Montana	703	680	680	539	539	844	20.1	116
Nevada	3,518	2,638	2,638	2,332	2,332	3,824	8.7	202
New Mexico[c,e,g]	2,831	1,650	1,650	1,559	1,559	2,922	3.2	200
Oregon	21,189	9,231	9,231	8,024	8,024	22,396	5.7	782
Utah	3,242	2,617	2,617	2,485	2,485	3,374	4.1	190
Washington	11,568	5,923	5,923	4,880	4,880	12,611	9.0	257
Wyoming	609	381	381	316	316	674	10.7	170

Note: Because of nonresponse or incomplete data, the parole population for some jurisdictions on December 31, 2006, does not equal the population on January 1, plus entries, minus exits. Rates were computed using the estimated adult resident population in each State on January 1, 2007. See *Methodology*.

**Not known.

:Not calculated.

[a]Details may not sum to totals because of rounding.

[b]Includes an estimated 34,900 parolees under supervision in Illinois on December 31, 2006.

[c]Some or all data were estimated.

[d]Data for entries and exits were estimated for nonreporting county agencies. See *Methodology*.

[e]Excludes parolees in one of the following categories: absconder, out of State, inactive, or only have financial conditions remaining.

[f]Parole population on January 1, 2006, was estimated from the number reported for December 31, 2005. See *Methodology*.

[g]Due to a change in recordkeeping procedures, data were not comparable to previous reports.

At yearend 2006, 352 persons per 100,000 adult residents were under parole supervision. This represented 1 in every 284 adults in the United States. Arkansas had the highest rate of parole supervision at yearend 2006 (863 per 100,000), surpassing Pennsylvania (791 per 100,000) which had the highest rate of parole supervision since 1997. Maine had the lowest rate of parole supervision in 2006 (3 per 100,000).

Parole population increased in 36 States

The Federal System, 36 States, and the District of Columbia had more adults on parole at the end of 2006 than at the beginning of the year. Double-digit increases were reported in 14 States, led by North Dakota (up 23%) and Rhode Island (up 21%).

A total of 13 States had a decrease in their parole population during 2006. Double-digit decreases were found in Oklahoma (down 29%), Virginia (down 12%), and South Carolina (down 11%).

Parole entries outpaced exits during 2006

The State parole population reached 708,764 at yearend 2006, an increase of 15,000 parolees (or 2.2%). This was greater than the 10,200 average annual increase (1.5%) that occurred between 2000 and 2006.

During 2006 entries to State parole supervision (3.0%) outpaced exits (2.4%). However, between 2000 and 2006 entries (1.9%) and exits from State parole (1.8%) grew at about the same pace each year on average.

Year	State entries	State exits
2000	441,600	432,200
2001	445,600	439,100
2002	436,300	420,000
2003	459,100	440,500
2004	469,500	467,100
2005	479,800	468,900
2006	494,300	480,000
Percent change, 2006	3.0%	2.4%
Average annual percent change, 2000-06	1.9%	1.8%

Mandatory releases from prison made up half of all entries to parole supervision during 2006

Of the 536,200 parolees who entered parole supervision during 2006, more than half entered through a mandatory release from prison. Since 2000 (54%) mandatory releases to parole have decreased slightly.

Thirty-five percent of parolees who entered supervision in 2006 received a discretionary release from prison by a parole board decision. Discretionary releases to parole have decreased since 2000 (37%).

Between 2000 and 2006 reinstatements to parole increased as a percentage of all entries (6% and 9%, respectively).

Type of entry	Percent of adults entering parole 2000	2006
Discretionary parole	37%	35%
Mandatory parole	54	52
Reinstatement	6	9
Other	2	3
Total estimated entries*	470,400	536,200

*Includes offenders on State parole and Federal post-custody release.

Table 4. Characteristics of adults on parole, 1995, 2000, and 2006

Characteristic	1995	2000	2006
Total	100%	100%	100%
Gender			
Male	90%	88%	88%
Female	10	12	12
Race			
White*	34%	38%	41%
Black*	45	40	39
Hispanic or Latino	21	21	18
American Indian/Alaska Native*	1	1	1
Asian/Native Hawaiian/other Pacific Islander*	--	--	1
Two or more races*	...	...	--
Status of supervision			
Active	78%	83%	84%
Inactive	11	4	4
Absconder	6	7	7
Supervised out of State	4	5	4
Financial conditions remaining	...	...	--
Other	--	1	2
Sentence length			
Less than 1 year	6%	3%	6%
1 year or more	94	97	94
Type of offense			
Violent	...	...	26%
Property	...	...	24
Drug	...	...	37
Public order	...	...	6
Other	...	...	6

Note: Each characteristic included persons of unknown type. Detail may not sum to total because of rounding.
--Less than 0.5%.
...Not available.
*Excludes persons of Hispanic origin.

