

The Committee exercises its authority by further referring complaints to the Subcommittee on Intellectual Property and Judicial Administration, which has responsibility for matters relating to the federal courts. In addition, impeachment resolutions referred to the Committee are ordinarily referred to the Subcommittee, which has -- under the leadership of its chairman -- discretion to investigate or not investigate the facts behind any particular resolution. In 1986, for example, the Subcommittee elected not to pursue the impeachments of three federal judges in response to thousands of citizen petitions, complaining about an appellate court's decision to grant a petition for habeas corpus in a notorious murder case. None of the complaints alleged unethical or criminal activity. A determination was made that federal judges should not be impeached for judicial decision making even if the decision is an erroneous one. Standing alone, the act of rendering a judicial decision does not rise to the level of a "high crime or misdemeanor." If this were otherwise, the impeachment remedy would become merely another avenue for review and thereby compromise the separation of powers. In recent cases involving judges who have been prosecuted, the Committee has delegated the initial inquiry responsibility to different subcommittees.

The Committee has developed and made available impeachment procedures, including "Procedures for Access to Confidential and Executive Session Materials". Since 1983, the Committee has kept a record of the number and nature of judicial discipline complaints received, and reported this data in the Summary of Activities published each Congress. Every Congress these complaints are archived and may be made available pursuant to request. More recently, the Committee has responded to every complaint by a letter acknowledging receipt and directing complainants' attention to the 1980 Act.

With a few changes, the Committee's responses could be made even more informative. The acknowledgment letter should tell complainants that the 1980 Act does not contemplate sanctions for judges' decisions or issues relating to the merits of litigation. In appropriate cases, the Committee may request to be kept apprised of the complaint's disposition. Finally, because members of Congress sometimes receive complaints from constituents, members might be encouraged by the House Judiciary Committee Chairman -- perhaps once a Congress -- to forward the complaints to the Committee.

*The Commission recommends that the House*