

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Fax: 202-273-1108 (5 pages)

June 19, 1996

Jeffrey N. Barr, Assistant General Counsel  
Administrative Office of the United States Courts  
One Columbus Circle  
Washington, D.C. 20005

RE: 28 U.S.C. §372(c)

Dear Mr. Barr:

Following up our telephone conversation, enclosed are pages 35-37 of the May 1995 Report (Part I) of the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts.

We would greatly appreciate information as to any study "being conducted by the Judicial Conference in response to concerns regarding the ethics complaint review process" (at p. 36).


Also, do you have any information on the program that is being set up in the Seventh Circuit to "bring private attorneys into the process of reviewing ethical complaints against judges of the circuit" (at p. 37)?

Finally, may I again urge that you obtain from the Long Range Planning Committee of the Judicial Conference the materials we provided them in December 1994 in conjunction with our testimony. Those materials included the four documents submitted to the Second Circuit in support of our §372(c) complaint, referred to in the second paragraph thereof. They are:

1. Our Petition for Rehearing En Banc to the Second Circuit
2. Our Petition for a Writ of Certiorari (Supreme Court)
3. Our Petition for Rehearing (Supreme Court)
4. Our Supplemental Petition for Rehearing (Supreme Court)

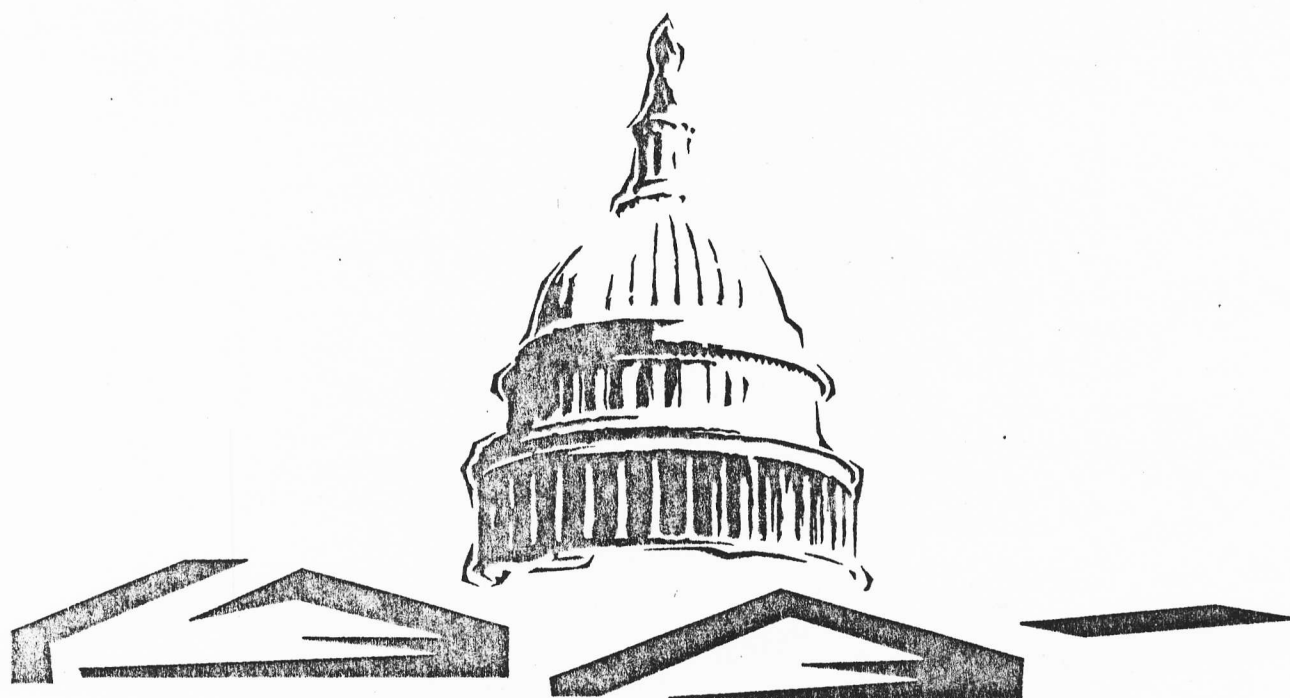
Should you be unable to secure these documents from the Long Range Planning Committee, we will, of course, provide you with a duplicate set.

Yours for a quality judiciary,

  
ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc.

