Hearing
Before the
National Commission on Judicial Discipline and Removal

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COMMISSIONERS PRESENT
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Judge S. Jay Plager, Vice-Chairman
Prof. Stephen B. Burbank
Judge Levin H. Campbell
Charles J. Cooper
Representative Hamilton Fish, Jr.
Chief Justice Gordon R. Hall
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CHAIRMAN KASTENMEIER: Mr. Cooper? Are there any further questions from the panel? I have just taken over from Congressman Fish, who had to leave, so I will be chairing the Commission for the balance of the day.

I want to express my thanks to Congressman Fish for chairing the Commission up to this point.

I also want to thank Sandy D'Alemberte for his testimony today, and we look forward to working with you on this question.

MR. D'ALEMBERTE: Thank you very much. Mr. Chairman, may I introduce Denise Cardman?

CHAIRMAN KASTENMEIER: Denise Cardman, yes.

MR. D'ALEMBERTE: She works with the American Bar Association and has been blessed with the task of working with this Commission. She is in the Washington office and I think you'll find her extremely helpful. She will give me instructions to return whenever you tell her to give them to me. If we can help out, please let us know.

CHAIRMAN KASTENMEIER: Certainly. Thank you very much.

MR. D'ALERMBERTE: Thank you.

CHAIRMAN KASTENMEIER: Next, I would like to greet Mr. Paul Kamenar. [146] Mr. Kamenar is Executive Legal Director of the Washington Legal Foundation, which is a non-profit public interest law and policy center.

As part of the Foundation's court watch project, Mr. Kamenar, among other things, has filed numerous misconduct complaints under the 1980 Judicial Discipline Act. Also, Mr. Kamenar is a senior fellow of the Administrative Conference of the United States and has argued cases before the United States Supreme Court and testified, as well, on numerous occasions before the Congress.

Mr. Kamenar, welcome. You may proceed as you wish. [147]

PAUL D. KAMENAR. ESQ.
EXECUTIVE LEGAL DIRECTOR
WASHINGTON LEGAL FOUNDATION

MR. KAMENAR: Thank you very much, Mr. Chairman, and thank you members of the Commission for inviting me here today to share my thoughts and experiences with this Commission. I commend the Commission for the work that it is doing. I think it is vitally important that you study these issues and come up with reforms that are necessary. I hope that I can give you some insight into our experience that might help you with that task.

I'm the Executive Legal Director of the Washington Legal Foundation. We are a non-profit public interest law and policy center. We engage in litigation and the administrative process over a variety of substantive areas, as well as publish monographs and working papers on various legal topics.

As the Chairman pointed out, we have a court watch project which constitutes a relatively small but, nonetheless, important part of our foundation, where we monitor the conduct of state and federal judges. We have filed misconduct complaints against dozens of state and federal judges for misconduct on and off the bench.

We've also filed amicus briefs in various cases [149] that have some relationship to this issue, one in the Court of Claims involving Judge Alcee Hastings, a claim for compensation on the grounds that the attorney's fees he had to expend to defend himself in the impeachment proceedings constituted a diminution of his salary and, therefore, was unconstitutional.

I won't go it any further lest I breach a violation of the canons of ethics for Judge Plager, who may have to hear that on appeal. But we were, also, in the Court of Appeals dealing with the legal issues involved in Judge Alcee Hastings' impeachment proceedings.

We're also considering filing a brief in the Supreme Court in the *U.S. v. Nixon* case on the side of the United States supporting the current procedures that the Senate has to streamline the impeachment process.

We have filed at the state level complaints against a Michigan judge who publicly gave probation to two white men convicted for beating to death an Asian-American. The Department of Justice later filed a civil rights charge against those two killers.

We also filed a complaint against former Chief Judge Carl Moultrie of the Superior Court of the District of Columbia on behalf of a mother whose daughter was viciously murdered, having been shot dead in the head three times point blank. The judge gave the confessed weekends only in a halfway [150] house for a year. You wonder why there's a lot of violence in the District of Columbia and other places where judges think a slap on the wrist is sufficient punishment?

We filed a complaint recently against a California Court of Appeals judge who is simultaneously serving as a trustee of the Environmental Defense Fund, a clear violation of the Code of Judicial Conduct, when he sits on environmental cases.