Percentage of parolees who completed their full-term sentence or exited parole early has remained stable since 2000

Forty-four percent of the estimated 519,200 parolees who exited supervision during 2006 completed their full-term parole sentence or were released from supervision early. Since 2000 this proportion has remained stable (43% in 2000).

In both 2000 and 2006, about 4 in 10 parolees exited supervision because they were returned to incarceration for a new offense or a technical violation. In the same two years, about 1 in 10 parolees exited supervision because they had absconded. Another 2% who exited in 2000 and 2006 had their parole sentence terminated unsatisfactorily.

	Percent of adults exiting parole	
Type of exit	2000	2006
Completions	43%	44%
Returned to incarceration	42	39
With new sentence	11	11
With revocation	30	26
Other/Unknown	1	2
Absconder	9	11
Other unsatisfactory	2	2
Transferred	1	1
Death	1	1
Other	2	3
Total estimated exits	459,400	519,200

Since 1995 the percentage of female and white parolees has increased

At yearend 2006 about 1 out of every 8 adults on parole was a woman (96,200) (table 4). Women represented a greater percentage of the parole population in 2006 (12%), compared to 1995 (10%).

The percentage of parolees who were black dropped to 39% in 2006, continuing a decline from 45% in 1995. Whites constituted 41% of the parole population in 2006, up from 34% in 1995. Almost 1 in 5 parolees were Hispanic (146,200). About 2% of parolees were of other races (12,500).

Nearly 4 in 10 parolees served a sentence for a drug offense

About 94% of all parolees at yearend 2006 had been sentenced to 1 year or more in Federal or State prison. The largest percentage of parolees had been convicted of a drug offense (37%, down from 40% in 2002). Data on type of offense were first collected in 2002.

At yearend 2006 about one in four parolees had been convicted of a violent offense or a property offense. In 2006, 6% of parolees had been convicted of a public order offense and 6% of another type of offense which was not classified.

	Percent of parolees	
Type of offense	2002	2006
Violent	24%	26%
Property	26	24
Drug	40	37
Public order	...	6
Other*	10	6

Note: 2002 was the first year data for type of offense were collected. Detail may not sum to total because of rounding.
...Not available.
*In 2002 public order offenses were reported among other offenses.

1 in 6 persons under parole supervision during 2006 were returned to incarceration

Of the 1,151,203 adult parolees at-risk of re-incarceration during 2006 in the 46 jurisdictions that provided information, 16% (179,259) were re-incarcerated (table 5). Offenders at risk of re-incarceration were defined as adults on parole on January 1, 2006, and those released to parole supervision during the year. In the 46 jurisdictions that provided information, a total of 665,321 parolees were under supervision on January 1, 2006, and 485,882 were released to parole supervision during the year. An unknown number of the 165,642 parolees at-risk in 7 other jurisdictions during 2006 were re-incarcerated.

More than 2 in 5 parolees known to have been returned to incarceration during 2006 were in California (78,721). New York (11,548) and Texas (10,661) each returned more than 10,000 parolees to incarceration. California, New York, and Texas together accounted for more than half of all adult parolees re-incarcerated during 2006 (56%).

6 States returned 20% or more of their at-risk population to incarceration

Utah and California each returned to prison or jail more than a quarter (28%) of their offenders who were under parole supervision at some time during 2006. The offenders were returned either as a result of a technical violation of their conditions of supervision or as a result of a new offense. Colorado and Missouri each returned 24% of their at-risk population during 2006; Kentucky and Minnesota each returned 21%. Of the States that provided information, four reported having returned less than 5% of their at-risk population to incarceration during 2006, including North Carolina and Maine (each 3%), Idaho (less than 0.5%), and Virginia (0%).

Rates of return to incarceration have remained stable since 1998

From 1998 to 2006, the percentage of offenders under parole supervision who were known to have been returned to incarceration remained relatively stable (figure 2). Data on type of exit from parole collected prior to 1998 are not consistent with 2006.

The percentage of the at-risk population returned to incarceration as the result of a revocation also remained stable (11% in each year). In 2006 approximately 5% of the at-risk population had been returned to incarceration for a new offense, unchanged from 1998.

