group and a widely shared perception that some meritorious complaints are never filed.

The Twentieth Century Fund Task Force was correct in recommending various steps designed to increase public awareness of the Act, including the posting of explanatory notices, discussion of the Act at circuit conferences, and explanation of the Act's procedures in internal operating manuals and in the local rules of the district courts and courts of appeals. Public education about the Act is a responsibility that should be shared by the bar and the federal judiciary, and continuing education about judicial discipline and ethics within the judicial branch would serve the interests of both judges and the public.

> ***The Commission recommends that the bar and the federal judiciary increase awareness of and education about the 1980 Act among lawyers, judges, court personnel, and members of the public. As one part of such efforts, each circuit council that has not already done so should publish its rules under the Act in United States Code Annotated, and a reference to the 1980 Act and the circuit council's rules should be included in the local rules of each district court.***

The Act is obviously not serving its purpose to the extent that knowledgeable individuals with meritorious complaints are unwilling to file them because of fear of adverse consequences to themselves or to their clients once their identities are known. Lawyers are more likely to file meritorious complaints than non-lawyers. Yet, testimony before the Commission, surveys, and interviews with attorneys reveal a widespread reluctance among members of the bar to file a complaint. This type of risk aversion is common among those who appear frequently in federal court, notably government lawyers.

Congress was urged to permit anonymous complaints during the legislative process that led to the Act, but the statute is silent on the subject. Fairness to a judge accused of misconduct (or disability) ultimately requires that he or she be permitted to confront an accuser, although there is no logical imperative that an individual witness be identified as the initiator of the process. The Illustrative Rules provide that anonymous complaints "are not handled under these rules" but that they "will be forwarded to the chief judge of the circuit for such action as the chief judge considers appropriate." Taken together with a 1990

Ex "A"

amendment to the Act permitting a chief judge to "identify" (i.e., dispense with the formal filing of) a complaint on the basis of available information, which is now implemented by Illustrative Rule 2(j), the Commission believes this procedure has promise in addressing the bar's unfortunate but understandable reluctance to incur a judge's hostility by filing a complaint of misconduct or disability.

Concern may persist, however, that even if the chief judge identifies a complaint, the ultimate source will be identifiable, particularly if the alleged misconduct is an isolated instance. One way to diminish such concern is through the birth and nourishment of a culture in which the bar stands together with other informed citizens both in defending the judiciary against unjustified attacks and in defending lawyers against retaliation by vindictive judges.

The Commission studied one situation in which a complaint validly alleging unauthorized use of contempt powers by a magistrate judge was filed by two bar associations after the individual attorney who had been held in contempt decided he could not risk filing. The Commission concluded that an informed group of lawyers and lay persons in each circuit could be available to assist in presenting to the chief judge serious complaints against federal judges. Such groups could work with chief judges in efforts to identify problems that may be amenable to informal resolution. They could also help provide anonymity for a complainant concerned about retaliation if the chief judge identifies a complaint, and provide a deterrent against retaliation if the complainant is identified. Such groups, although of course having no decision-making authority, could be especially useful in bringing patterns of alleged misconduct to the attention of the chief judge. Finally, such groups could shoulder some of the responsibility for initiating educational activities about the Act and judicial discipline more generally that lies with the bar as well as with the judiciary.

> ***The Commission recommends that each circuit council charge a committee or committees, broadly representative of the bar but that may also include informed lay persons, with the responsibility to be available to assist in the presentation to the chief judge of serious complaints against federal judges. Such groups should also work with chief judges in efforts to identify problems that may be amenable to informal resolutions and should initiate programs to educate***

lawyers and the public about judicial discipline. The Commission also encourages other institutions, including the organized bar, to take an active interest in the smooth functioning and wise administration of formal and informal mechanisms that address problems of judicial misconduct and disability.

Whether or not an individual is reluctant to file a complaint, a chief judge should not insist that the individual do so when information is available on the basis of which a complaint should be identified and it appears that the matter is capable of being resolved through investigation.

Powers of Chief Judges in Complaint Disposition.

Limited Factual Inquiry. Advised that some doubt exists about the power of a chief judge to conduct a limited inquiry into the factual support for a complainant's allegations prior to taking action on a complaint, the Commission decided that such power is necessarily contemplated by the Act's provision authorizing a chief judge to conclude a proceeding. For that and other reasons, the Commission agrees with the Illustrative Rules' treatment of this issue. Illustrative Rule 4(b) authorizes a chief judge to "conduct a limited inquiry for the purpose of determining (1) whether appropriate corrective action has been or can be taken without the necessity for a formal investigation, (2) whether intervening events have made action on the complaint unnecessary, and (3) whether the facts stated in the complaint are either plainly untrue or are incapable of being established through investigation." It also provides that a chief judge "will not undertake to make findings of fact about any matter that is reasonably in dispute." This represents a sensible accommodation of the policies and interests that are implicated. The existence of such power is, moreover, a necessary predicate for the recommendation earlier in this chapter of the Report that the Act be amended to add as a ground for dismissal by a chief judge "that the allegations in a complaint have been shown to be plainly untrue or incapable of being established through investigation."

The Commission endorses Illustrative Rule 4(b) and recommends that the 1980 Act be amended to provide that a chief judge may conduct a limited inquiry into the factual support for a complainant's allegations but may not make findings of fact about any matter that is reasonably in dispute.