At the federal level, we filed complaints under the Judicial Conduct and Disability Act of 1980 against former Judge Alcee Hastings, and against Circuit Judge Abner Mikva for soliciting members to join an ABA committee. I guess the ABA is not here. They may have lost some members because Judge Mikva agreed to discontinue that practice upon receiving an advisory opinion from the committee of the Judicial Conference on this issue.

We filed a complaint against Robert Sweet of New York, who has the dubious distinction of becoming the first federal official of any of the three branches of our federal government to publicly call for the legalization of all drugs. He continues to sit on drug cases.

We filed misconduct complaints against Judge Buchmeyer in Texas, which I will talk about in a minute; and Judge Kelly in Philadelphia, and others.

Our general and overall comment is that the [151] disciplinary process as we've experienced it and researched it is generally ineffective. I think you've heard testimony before me, and maybe this morning, that things seem to be going pretty well, but that's not our experience.

Our impression is that the misconduct is generally condoned, judges are unwilling to investigate misconduct of their fellow judges unless if

gets very egregious as in the case of Judge Alcee Hastings; and that they will generally look for ways to dismiss the complaints that are filed.

When the chief judges dismiss the complaints and their decisions are appealed as the statute does allow, our experience is that those decisions are generally rubber stamped. Almost always there's no reason or opinion that is issued explaining the decision of the full judicial council. The complainant and the public, again, are left with the impression that the judges are sweeping the problem under the rug.

I think the statistics—and I don't have them, but I'm sure the Judicial Conference has compiled these statistics—show generally that these complaints are almost always dismissed and very few get to the investigatory stage.

I think the case that best illustrates our frustration with the operation of this whole process is our complaint against Judge Jerry Buchmeyer in Dallas, Texas, [152] which we filed before the Judicial Council of the Fifth Circuit, which to us has seemed to make a mockery of the statute in the way they handled it.

I think the Fifth Circuit, among all of the circuits, has been very remiss in enforcing the statue. They have provisions in their local rules such as a one-year statute of limitations, which the federal statute does not condone, but, nevertheless, they have that.

We filed a misconduct complaint against Judge Buchmeyer because of information that came to us that suggested that the judge had engaged in ex parte contacts with Mayor Annette Strauss of Dallas involving a civil rights case that involved the city of Dallas without getting the consent of all the attorneys in that case. [153]

We didn't know for sure whether that occurred—we had good evidence and information to support it. We filed the complaint, and unbeknownst to us, both the mayor and the city attorney submitted secret affidavits, if you will, to the Judicial Council confirming that the judge did not contact the attorney, the city attorney, and, indeed, the mayor did state that she talked to the judge about the case and he informed her not to tell anybody that they had talked. She went on a radio talk show, and explained what would happen if this case wasn't resolved the way it should be. She was asked repeatedly, "Did you talk to the judge about

this, because it sounds like you know something the rest of us don't know."

She, of course, publicly said, "No, I haven't" on the advice of the judge. It later came out that he had told her not to tell anybody about that.

So, unbeknownst to both the judge and our Foundation, those affidavits were submitted. Chief Judge Clark had sent the copy of the complaint to Judge Buchmeyer, and Judge Buchmeyer in a conference in his chambers with the parties' attorneys in the case, said, "I've got this complaint from the Washington Legal Foundation, and I'm going to answer this, and I'm going to say to the Chief Judge that I did get the consent of the city attorney," and looked at the city attorney's associate [154] who was in the room and, he did reply that he did get the consent of all the attorneys.

That's when the city attorney took it upon herself to file this affidavit saying that just simply wasn't the case.

We also made some other allegations that during the course of an intervention proceeding before Judge Buchmeyer there were allegations that people were sending him letters, hate mail, about his activities and had a very racist in tone.

He pulled those letters out during the hearing, at the intervention hearing, and implied to those who were going to intervene in the case against the city and against the plaintiffs that they may be racist like these letters suggest. Very improper conduct, as we maintain in our complaint.

Nevertheless, Chief Judge Clark said that with respect to the ex parte contact with the mayor, the judge never really considered this information, so it really didn't amount to anything, and did not dispose of the consideration of these crank letters during an open hearing; and the way he was discourteous to litigants saying that, "well, this is all part of the proceedings and, therefore, relate to proceedings before the Court." Apparently, Judge Clark has a rule that's really not phrased that way in the [155] statute that such misconduct is not fair game for a judicial misconduct complaint.

