

REPORT ON THE ACTIVITIES
OF THE
COMMITTEE ON THE JUDICIARY
OF THE
HOUSE OF REPRESENTATIVES
DURING THE
ONE HUNDRED FIRST CONGRESS
PURSUANT TO
CLAUSE 1(d) RULE XI OF THE RULES OF THE
HOUSE OF REPRESENTATIVES



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Exhibit "D"

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JUDICIAL DISCIPLINE COMPLAINTS

The Subcommittee, as in the past, has received complaints about judicial misconduct and disability.

During the First Session of the 101st Congress, the Subcommittee received 68 complaints against Federal judicial officers (lifetime tenured judges, bankruptcy judges and magistrates). In addition, the Subcommittee received 20 complaints against State judges. There was one written response to the complaints filed with the Subcommittee.

During the Second Session of the 101st Congress, the Subcommittee received 73 complaints against Federal judicial officers and 5 complaints against State judges. There was one inquiry made to the Administrative Office of the United States Courts regarding the status of a possible investigation by Federal authorities, of a United States district court judge.

UNITED STATES DEPARTMENT OF JUSTICE

The subcommittee has oversight of several entities within the United States Marshals Service, Executive Office of United States Attorneys, Office of Policy Development, Office of Legislative Affairs, and Federal Bureau of Prisons (see discussion under Corrections).

Oversight of several of these entities occurred during the First Session of the 101st Congress. The Subcommittee's oversight was designed in part to analyze whether Executive Branch entities are faithfully and effectively enforcing the law and respecting their statutory mandates.

EXECUTIVE OFFICE OF U.S. ATTORNEYS

On March 21, 1989, the subcommittee conducted oversight of the Executive Office of U.S. Attorneys, which administers the U.S. Attorneys' offices nationwide. The Office was represented by the Honorable James G. Richmond, U.S. Attorney for the Northern District of Indiana. Mr. Richmond was accompanied by the Honorable Stanley A. Twardy, Jr., U.S. Attorney for the District of Connecticut and the Honorable Lawrence S. McWhorter, Director, Executive Office of U.S. Attorneys. See Serial No. 38.

U.S. MARSHALS SERVICE

On March 21, 1989, the Subcommittee also conducted oversight of the U.S. Marshals Service. Testimony was presented by Director Stanley E. Morris who discussed many of the new burdens placed on the Marshals Service by recently enacted legislation. See Serial No. 38. The Marshals Service was created two hundred years ago, being the first law enforcement agency established by the Congress, and remains one of the most important bulwarks in our criminal justice arsenal.

CORRECTIONS

During the past decade, the Subcommittee has committed itself to improving the correctional system in the United States, both at the State and the Federal levels. In the 101st Congress the subcom-

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ings throughout the country in January 1990. A final report was presented in April, 1990. See Report of the Federal Courts Study Committee (April 2, 1990).

On July 26, 1990, Representatives Kastenmeier and Moorhead, in their respective capacities as chairman and ranking minority member of the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, introduced H.R. 5381, which implemented approximately 20 of the noncontroversial recommendations of the Federal Courts Study Committee. A hearing on H.R. 5381 was held on September 6, 1990, at which testimony was received from representatives of the Federal Courts Study Committee (Chairman Joseph Weis, Jr.), the Judicial Conference (Judge Deanell Tacha), the Federal Judges Association (Judge Diana Murphy), the Department of Justice (Mr. Stuart Gerson), the American Bar Association (Mr. Robert Landis), and Public Citizen Litigation Group (Mr. Alan Morrison). On September 13, 1990, the Subcommittee ordered the bill reported favorably with an amendment in the nature of a substitute.

H.R. 5381 was ordered favorably reported by the Committee on the Judiciary on September 18, 1990 by voice vote. See H. Rept. No. 101-734. On September 27, 1990 under suspension of the rules, H.R. 5381 was passed by the House on a voice vote. On October 27, 1990, the Senate passed H.R. 5316, title III of which contained all essential features of H.R. 5381. H.R. 5316 was passed by the House on a voice vote, under suspension of the rules on October 27, 1990. The measure was signed into law by the president on December 1, 1990, Public Law 101-650.

JUDICIAL DISCIPLINE AND IMPEACHMENT REFORM

The Subcommittee, as in the past, has received complaints about judicial misconduct and disability. See discussion, *infra*. The Committee, of course, possesses important impeachment responsibility and, pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (Public Law 96-458), has the additional role of receiving impeachment materials from the Judicial Conference of the United States. Furthermore, the Committee—acting through the Subcommittee—drafted the judicial discipline mechanism and is responsible for the Act's oversight.