Percentage of at-risk State and Federal parole population returned to incarceration, 1998-2006

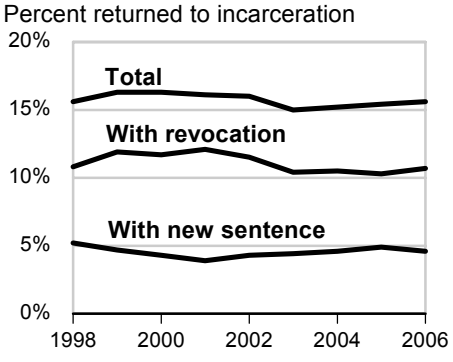

Figure 2

Table 5. Parolees returned to incarceration, 2006

Region and jurisdiction	Total population at-risk of re-incarceration[a,b]	Returned to incarceration[c]	
		Number	Percent
U.S. total	1,151,203	179,259	16%
Federal	128,774	8,521	7%
State	1,022,429	170,738	17
Northeast	149,512	21,737	15%
Maine	35	1	3
Massachusetts	8,198	873	11
New Hampshire	2,030	344	17
New Jersey	24,247	3,321	14
New York	76,955	11,548	15
Pennsylvania	35,845	5,381	15
Rhode Island	681	110	16
Vermont	1,521	159	10
Midwest	162,873	25,994	16%
Indiana	14,850	2,120	14
Iowa	5,941	727	12
Kansas	10,451	1,459	14
Michigan	30,691	5,188	17
Minnesota	9,434	1,952	21
Missouri	31,588	7,447	24
Nebraska	1,699	255	15
North Dakota	1,161	165	14
Ohio	29,224	2,185	7
South Dakota	4,498	793	18
Wisconsin	23,336	3,703	16
South	342,349	32,010	9%
Alabama	11,394	888	8
Arkansas	25,397	2,992	12
District of Columbia	7,182	873	12
Florida	11,259	1,740	15
Georgia	34,431	4,358	13
Kentucky	17,196	3,638	21
Louisiana	37,761	2,238	6
Maryland	21,762	1,566	7
Mississippi	2,923	174	6
North Carolina	6,709	210	3
Oklahoma	5,172	428	8
South Carolina	3,845	271	7
Tennessee	13,073	1,547	12
Texas	135,224	10,661	8
Virginia	6,478	0	0
West Virginia	2,543	426	17
West	367,695	90,997	25%
Arizona	18,469	2,804	15
California	281,369	78,721	28
Colorado	16,123	3,921	24
Hawaii	2,917	191	7
Idaho	4,009	6	--
Montana	1,383	207	15
Nevada	6,156	535	9
Oregon	30,420	2,871	9
Utah	5,859	1,649	28
Wyoming	990	92	9

--Less than 0.5%.

[a]Includes 665,321 adults on parole on January 1 and 485,882 who entered parole between January 1 and December 31, 2006; see table 3.

[b]Excludes an estimated 165,642 at risk of re-incarceration for which the total returned during 2006 was not reported, including Connecticut (5,416), Pennsylvania counties (estimated at 65,133), Illinois (estimated at 70,476), Delaware (967), Alaska (1,678), New Mexico (4,481), and Washington (17,491). See *Methodology*.

[c]Excludes persons who may have been returned to incarceration but were reported as unsatisfactory (8,400), absconder (51,500), other (71,796), or unknown (5,046); see appendix table 1. May also exclude some persons reported as having completed parole for whom outstanding warrants were executed immediately upon exit from parole.

Methodology

Beginning in 1980 the Annual Probation Survey and Annual Parole Survey collected data on the total number of persons supervised in the community on January 1 and December 31 of each year and on counts of the number persons entering and exiting supervision during the year. These surveys cover the Federal System, all 50 States, and the District of Columbia. BJS depends entirely upon the voluntary participation of the State central reporters and the separate State, county, and court agencies for the annual probation and parole data.

In 2006 the U.S. Census Bureau served as the Bureau of Justice Statistics' (BJS) collection agent, except for the Federal system. Data for the Federal system were provided directly to BJS through the BJS Federal Justice Statistics Program which obtained data from the Office of Probation and Pretrial Services, Administrative Office of the United States Courts.

Because many States update their population counts, the January 1, 2006, numbers may differ from those previously published for December 31, 2005.