He finally then said, with respect to the discrepancy between the affidavits of the mayor and the city attorney and what Judge Buchmeyer told him, that by publishing this order that recites all these nefarious events, that that by itself constitutes "appropriate corrective action" under the Judicial Misconduct Act.

It seemed to us that the corrective action should have been some kind of reprimand or disciplinary action against the judge. Corrective action, in our view is where, for example, Judge Mikva refrained from soliciting members to the ABA committee, or if the judge in California would resign as a trustee of the Environmental Defense Fund. That's corrective action.

It seemed to us very strange to argue that corrective action is the mere publication of the reciting of these proceedings, as if that's the intervening event. It doesn't make any sense for the mere publication to go backwards in time and constitute an intervening event.

We, thereupon, filed a second complaint focusing on this dissembling by Judge Buchmeyer. We alleged that it may even violate 18 U.S.C. 1001. That was kicked down to Judge Politz, the next ranking circuit judge, [156] because, obviously, you'd be reviewing, in effect, some of what Chief Judge Clark did.

Judge Politz duly dismissed it under section (a) (1) as the complaint did not really state a claim. And there we are.

Then we appealed the whole thing, by the way, to the full Judicial Council of the Fifth Circuit back in whatever the date is of this appeal which is before the Commission—it was filed almost a year ago—and we just received word a few weeks ago that it was, again, summarily affirmed, with no reasons given explaining why any of this conduct by Judge Buchmeyer was not violative of the Code of Conduct, and why what appears to be actual dissembling to the judicial council itself, does not constitute the worst form of judicial discipline in terms of violation of the Code of Conduct.

That undermines the integrity of the whole process, and I've experienced this in an number of cases. I've had citizens call me up, send me their similar pleadings, and find that they also share my dissatisfaction with the whole system.

As I've stated, the statute basically gives the chief judge three reasons to dismiss the complaint: one, it's not in conformity with 372 (c)(1); two, it directly relates to the merits of a decision or procedural ruling; [157] or, three, it's frivolous.

Now, the chief judge can dismiss on any of those three grounds, or they can, as the Chief Judge of the D. C. Circuit did with respect to Judge Mikva, say that corrective action was taken there and conclude the proceeding.

We have no problem really with the way the Mikva one was handled. But with respect to these three grounds, it seems that the chief judge and the councils can really manipulate these grounds whatever way they want to deal with this.

For example, with respect to point number one, that it is "not in conformity with section 372(c)," what does that really mean, "not in conformity?" Section 372(c)(1) says you have to file a brief complaint alleging the misconduct. Well, if the complaint is long instead of brief, I guess one could say it's not in conformity and, therefore, can be dismissed under that, although it seems that that's been invoked basically to show that you haven't really stated a cause of action, so to speak, under the statute, and I think that needs to be clarified.

The second point is: Does it directly relate to the merits of a decision or procedural ruling? Now, as I've just told you, that was used to dismiss our Judge Buchmeyer complaint, and also was used by the Chief Judge of the Third [158] Circuit to dismiss the complaint we filed against a judge who was invited to attend a conference on asbestos in New York, paid for by plaintiffs and their counsel in an asbestos case that he was sitting on. He refused to recuse himself. We argued that he should have recused himself for a number of reasons. And, again, they say, "Well, it's directly related to the merits of a decision or procedural ruling."

We don't think—if it's a violation of the code of judicial conduct, and one violation is failure to recuse—that Congress really intended that anything that relates to the proceedings be off limits for a judicial misconduct complaint. The parties may not want to appeal their rights during litigation where there might be some misconduct by the judge, even though it might be able to be handled through the court system, for fear that there may be some retaliation.

That's a well-founded fear, and it behooves groups like ourselves to be independent and follow these kinds of misconduct complaints and not be thrown out by the chief judge on the grounds that, well, if there's really a problem here, let the parties appeal this failure to recuse or other misconduct by the court.