During the 101st Congress, Mr. Kastenmeier introduced H.R. 1620, to improve the functioning of the Federal judicial discipline statute. Title I of H.R. 1620 contained amendments to the 1980 discipline Act, codified at 28 U.S.C. 372(c). Title I also amended four other provisions of the Code: the first, granting contempt power in discipline cases to circuit councils; the second, amending the oath of office for Federal judges; the third, modifying the Ethics in Government Act; and the fourth, increasing the authority of the circuit advisory committees of the circuit to assist in drafting discipline rules.

While several provisions of H.R. 1620 improved the channels of communications between the judicial and legislative branches when an impeachable offense may have been committed by a Federal judge, title I did not contain any constitutional and institutional changes as to how Congress responds to the impeachment of a

Federal judge. Title II of the Judicial Impeachment, v problems and issues involving judges. The Commission authorized adequate funding.

During the 101st Congress, the subject of judicial discipline was the subject of judicial discipline. On April 27, 1989, testimony was received from the United States District Judge Honorable John C. Goddard (Pittsburgh) and a law professor of Pennsylvania State University (Harrisburg). On July 28, 1989, testimony was received from the Administration of Justice (Harrisburg) and the American Bar Association (Harrisburg). On July 28, 1989, testimony was received from the Task Force on Judicial Discipline (Harrisburg) and the Honorable Abner J.

The hearings centered on the subject of judicial discipline. H.R. 1620 was introduced by Mr. Moorhead, and Mr. Kastenmeier. The Federal judicial discipline study commission on judicial discipline received on H.R. 2181 (Circuit Councils Reform and Judicial Conduct and Disability Act) was introduced by Mr. Moorhead (both by request) and to restore lost pay raises for senior Federal judges was introduced by Mr. Kastenmeier, for himself and for his senior Federal judges who should receive a pay raise.

After the hearings were held, the Commission on Judicial Discipline (Hyde), to supplement the recommendations of the Federal judges, was introduced.

On July 25, 1989, the Commission on Judicial Discipline (Hyde) was introduced about H.R. 1620 (judicial discipline study commission on judicial discipline workload), and H.R. 2181 (Circuit Councils Reform and Judicial Conduct and Disability Act). Mr. Kastenmeier informed the Subcommittee that an amendment relating to judicial discipline was being introduced.

Action on all of the amendments was dealt later in the First Session of the 101st Congress. On November 30, 1989, President Bush signed Public Law 101-162 (Public Law 101-162) which amended the judicial discipline statute. The reform was left pending.

On February 28, 1990, the Commission on Judicial Discipline (Hyde) and a quorum of Members of the Subcommittee reported to the full Committee on the Judiciary a substitute. Congress, on February 28, 1990, a Member, offered an amendment to clarify changes to the judicial discipline statute. The Member clarified that the National Commission on Judicial Discipline not have authority to propose changes to the judicial discipline statute. The Member's proposal was not adopted. The amendment, offered by Congress, was not adopted.

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Federal judge. Title II therefore created a National Commission on
Judicial Impeachment, which was assigned the task of studying the
problems and issues involved in the appointment of lifetime tenure
judges. The Commission had a relatively short life (1 year) and was
authorized adequate funds to fulfill its assigned mission.

During the 101st Congress, three days of hearings were held on
the subject of judicial independence: discipline and conduct. On
April 27, 1989, testimony was received from the Judicial Confer-
ence of the United States (the Honorable Frank M. Coffin; the
Honorable John C. Godbold; and the Honorable Walter K. Staple-
ton) and a law professor (Stephen Burbank, Law School, University
of Pennsylvania). On June 13, 1989, the Subcommittee heard from
the Administration (Honorable Thomas M. Boyd), the American
Judicature Society (Dr. Frances Kahn Zemans), and California
Women Lawyers (Ms. Janice Kamernir-Reznik). Finally, on June
28, 1989, testimony was received from the Twentieth Century Fund
Task Force on Judicial Responsibility (Professor A. Leo Levin and
the Honorable Abner J. Mikva). See Serial No. 40.

The hearings centered on one legislative proposal pending before
the Subcommittee. H.R. 1620 (Chairman Kastenmeier, for himself,
Mr. Moorhead, and Mr. Hughes) to improve the functioning of the
Federal judicial discipline statute (Title I) to create a national
study commission on impeachment (Title II). Testimony was also
received on H.R. 2181 (Chairman Kastenmeier, for himself, and Mr.
Moorhead (both by request)), a bill to give Federal judges a pay
raise and to restore lost compensation, and H.R. 1930 (Chairman
Kastenmeier, for himself and Mr. Moorhead), regarding whether
senior Federal judges who do not work or who do very little work
should receive a pay raise. See discussion, *infra*.

After the hearings were concluded, another bill, H.R. 3907 (Mr.
Hyde), to supplement the impeachment remedy for removing Fed-
eral judges, was introduced.