Probation

The 2006 Annual Probation Survey was sent to 463 respondents — the Federal System, 33 central State reporters, the District of Columbia, and 428 separate State, county, or court agencies. States with multiple reporters were Alabama (3), Arizona (2), Colorado (8), Florida (41), Georgia (5), Idaho (2), Kentucky (3), Michigan (128), Missouri (2), Montana (4), New Mexico (2), Ohio (185), Oklahoma (3), Pennsylvania (2), Tennessee (3), Washington (33), and West Virginia (2).

Since 1995 the survey coverage has been expanded to include 175 additional local agencies in Ohio (131), Florida (27), Washington (11), Montana (3), Kentucky (2), and Idaho (1). The majority of agencies (161) were added in 1999. At yearend 2006, 236,014 probationers were under the supervision of the 175 local agencies added since 1995.

Parole

The 2006 Annual Parole Survey was sent to 54 respondents, including 52 central reporters, the California Youth Authority, and 1 municipal agency. States with multiple reporters were Alabama (2) and California (2). One State, Illinois, did not provide data. See *Imputing entries and exits for non-reporting agencies* for more details.

Federal parole as defined here includes supervised release, parole, military parole, special parole, and mandatory release.

Imputing entries and exits for non-reporting agencies

Entries were imputed for non-reporting agencies using one of four methods, depending on data availability. The first method estimated entries to probation by applying the ratio of entries to the January 1 population in a recent year to the January 1, 2006, population for the same agency. Exits were estimated by adding the estimated entries to the January 1, 2006, population and subtracting the December 31, 2006, population. This method was used to estimate probation entries and exits for non-reporting agencies in Arizona, Colorado, Florida (four agencies), Georgia, Illinois, Kentucky, Michigan (the State agency), Montana, New Mexico, and Pennsylvania counties. This method was also used to estimate parole entries and exits for Pennsylvania counties.

A second method was used for Illinois which did not report on its parole population for 2006. Both the ratio of entries to the January 1 population and the ratio of exits to the January 1 population were estimated for 2006 from parole data provided by Illinois for 2005. These ratios were applied to the number on parole in Illinois on January 1, 2006, (estimated from the count on December 31, 2005). The December 31, 2006, parole population was estimated by adding the estimated number of entries and subtracting the estimated number of exits from the January 1, 2006, parole population.

The third method estimated entries to probation supervision for county and district agencies which did not report entries and exits but which provided an estimate of their December 31, 2006, probation population. The ratio of entries to the January 1, 2006, population among reporting agencies in the same State was used to estimate the number of entries for non-reporting agencies having similar numbers of probationers. Exits from probation supervision were estimated in the same manner as in the first method (above). This method was used to estimate probation entries and exits for non-reporting agencies in Florida (four agencies), Michigan (localities), Ohio, and Washington.

The fourth method was used to estimate entries for one State-level agency. The number of entries for a West Virginia agency was estimated using the ratio of entries to January 1, 2006, population among reporting agencies within the same region. Exits for the non-reporting agency in West Virginia were estimated in the same manner as in the first method (above).

Estimating the adult resident population

Estimates of the adult resident population in each State on January 1, 2007, were generated by applying the July 1, 2006, ratio of persons 18 years or older to the January 1, 2007, resident population estimates within each State. The January 1, 2007, total resident population estimates were provided to BJS by the U.S. Census Bureau.