In the Buchmeyer case, we argued about the way he mistreated the witnesses and so forth. Again, the intervenor [159] did not want to appeal that decision, and didn't have the resources. But why should that kind of misconduct in open court be countenanced, especially when even Judge Clark, coauthor of the Illustrative Rules, indicated that if there is an allegation of misconduct while the judge is on the bench, the chief judge would normally want to see the transcript of the proceedings there.

In this case, Chief Judge Clark, not even taking his own advice apparently, did not even order the transcript and did not treat this seriously because he thought he had an internal rule that if it dealt with an open hearing, that's off limits for misconduct complaints.

Finally, the third ground is: Is it frivolous? What do you mean by that? For example, in the Judge Kelly complaint in Philadelphia—and I'll be closing here in a second—not only do we allege that he improperly attended this asbestos conference, but as a totally independent allegation we discovered that he received a $500 gift from his court reporter. There is a federal law that prohibits superiors in all three branches of government from receiving gifts from their subordinates. In fact, there are two federal laws on this; indeed, some advisory opinions by the Judicial Conference apply.

Yet the Chief Judge of the Third Circuit said, "That's frivolous." Really. I mean, since when is it a [160] frivolous allegation that a federal judge has violated a federal law?

So you can understand our total frustration with the way this law is being applied out in the field, so to speak, and we recommend that there be changes made to the statute. Perhaps one change that might be made is right there in the beginning of 372(c) in terms of what is subject to the judicial misconduct complaint procedure, where it says, "Has the judge engaged in conduct prejudicial to the effective administration of justice?"

Well, what does that mean? I would think that any violation of the U.S. Code of Conduct ought to be, per se, considered to be conduct

prejudicial to the administration of justice. Apparently, some of the circuits don't think so. I would also say a violation of a federal or a state law by a judge should be subject to this. So I would recommend amending the statute so that it would read that a complaint may be filed where "the judge has violated the Code of Conduct for U.S. Judges, violated any federal or state law, or otherwise engaged in conduct prejudicial to the administration of justice."

This would drive it home, so that the circuit court councils can't weasel out under that phrase in order to cover up what clearly is improper conduct.

A few other quick points: We think that the chief judge [161] and the full judicial council ought to give reasons for the disposition of these complaints. A lot of times they're just dismissed or affirmed in one or two sentences. You really don't know what the reasons are.

We recommend that dispositions of all complaints by the chief judge and judicial council be filed with the Administrative Office of the U.S. Courts. The Third Circuit local rule does require this. I went down to the conference, found maybe two or three filings there in the file from the Third Circuit. They're not even following their own rule. There have been hundreds of complaints over the years to do with the Third Circuit, and there are only two or three in the folder!

We also recommend highly to the Commission the recommendations by the 20th Century Fund Task Force on Federal Judicial Responsibility that looked at a lot of these issues. And there are a lot of good recommendations in here with respect to disclosure, and with respect to, perhaps, having a oversight panel composed of not just the judges in the circuit, but perhaps attorneys and laymen as there are in the state judicial misconduct commissions. That, at least, would give the public at least the appearance that it's not just a matter of the judges trying to protect their own in dismissing a lot of these complaints.

That generally concludes my remarks, and I'd be [162] glad to take any questions.

CHAIRMAN KASTENMEIER: Thank you, Mr. Kamenar. We do have "The Good Judge." And we've had at least one, if not two, witnesses from the task force already appear before us.

I'd like to now yield to Judge Plager. Judge Plager?

JUDGE PLAGER: Thank you very much, Mr. Kamenar, for your thoughtful and considered remarks. Without knowing all the details of all the cases you have discussed with us, and without getting into the merits of any particular case, I must say that your remarks certainly drive home at a minimum the fact that the system seems not to be communicating effectively to the public, or at least certainly parts of the public a sense of satisfaction with the way it is working.

And that's an important consideration. That is, if we are going to continue with the system in which judges deal with their own problems, it has to be a system that deserves and gets widespread public understanding and concurrence. And you're suggesting that we're falling substantially short of that.

And, as I say, I think that's a concern then that we certainly have to address, and I thank you for bringing it to us. [163]

Let me ask you just one, well, a couple of questions. Perhaps you answered this question in the last few minutes of your remarks. Given your concerns, have you told us what you think we need to do to make the system more responsive? And, if so, please don't repeat it. I'll get it from the record. Or, are there other things that we can do or should be doing, or is it your feeling that the system is just fatally flawed and we have to have a different one?