On July 25, 1989, the Subcommittee engaged in general debate
about H.R. 1620 (judicial discipline reform), H.R. 1930 (senior judge
workload), and H.R. 2181 (judicial pay). Congressman George
Crockett informed the Subcommittee that he was prepared to offer
an amendment relating to judicial retirement.

Action on all of the proposals was deferred until the Congress
dealt later in the First Session with pay and ethics reform. On No-
vember 30, 1989, President Bush signed the Ethics Reform Act of
1989 (Public Law 101-194), which incorporated provisions relating
to judicial salaries and senior judges. The issue of judicial discipline
reform was left pending in the Subcommittee.

On February 28, 1990, the Subcommittee marked up H.R. 1620
and, a quorum of Members being present, ordered it favorably re-
ported to the full Committee with an amendment in the nature of
a substitute. Congressman Moorhead, the ranking Minority
Member, offered an amendment making several technical and
clarifying changes to the bill. Among these changes was one that
clarified that the National Study Commission on Impeachment did
not have authority to propose constitutional amendments regard-
ing Presidential appointment of Federal judges. A second amend-
ment, offered by Congressman Crockett, dealt with judicial retire-
ment. The amendment was held by Chairman Kastenmeier to be

non-germane, pursuant to an objection by Congressman Sensenbrenner.

On March 28, 1990, the Committee considered H.R. 1620 and, a quorum of Members being present, ordered the bill (as amended) reported favorably to the full House by voice vote, no objections being heard. *See* H. Rept. No. 101-512.

On June 5, 1990, under suspension of the rules, the House passed H.R. 1620, as amended, unanimously by voice vote.

On October 27, 1990, the Senate passed H.R. 5316, a bill initially relating to the creation of new judgeships in the Federal courts but later melded by the House and Senate Judiciary Committees into an omnibus court reform and intellectual property reform measure. Title IV of H.R. 5316 was the Judicial Discipline and Removal Reform Act of 1990. On the same day (October 27, 1990), the House passed H.R. 5316 under suspension of the rules, clearing the measure for Presidential signature.

On December 1, 1990, President Bush signed Public Law 101-650, enacting Title IV into law.

JUDICIAL SALARY REFORM

On May 2, 1989, Chairman Kastenmeier (with Mr. Moorhead) introduced H.R. 2181, a bill to restore lost compensation and establish a procedure for adjusting the future compensation of Federal judges. H.R. 2181 was introduced at the request of the Judicial Conference of the United States, which placed its highest priority upon effecting immediate and marked improvement in judicial compensation. Chief Justice William H. Rehnquist, in his capacity as presiding officer of the Judicial Conference, reiterated the urgency of improving judicial pay in public remarks and congressional testimony subsequent to this Conference action.

H.R. 2181 accomplished the Conference recommendation for a 30-percent increase in judicial pay at all levels of the Federal judiciary. It also provided an improved method of future judicial salary adjustment to reflect increases in living costs by linking such pay raises to the current mechanism for adjustment of civil service retirement annuities.

The bill was considered during the Subcommittee's hearings on judicial independence: discipline and conduct. A modified version of H.R. 2181 (providing Federal judges with a 25 percent salary increase on January 1, 1991, and cost-of-living increases on January 1, 1990) was incorporated in H.R. 3660 (the "Ethics Reform Act of 1989"). This bill was enacted as Public Law 101-194, having been signed by President Bush on November 30, 1989.

Senior Judge Workload

Chairman Kastenmeier with Mr. Moorhead also introduced a legislative proposal (H.R. 1930) regarding whether senior Federal judges who do not work or who work very little should receive a pay raise. Hearings were held on H.R. 1930, during the subcommittee's inquiry into judicial independence and conduct.

H.R. 1930 provided that in order to continue receiving the salary of the office (that is, to get a pay raise) while in senior status a judge or justice must be certified as having met specific statutory

criteria. Certification by the Supreme Court of those who reside in the circuit.

The criteria are set forth in the preceding calendar year's report of the Commission which is equivalent to the court's workload. Fourth, the judge's performance in the operation of the court's judicial or administrative duties must be able to be certified in the next four months, may be certified in the next four months, may be certified in the next four months, may be certified in the next four months.

The proposal, as amended, was passed by the Reform Act of 1989, signed by President Bush on November 30, 1989.

MULTIPARTY

On October 4, 1989, a Multiparty, Multiforum hearing was held in the District of Columbia, the U.S. District Court for the District of Columbia. The bill would create a new procedure for handling the injury to the public interest by minimal diversity. Federal district court jurisdiction over a defendant resides in the district of Federal mass tort actions.

On February 28, 1990, the bill was reported unanimously by the subcommittee. The number of respect from witnesses at the hearing was 100.

On March 28, 1990, H.R. 3406 favorably reported. On June 5, 1990, the bill was passed by the House. H.R. 3406 was introduced in the court reform/intellectual property reform bill. The Senate by unanimous vote.