Appendix table 1. Adults leaving parole, by type of exit, 2006

Region and jurisdiction	Number of adults leaving parole, 2006: Total reported exits	Completion	Returned to incarceration: Total	With new sentence	With revocation	Other	Other unsatisfactory[a]	Other[b]	Unknown
U.S. total	469,768	205,267	179,259	51,146	119,531	8,582	8,400	71,796	5,046
Federal	39,230	26,546	8,521	3,994	4,527	0	**	4,163	0
State	430,538	178,721	170,738	47,152	115,004	8,582	8,400	67,633	5,046
Northeast	53,793	27,850	21,737	4,842	15,989	906	0	1,357	2,849
Connecticut	2,849	**	**	**	**	**	**	0	2,849
Maine	4	2	1	0	1	0	0	1	0
Massachusetts[c]	5,120	4,225	873	**	**	873	0	22	0
New Hampshire	409	57	344	344	0	0	0	8	0
New Jersey	9,842	6,374	3,321	486	2,835	~	~	147	0
New York	23,954	12,099	11,548	2,095	9,453	~	~	307	0
Pennsylvania	10,742	4,533	5,381	1,832	3,549	0	0	828	0
Rhode Island	317	206	110	27	83	0	0	1	0
Vermont[c]	556	354	159	58	68	33	~	43	0
Midwest	66,736	34,153	25,994	7,395	13,473	5,126	227	6,362	**
Illinois[d]	**	**	**	**	**	~	**	**	**
Indiana	6,900	3,820	2,120	**	**	2,120	30	930	0
Iowa	2,363	1,616	727	**	727	0	1	19	0
Kansas	5,565	2,155	1,459	181	1,273	5	133	1,818	0
Michigan	12,205	6,862	5,188	2,016	3,172	0	0	155	0
Minnesota	5,003	2,551	1,952	184	1,768	0	0	500	0
Missouri[c]	12,525	4,049	7,447	2,692	1,757	2,998	0	1,029	0
Nebraska	902	644	255	17	235	3	~	3	0
North Dakota	791	618	165	26	139	0	0	8	0
Ohio	11,621	7,783	2,185	1,624	561	0	0	1,653	0
South Dakota	1,731	751	793	118	675	0	30	157	0
Wisconsin	7,130	3,304	3,703	537	3,166	0	33	90	0
South	105,356	62,601	32,010	12,396	17,065	2,549	5,680	5,061	4
Alabama[c]	2,736	1,731	888	213	415	260	0	117	0
Arkansas	6,992	3,483	2,992	1,199	1,722	71	~	517	0
Delaware	423	194	**	**	**	**	130	99	0
District of Columbia	1,795	396	873	**	**	873	171	351	4
Florida[c]	6,469	4,181	1,740	388	1,352	0	472	76	0
Georgia	11,473	7,030	4,358	54	3,451	853	0	85	0
Kentucky[c]	5,329	1,573	3,638	446	2,988	204	0	118	0
Louisiana	13,098	7,115	2,238	1,029	1,095	114	3,475	270	0
Maryland	7,411	4,290	1,566	754	812	0	1,408	147	0
Mississippi	1,024	684	174	**	**	174	0	166	0
North Carolina	3,473	2,895	210	77	133	0	24	344	0
Oklahoma[c]	2,100	1,190	428	85	343	0	0	482	0
South Carolina	1,110	798	271	34	237	0	0	41	0
Tennessee	3,232	1,584	1,547	596	951	0	0	101	0
Texas	35,171	23,613	10,661	7,500	3161	0	0	897	0
Virginia	2,500	1,305	0	0	0	0	0	1,195	0
West Virginia	1,020	539	426	21	405	0	0	55	0
West	204,653	54,117	90,997	22,519	68,477	1	2,493	54,853	2,193
Alaska	634	**	**	**	**	**	**	0	634
Arizona[c]	12,006	9,192	2,804	166	2,638	0	0	10	0
California	163,428	34,828	78,721	19,663	59,058	0	0	49879	0
Colorado	6,572	2,477	3,921	1,012	2,909	0	0	174	0
Hawaii	601	198	191	10	181	0	0	212	0
Idaho	1,277	475	6	6	~	~	788	8	0
Montana	539	259	207	13	194	0	0	73	0
Nevada	2,332	1,604	535	353	182	0	0	193	0
New Mexico[c]	1,559	**	**	**	**	**	**	0	1,559
Oregon	8,024	4,189	2,871	865	2,005	1	677	287	0
Utah	2,485	591	1,649	420	1,229	0	127	118	0
Washington	4,880	140	**	**	**	0	901	3839	0
Wyoming	316	164	92	11	81	0	0	60	0

** Not known.

~ Not applicable.

[a]Includes parolees released from parole supervision who failed to meet all conditions of supervision, including some with only financial conditions remaining whose case may have been turned over to a business office, and other types of unsatisfactory exits; includes early terminations and expirations of sentence.

[b]Includes 51,500 parolees who had absconded (including 45,160 in California), 4,884 who had died, 2,766 who had transferred to another jurisdiction, and 12,646 others.

[c]Some or all detailed data are estimated.

[d]No data provided. An estimated 35,600 adults left parole supervision in Illinois during 2006. See *Methodology*.