MR. KAMENAR: Well, I did make several recommendations. I don't think it's fatally flawed. I think it needs to be and can be improved substantially along the lines of being more accountable to the public. And I made several suggestions about changing some statutory language to make it clear what conduct can be subject to the Act, and how there may even be an oversight committee composed of not just judges but attorneys and laymen as well to open the process up. Some of the confidentiality provisions, I think, need to be opened up and, basically, some of the recommendations in "The Good Judge" by the 20th Century Fund Task Force should be adopted. The Commission should seriously look at that as well as, as I said earlier, for the chief judge and the council to explain the reasons why they're dismissing complaints. I don't expect every time I file a complaint [164] that I'm going to get what I want. I don't mind losing a case. I lose a lot of cases. But what I don't like is not knowing why I lost.

which reflect pretty much the federal ones, as well. In terms of the appearance of justice and undermining the integrity of the judiciary, we think it clearly is a slap in the face where unduly lenient sentences just have the public totally outraged and we think it—

JUDGE PLAGER: I take your point, but my question is were you suggesting that we discard the merits criteria?

MR. KAMENAR: No, I don't think that necessarily has [166] to be discarded, but I think what needs to be clarified is this, that what does it mean by the merits because we have cases where the judge would find—as Chief Judge Clark held in the Fifth Circuit— that if it's anything dealing with what happened in open court, it's with the merits and, therefore, is not eligible.

But, number two, even if it had to do with the merits, is there an analog in the Code of Conduct? For example, recusal. The Code of Conduct states that a judge shall recuse him or herself under certain conditions. That's a separate body of ethical law.

There's also a separate body of case law that decides when a party can file such motions and when the courts can rule on it.

If, indeed, the parties either don't use that procedure or are satisfied with the decision of the judge not to recuse himself, I don't think it should be off limits for an independent organization like ourselves or anyone else who thinks that the decision is totally wrong; it's obvious to everybody, but no one wants to appeal it for strategic or tactical litigation reasons, that the Code of Conduct has been violated. It should not be swept under the rug as if to say simply, "Yes, everybody would agree that the Code of Conduct has been violated, but just because it happens to be part of this proceeding that nobody wanted to raise, [167] we're not going to address it."

JUDGE PLAGER: I understand. Thank you, Mr. Chairman.

CHAIRMAN KASTENMEIER: Judge Campbell?

JUDGE CAMPBELL: Thank you for your testimony. I don't have any specific question at the moment.

CHAIRMAN KASTENMEIER: Chief Justice Hall?

CHIEF JUSTICE HALL: I don't believe I have anything.

CHAIRMAN KASTENMEIER: Mr. Cooper?

MR. COOPER: I only have one question in addition to welcoming Mr. Kamenar to our proceeding today. And that is do you or your organization have any information or interest or participation in a judicial discipline proceeding that is taking place that arises out of Texas dealing with a Texas redistricting case?

This is something that was brought to our attention, this Commission's attention, at its last meeting. And I was just wondering if you have any participation in that.

MR. KAMENAR: No, we do not. I am generally aware of that, and it sounds suspiciously similar to with Judge Buchmeyer, although they're totally different cases and facts and districts and so forth. But we will take a look at that, and if we think something is warranted we will take action. But I understand that that has reached the next level, as I understand, where finally an investigatory [168] committee has been appointed. So the judge or the chief judge there, which is probably unprecedented, has begun opening the proceeding, or starting the proceedings.

MR. COOPER: Okay. Thank you.

CHAIRMAN KASTENMEIER: Professor Burbank?

PROF. BURBANK: Mr. Kamenar, I think your remarks are very helpful to the Commission. Am I correct in assuming that your testimony is that the Fifth Circuit still has the statute of limitations in its rules? Because my impression was that that was made verboten by the 1990 amendments to the Act.

MR. KAMENAR: Well, I think you're correct. They may have changed—

PROF. BURBANK: Because of the Fifth Circuit—

MR. KAMENAR: —or probably at their next meeting. But the latest rules that I have from the Fifth Circuit do have a statute of limitations. I don't know whether that rule—

PROF. BURBANK: It must be in the process of revision.

