

the interviews with Judges Breyer and Campbell, I had no direct participation in the FJC study data gathering, and have not examined the primary materials upon which that study was based.

In October, I began to receive partial feedback from the FJC study. This took the form of selected entries from the coding forms prepared on each complaint detailing (in an anonymous manner) the specifics of each complaint and other information about its disposition. On occasion, these printouts provided some evaluative comments. Altogether, this information gave a good feel for the handling of individual complaints in the various circuits. I followed up this information with questions about individual complaints that seemed to be of interest, sometimes requesting more information on the complaints. Under the terms on which I received this information, I agreed not to quote or reproduce it without permission from the FJC, and to remove identifying details such as circuit of origin and complaint number. Thus, where such information is provided in this report it will be done without those identifications of source.

In addition to printouts regarding complaints, I received lengthy memoranda presenting an amalgam of the fruits of the chief judge and circuit executive/clerk interviews. These memoranda were organized in such a way as to obscure which individual made given comments or the circuit from which this person came. The memoranda were substantial (80 single-spaced pages for the chief judge interviews and 38 pages for the circuit executive/clerk interviews).

This report draws on two other sources in addition to dismissal orders and the FJC study. First, along with consultant Charles Geyh, I drafted a questionnaire concerning actions under §§ 332 and 372(c) that was submitted to each present and former circuit chief judge. A copy of this questionnaire is attached hereto as Exhibit A.

In addition, the Justice Research Institute circulated a survey to a substantial proportion of the federal judges who are "regulated" by the Act, and the report relays information from the responses to that survey.<sup>4</sup>

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<sup>4</sup> In addition, I received information culled from the files of the House Judiciary Committee to provide a further check on whether there had been significant reported instances of alleged judicial misconduct that did not come to the attention of the § 372(c) process. The House Judiciary Committee frequently receives complaints from citizens  
(continued...)

Exhibit "F"

This lengthy, and somewhat tedious, prologue is included as an explanation, and perhaps as a qualification, of what follows. I reiterate that I believe that the information gathered (which is individualized and relates to approximately half of all complaints filed under the Act, and is far more detailed and concrete than anything previously used to evaluate the Act) suffices to justify the discussion below. Nevertheless, it is also true that there are circuits and complaints on which we have very little information, and that confidentiality proved to be a significant obstacle for the FJC study in one of the circuits it did visit.

### III. OVERVIEW OF CONCLUSIONS

Particularly in view of the qualifications in Section II, it seems appropriate to begin with an overview of the conclusions. First, it is clear that the great majority of the complaints are completely groundless either because they are from disgruntled litigants who dislike rulings or because they rely on factual notions that are palpably imaginary or contradicted by court records. Nevertheless, it appears that the § 372(c) process has usually been treated seriously by chief judges. Thus, there clearly have been instances of significant sanctions imposed on judges. More significantly, there have been numerous instances of "corrective actions" that should serve to improve both the quality and public perception of justice in the federal court system. These corrective action episodes suggest that local control of discipline is valuable. (See section IV)

Second, it is also clear that there have been some instances of questionable results. To some extent, these may reflect a lower level of enthusiasm among some chief judges for the discipline process. Although these outcomes may suggest that further consideration of a national discipline apparatus is worthwhile, that possibility seems outweighed by the benefits of local control mentioned above and the burden of the enormous number of clearly meritless complaints. At the

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<sup>4</sup>(...continued)

about federal judges. Pro bono attorney Peter Hutt of Wilmer, Cutler & Pickering culled the files for complaints received during the 98th and 100th Congresses and sent me copies of the files that seemed to him worth review. William Weller, Associate Director of the Commission, similarly culled the files of the 99th and 101st Congresses and reported his results to me. Based on this information, I can report that there have not been significant allegations of judicial misconduct that failed to come into the § 372(c) process.