Appendix table 2. Adults on probation and parole, 1995, 2000, 2005, and 2006

Region and jurisdiction	Adults on probation				Adults on parole			
	1995	2000	2005	2006	1995	2000	2005	2006
U.S. total	3,077,861	3,826,209	4,166,757	4,237,023	679,421	723,898	780,616	798,202
Federal	35,457	31,669	25,473	24,491	51,461	76,069	86,852	89,438
State	3,042,404	3,794,540	4,141,284	4,212,532	627,960	647,829	693,764	708,764
Northeast	538,941	573,280	699,933	698,428	175,207	159,653	152,033	152,563
Connecticut	54,507	47,636	52,835	54,511	1,233	1,868	2,571	2,567
Maine	8,641	7,788	8,052	7,919	55	28	34	31
Massachusetts[a]	43,680	45,233	167,960	169,522	5,256	3,703	3,579	3,223
New Hampshire	4,347	3,629	4,615	4,590	785	944	1,402	1,621
New Jersey	126,759	130,610	139,091	132,636	37,867	11,709	13,874	14,405
New York	168,012	186,955	125,314	123,418	55,568	57,858	53,533	53,001
Pennsylvania[a]	106,823	121,176	167,520	172,184	73,234	82,345	75,678	76,386
Rhode Island	18,850	20,922	25,613	26,017	591	331	302	364
Vermont	7,322	9,331	8,933	7,631	618	867	1,060	965
Midwest	675,380	896,061	975,228	992,920	86,598	103,331	131,283	131,037
Illinois	109,489	139,029	143,136	141,000	29,541	30,196	34,576	**
Indiana	95,267	109,251	117,960	120,421	3,200	4,917	7,295	7,950
Iowa	16,579	21,147	23,404	22,622	2,340	2,763	3,560	3,578
Kansas	16,547	15,992	15,010	15,518	6,094	3,829	4,666	4,886
Michigan	141,436	170,276	180,290	182,650	13,862	15,753	19,978	18,486
Minnesota	83,778	115,906	118,878	127,289	2,117	3,072	4,007	4,431
Missouri	41,728	53,299	53,614	54,963	13,001	12,563	18,374	19,063
Nebraska	13,895	21,483	18,468	18,731	661	476	662	797
North Dakota	2,320	2,847	4,085	4,303	114	110	302	370
Ohio[b]	103,327	189,375	240,706	243,956	7,432	18,248	19,512	17,603
South Dakota	3,745	4,214	5,308	5,661	688	1,481	2,444	2,767
Wisconsin	47,269	53,242	54,369	55,806	7,548	9,923	15,907	16,206
South	1,248,608	1,573,215	1,685,782	1,702,430	240,478	225,955	235,061	237,821
Alabama	33,410	40,178	48,607	55,766	7,793	5,484	7,795	8,658
Arkansas	22,397	28,409	30,735	31,508	4,685	8,659	16,666	18,405
Delaware	16,124	20,052	18,462	16,958	1,033	579	600	544
District of Columbia	10,414	10,664	7,006	6,883	6,340	5,332	4,926	5,387
Florida[b]	243,736	296,139	279,613	272,977	11,197	5,982	4,785	4,790
Georgia[c]	142,954	321,407	414,409	422,790	19,434	21,556	22,851	22,958
Kentucky[b]	11,499	19,620	37,030	41,162	4,257	4,614	10,162	11,867
Louisiana	33,753	35,854	38,366	38,057	19,028	22,860	24,072	24,663
Maryland	71,029	81,523	75,593	75,698	15,748	13,666	14,271	14,351
Mississippi	9,595	15,118	23,864	24,107	1,510	1,596	1,970	1,899
North Carolina	97,921	105,949	111,626	110,419	18,501	3,352	3,101	3,236
Oklahoma	27,866	30,969	28,996	27,415	2,356	1,825	4,329	3,072
South Carolina	39,821	44,632	39,308	38,353	5,545	4,378	3,072	2,735
Tennessee	36,485	40,682	48,631	52,558	8,851	8,093	8,630	9,702
Texas	421,213	441,848	430,301	431,967	103,089	111,719	101,916	100,053
Virginia	24,264	33,955	45,589	48,144	10,188	5,148	4,499	3,978
West Virginia	6,127	6,216	7,646	7,668	923	1,112	1,416	1,523
West	579,475	751,984	780,341	818,754	125,677	158,890	175,387	187,343
Alaska	3,481	4,779	5,680	6,095	459	525	973	1,044
Arizona	40,614	59,810	71,115	73,265	4,109	3,474	6,213	6,463
California	280,545	343,145	388,260	401,707	91,807	117,647	111,744	118,592
Colorado	42,687	50,460	56,438	63,032	3,024	5,500	8,196	9,551
Hawaii	12,957	15,525	16,825	18,598	1,689	2,504	2,119	2,316
Idaho[b,d]	5,308	35,103	43,712	48,609	619	1,409	2,482	2,732
Montana[b]	4,318	6,108	8,316	8,770	744	621	703	844
Nevada	8,634	12,189	12,616	13,208	2,863	4,056	3,518	3,824
New Mexico	8,524	10,461	14,982	16,493	1,366	1,670	2,831	2,922
Oregon	39,725	46,023	43,606	45,250	15,019	17,579	21,189	22,396
Utah	8,562	9,800	10,083	10,426	2,700	3,231	3,242	3,374
Washington[a,b]	120,466	154,466	103,882	108,076	875	160	11,568	12,611
Wyoming	3,654	4,115	4,826	5,225	403	514	609	674