MR. KAMENAR: I hope so. I hope a lot of—

PROF. BURBANK: So do I.

I'd like to explore with you a little bit of what you said because it relates to some information and discussion that the [169] Commission has had before. Your notion, which we have heard from others, is that the Commission should be concerned with the way in which the chief judges and the councils, to the extent they're reviewing dismissals by the chief judges, are interpreting language that is not the most determinant.

Frivolity, of course, is often thought to be in the eye of the beholder. We know how indeterminant the concept of frivolousness is under this statute or Rule 11, or whatever. That's been, I think, the focus of many comments about indeterminacy.

I was more interested to hear your comments about what one might call abuse of the power to dismiss, indeed, the duty to dismiss complaints that are directly related to the merits of a decision or a procedural ruling. I believe that the Commission should take a look at that, as well as decisions by chief judges to conclude proceedings on the ground that there's been corrective action taken, which I also was interested to hear you testify about.

I would like to explore for a moment, if I may, your notion, as I take it, that it would be appropriate, perhaps by statutory amendment, to read into or to put into this statute the Code of Judicial Conduct. I think I also heard you say that you thought that it should be automatically a violation of the 1980 Act by [170] amendment if a judge has violated any law. I wonder whether that really is something that you mean to say.

I'm concerned because if one looks at lawyer discipline now, one sees the potential hazards of formulating what one might call transremedial norms. One hazard, of course, is that norms get skewed because they're defined to deal with a number of different remedial contexts.

Another hazard is, perhaps, that we cannot foresee all the uses to which the norms will be put. The Kaye Scholar incident suggests, perhaps, the problem there. Would we have formulated the model rules

the way we did if we knew that the government might go after the entire assets of a law firm?

Do you really think that every time a judge—and let's assume that there has been a violation—has violated the Code of Conduct, that that judge should be subjected to discipline under the Act? Do you really think that every time that a judge has violated any law that that judge ought to be subjected to discipline?

MR. KAMENAR: Well, let me begin by, first of all, perhaps clarifying the statutes here. The statute in terms of whether the subject of the complaint directly related to the merits of the decision or procedural ruling and so forth, it states here that the chief judge may dismiss the [171] complaint. It's not compelled under the statute. The statute does not compel dismissal even if it does relate to the merits of procedural ruling.

So it seems to me Congress did not foreclose that altogether.

But going to your question regarding whether I think the judicial conduct should be built into the statute as well as violation of federal law. I think the case can be made, certainly, for the Code of Judicial Conduct to be put into the procedure that purports to discipline judges from violating ethical considerations.

With respect to lawyers, you have that as well. To be sure, there are a lot of problems with the Kaye Scholer case and so forth, but there are many cases in D. C., for example, where a lawyer was disciplined not for anything he did with respect to his practice. I'll give you an example where a lawyer had rented a car from an airport car rental agency. His friend drove it or something like that, and it was returned and the friend didn't pay for it. He said, well, my lawyer friend rented it. The lawyer didn't pay the bill and tried to stiff the car dealership or the car rental agency.

The D.C. Disciplinary Bar Council ruled that that conduct violated the ethics of conduct for lawyers in terms of how they conduct not only their professional lives, [172] but their private lives as well. That person was reprimanded or suspended for a couple months or something like that.

PROF. BURBANK: I think that's a very good example, because I think if you look at the legislative history of the 1980 Act, rightly or wrongly, and I know we're talking about statutory amendments here, if you will—and I define that legislative history broadly to include the previous attempts to pass legislation in the Senate—you will find that one of the reasons why the Nunn-DeConcini bill failed was because of concern on the part of a number of legislators that the standard that was being used would allow the bodies that would have been charged by the legislation with the carrying out of the process to delve too deeply into the lives of individual judges for things that were not demonstrably related to their conduct on the bench.

Now, I take it that one response you could make is—at least if one is talking about the Code of Judicial Conduct—presumably, there's nothing in there that is not demonstrably related to the conduct of the judge on the bench. I'm not sure you could make the same response with respect to violations of federal law.