Enclosures

Report  
On the January 1996  
(Judicial Survey  
(Part 1, U.S. Courts of Appeal)



U.S. Senate Judiciary Subcommittee  
on Administrative Oversight  
and the Courts  
May 1996

Senator Charles E. Grassley  
Chairman

*cost-saving measure would be to auction off exclusive rights to public court opinions. (6th Cir.)*

- \* *"I believe that West Publishing Company does an exemplary job and breaking it up would be akin to the worst decision ever rendered by a federal court and that is breaking up AT&T." (4th Cir.)*
- \* *"[T]he presumption [is] that more competition is normally better; but I also regard the West system as an invaluable tool and would be very cautious about any rearrangements that would disrupt or complicate the use of the existing system." (1st Cir.)*
- \* *"There are currently no restrictions on the right of any publisher to publish court opinions, and their opinions are published by many specialized publishing services, in addition to the Federal Reporter. A contract is awarded, by competitive bidding, for printing slip opinions. It is probably worth experimenting with electronic citations, on the model of the Wisconsin state court system, as an alternative alongside of the West system, not in lieu of it." (2d Cir.)*
- \* *"I remember at least one point when there was active competition for the right to publish court opinions. At that point, a company underbid West and we gave the right to publish the opinions to that company. It did save some money, but the resulting quality of the opinions was very poor, and that in turn required more staff time to get the opinions straightened out. The West system yields very good quality opinions, and with the high volume of slip opinions that we produce, the availability of head notes is useful in deciding whether you need or want to read an opinion carefully or simply to skim it." (5th Cir.)*

## **J. REVIEW OF JUDICIAL ETHICS COMPLAINTS**

The overwhelming majority of responding judges indicated that the current judicial ethics complaint review procedure was timely (76.5%) and that the procedures did not create a possibility of an appearance of impropriety (71.2%). Some judges encouraged Congress to consider discouraging frivolous complaints that misuse the process.

- \* *"I know that from time to time someone suggests that some organization outside of the judiciary should be processing these kinds of complaints. I think that should be avoided." (11th Cir.)*
- \* *"[T]here is no reasonable basis for perceiving an appearance of impropriety in the current procedures [for judicial misconduct complaints]. As a matter of public policy, it is a fair question whether complaints of judicial misconduct*

*should be adjudicated only by judges rather than a mixed tribunal that includes non-judge members, but that is an issue of policy, not propriety." (2d Cir.)*

- \* *"The ethics complaint situation is out of control. . . . Time is not the real problem. There is a flood of these complaints which are completely frivolous. But I don't know a better way to handle the complaints than under the current system." (3d Cir.)*
- \* *"I certainly understand the complaint that our procedures for processing judicial ethics complaints may create an appearance of impropriety because judges are overseeing other judges' conduct. On the other hand, we routinely perform such an oversight function on the appellate level, where our work is open and subject to critique in the context of specific cases. Further, I see no obvious way to change the situation without perhaps impeding necessary Article III independence." (5th Cir.)*
- \* *"One who files a complaint against a judge (and those whom the complainant can stir up) will never be satisfied with the propriety of the process unless, within 24 hours of the filing, the accused judicial officer is publicly drawn, quartered, disemboweled, impaled, and burned. More objective laymen might question in abstract whether judges judging other judges can ever be fully objective, but that can be questioned of any body or association that is self-policing, e.g., medical societies, bar associations, legislatures, and the like. Most frequently, the appearance of impropriety is in the eyes of the beholders, so all that can be done by the federal judiciary is to be conscious of and concerned about doing right and doing it in a manner that appears to be proper to objectively reasonable persons with open minds." (5th Cir.)*
- \* *"I fully recognize that a system for determining good faith assertions of judicial misconduct needs to be in place, and that the present system is designed to and does serve that useful and beneficial purpose. I do not propose its abolition. I only point out its susceptibility to abuse." (8th Cir.)*

However, a few judges recommended that some streamlining and revision might be necessary. In fact, it appears that a study is being conducted by the Judicial Conference in response to concerns regarding the ethics complaint review process. \*

- \* *The current judicial ethics procedure "may need some streamlining and revision, and we currently are investigating this possibility on both our Judicial Council and through the National Committee on Judicial Misconduct and Disability. Some thoughtful changes have been proposed locally and nationally." (10th Cir.)*
- \* *"In conformity to a recommendation of the ethics committee of the Judicial*

*Conference, the Seventh Circuit is establishing a program that will bring private attorneys into the process of reviewing ethical complaints against the judges of the circuit." (7th Cir.)*



One judge noted that nonlawyers and nonjudges sitting on disciplinary boards would foster a sense of trust.

- \* *"I would note that many people distrust the concept of judges judging other judges. Personally, I would like to see nonlawyers and nonjudges sitting on disciplinary boards. Prior to my appointment to the bench, I served as a member and as a president of our state's Judicial Supervisory Commission. The membership of this Commission was composed of judges, lawyers, and 'lay people' citizens. It worked very well and I believe it helped foster a sense of trust."*