Note: Counts for 1995, 2000, and 2005 are for January 1 and may have been updated from previously published yearend counts.

**Not known.

[a]Due to a change in recordkeeping procedures, probation and parole counts for 2005 and 2006 are not comparable to previous years.

[b]Due to expanded coverage, probation counts for 2000, 2005, and 2006 are not comparable to 1995.

[c]Probation counts for 2000, 2005, and 2006 include private agency cases and may overstate the number under supervision.

[d]Probation counts for 2000, 2005, and 2006 include estimates for misdemeanors based on admissions.

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December 2007, NCJ 220218

Table 1.1

Total Judicial Officers. Courts of Appeals, District Courts, Bankruptcy Courts

Fiscal Year	Courts of Appeals			District Courts							Bankruptcy Courts		
				Article III Judges			Magistrate Judges						
							Authorized Positions						
	Authorized Judgeships	Active Judges	Senior Judges[1]	Authorized Judgeships	Active Judges	Senior Judges[2]	Full-Time	Part-Time	Clerk/ Magistrate Judge	Recalled Judges	Authorized Judgeships	Active Judges	Recalled Judges
1990	168	158	63	575	541	201	329	146	8	5	291	289	13
1995	179	168	81	649	603	255	416	78	3	16	326	315	23
2000	179	156	86	655	612	274	466	60	3	23	325	307	30
2002	179	151*	92	665	615*	278*	486	51	3	24	324	302*	31
2003	179	162*	91	680	651	287*	491	49	3	40	324	309	35
2004	179	166	102	679	663*	294*	500	45	3	32	324	313	35
2005	179	166*	106*	678	642	300*	503	45	3	34	352	315	32
2006	179	165	103	678	645	311	505	45	3	36	352	337	25
Percent Change - 2006 over 1990													
	6.5%	**	63.5%	17.9%	19.2%	54.7%	53.5%	-69.2%	**	620.0%	21.0%	16.6%	92.3%

[1] Sitting senior judges who participated in appeals dispositions

[2] Senior judges with staff

* Revised

**Percentage is not computed when the total is fewer than 10.

Source: Text Narrative and Tables - Annual Report of the Director.

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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

A judge that engages in wrongdoing once and gets away with it because the other judges will not discipline him or her, will be more likely to do wrong again because they realize that as a matter of practice wrongdoing is an easy or profitable way of handling judicial business and can be engaged in with impunity regardless of the harm caused to third parties. An example is set for their fellow judges to follow. In time, everyone knows about the wrongdoing of the others, whether it be bias, abuse of power, or disregard for the law and the facts. Then they must cover for each other, for if one were allowed to be indicted, he or she could tell on another who could tell on another and with domino effect all would fall. This effect would take place even if the incriminated judge were low in the judicial hierarchy, for he or she could trade up in a plea bargain by incriminating those higher up, whether appellate judges or a chief judge, who knew about that one's wrongdoing, or though ignoring it, knew about the wrongdoing of other judges subject to the domino effect, but passively tolerated, or even actively supported them through a cover up or participation, despite their duty to safeguard the integrity of judicial process.

In a hierarchy where integrity is of the essence for the court's single business, that is, administrating justice in accordance with due process, the incrimination of a chief judge would give rise to a most threatening question, to wit, what else did he or she tolerate or support that impaired or denied due process in any other case or all other cases of the indicted judge and, by the same token, of any other judge and all the other judges of the court. In one single step, the trade up, the whole court would come under scrutiny and with it the validity-determinative due process element of the decision in every one of its cases.

This illustrates the dynamics of multilateral interdependency of survival in a practically closed and stable group of people, such as the federal judiciary, where no member, however low in the hierarchy, is expendable: If one judge falls, all fall, unless that one was the odd man out who went outside the group on a folly of his own and never became privy to the wrongdoing of the other judges. Once those dynamics are allowed to determine the relationships among judges, the mentality of everything goes develops, for another, even a more egregious, act of wrongdoing must be tolerated or supported. Were it not, a complaint that was investigated and led to disciplinary action would set a precedent that other complaints could cite in their support, each one of which could support other complaints, thus triggering a chain reaction and uncovering a pattern of wrongdoing that could lead to the fall of a court or the judiciary.

The everything goes mentality gives a boost to a degenerative trend that leads from judicial wrongdoing to organized corruption. In such organization, even third parties outside the court, whether it be court staff, lawyers, others frequently before the court, such as bankruptcy trustees, or litigants, are allowed in the corruption in exchange for a material or moral benefit payable or receivable in the case at hand or in IOUs for future cases. By then, the force dominating the court and its judges' business is not the law of Congress under the Constitution, but rather their interest in surviving and thriving. The court becomes a racketeer influenced and corrupt organization.*

See The Supreme Court Tolerates the Systematic Dismissal of Judicial Misconduct Complaints, http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf

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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.

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The Salient Facts of The *DeLano* Case
showing a bankruptcy fraud scheme supported or tolerated by judges

DeLano is a federal bankruptcy fraud case. As part of 12 such cases, it reveals fraud conducted through coordinated wrongdoing that is so egregious as to betray overconfidence born of a long standing practice: Fraud has been organized into a bankruptcy fraud scheme. This case was commenced by a bankruptcy petition filed with Schedules A-J and a Statement of Financial Affairs on January 27, 2004, by the DeLano couple. (04-20280, WBNY) Mr. DeLano, however, is a most unlikely candidate for bankruptcy, for at the time of filing he was already a 39-year veteran of the banking and financing industry and was and continued to be employed by M&T Bank precisely as a bankruptcy officer. He and his wife, a Xerox technician, declared:

1. that they had in cash and on account only $535 (D:31), although they had declared that their monthly excess income was $1,940 (D:45); and in the FA Statement (D:47) and their 1040 IRS forms (D:186) that they had earned $291,470 in just the three years prior to their filing;
2. that their only real property was their home (D:30), bought in 1975 (D:342) and appraised in November 2003 at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and receiving during that period at least $382,187 (2)…through a string of eight mortgages! (D:341) *Mind-boggling!*
3. that they owed $98,092 –spread thinly over 18 credit cards (D:38)- while they valued their household goods at only $2,810 (D:31), less than 1% of their earnings in the previous three years! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their worklives of more than 30 years.
4. Theirs is one of the trustee's 3,907 *open* cases and their lawyer's 525 before the same judge.

These facts show that this was a scheme-insider offloading 78% of his and his wife's debts (D:58) in preparation for traveling light into a golden retirement. They felt confident that they could make such incongruous, implausible, and suspicious declarations in the schedules and that neither the schemers would discharge their duty nor the creditors exercise their right to require that bankrupts prove their petition's good faith by providing supporting documents. Moreover, they had spread their debts thin enough among their 20 institutional creditors (D:38) to ensure that the latter would find a write-off more cost-effective than litigation to challenge their petition. So they assumed that the sole individual creditor, who in addition lives hundreds of miles from the court, would not be able to afford to challenge their good faith either. But he did! The Creditor analyzed their petition and documents and estimated that the DeLano Debtors had concealed assets worth at least $673,657! (2)

The Creditor requested that the DeLano Debtors produce financial documents as obviously pertinent to prove the good faith of any debtors' bankruptcy petition as their bank account statements. Yet the trustee, who is supposed to represent the creditors' interests, tried to prevent the Creditor from even meeting with the DeLanos. After the latter denied *every single document* requested by the Creditor, he moved for orders of production. Contrary to their duty to determine whether the Debtors had engaged in bankruptcy fraud by concealing assets, the bankruptcy judge, the district judge, and the Court of Appeals[1] also denied *every single document* requested. Then they eliminated the Creditor by disallowing his claim in a sham evidentiary hearing.[2] Revealing how incriminating these documents are, to oppose their production the DeLanos, with the trustee's recommendation and the bankruptcy judge's approval, have been allowed to pay their lawyers legal fees in the amount of $27,953…although they had declared only $535 in cash and on account! To date $673,657 is still unaccounted for. Where did it go and for whose benefit?