I remember in connection with the proposed constitutional amendment for automatic removal for violation [173] of a felony, that Judge Wallace came up with the marvelous example of Idaho law, and there's a comparable crime for federal reservations, that poisoning your neighbor's cat is a felony. I was asked by Senator Hatch if I thought that a judge ought to be removed for poisoning his or her neighbor's cat, and I thought, rather, that a report to the SPCA would be appropriate.

MR. KAMENAR: Yes. Right. Well, I think, you know, you've got a point to be made there. But with respect to the Code of Judicial Conduct, if that wasn't the intent of the Congress when passing this, certainly we see that the phrase that is currently in the statute needs to be defined, "conduct prejudicial to the effective and expeditious administration of the business of the courts."

I just simply think that the public has a right to expect federal judges and all judges to comply with the Code of Conduct, especially judges, because they represent society, law and order, and so forth. And I think that Canon 2 says a judge shall respect the law and instill public confidence in the integrity and impartiality of the judiciary. It talks about the—

PROF. BURBANK: I guess all I'm saying, Mr. Kamenar—

MR. KAMENAR: —judge's social and family [174] relationships and so forth. I'm not asking that they pry into the judge's private lives in every sense, but I would think that if one can make out a case where the judge has violated the Code of Conduct for United States Judges, or an applicable advisory opinion to that, that that should be subject to the disciplinary proceedings. Perhaps you have a point with respect to federal and state law that poisoning a cat or running a red light may be de minimus or frivolous or—

PROF. BURBANK: Or not related to conduct on the bench.

MR. KAMENAR: Perhaps that's correct. Maybe that could be the qualifying phrase because there are other cases like we said, for example, with respect to Judge Buchmeyer, where we felt that his dissembling to the circuit in terms of investigating of complaint, that really didn't relate to the conduct on the bench in that particular time although the first complaint did. The second one focused solely on the way he handled himself with the first complaint.

And we think that that too should rise to the level of review under the respective statute.

CHAIRMAN KASTENMEIER: Thank you very much. One last question. Because of your difficulties with the 1980 Act [175] and the way you've been treated under it or fared under it, and your recommendation of "The Good Judge," it is my recollection that they describe the 1980 Act as basically an inquisitorial technique in terms of handling complaints or cases and suggested the adversarial model might be the way to go.

Have you any view about that?

MR. KAMENAR: Well, no, I haven't focused on that. I'd be glad to give some more thought to that and submit my views to the Commission.

I think with respect to serious allegations (and there are a lot of these serious allegations), since it involves essentially what may perhaps even lead to impeachment, as we know, that there is an adversarial relationship involved. I think a lot of these can be handled simply with just the judge being admonished by the Chief Judge the way, for example, Judge Mikva's complaint was handled.

We were essentially satisfied with the way that was handled, and that wasn't necessarily inquisitorial or adversarial. It was just common sense, it seemed to me, how that was essentially handled. And we got relief. The judge stopped what he was doing which we felt was wrong. It was soliciting membership to the ABA committee. It had nothing to do with what he did on the bench, although [176] that was a second element of our complaint. And we think there should be some mechanism to handle these kinds of charges.

CHAIRMAN KASTENMEIER: Thank you very much, Mr. Kamenar, for your contribution today.

Next, the chair would like to call Reid Weingarten, who is waiting here patiently. Mr. Weingarten, I think, as the Commission knows, is a partner in the law firm of Steptoe and Johnson here in Washington. He also serves as special council for the Senate Foreign Relations Committee investigation known as the "October Surprise."

Mr. Weingarten was the prosecutor in the impeachment trials of Alcee Hastings and Walter Nixon, and was involved, as well, in the Claiborne case. He was a trial attorney with the U.S. Department of Justice from 1977 to 1987.

You're most welcome, Mr. Weingarten. We are delighted to hear what you have to say. [177]

REID WEINGARTEN, ESQ.
PROSECUTING ATTORNEY FOR
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MR. WEINGARTEN: It's a great privilege to be here, and I'm delighted to do anything I possibly can to help the Commission.

As you stated, my experience in connection with your work dates back to my service as a prosecutor in the Public Integrity Section of the Justice Department from 1977 to 1987. As the Commission knows, I'm sure, every allegation in the federal system against a federal judge is referred to the Public Integrity Section, and the Public Integrity Section is a small group of approximately 25 lawyers; and it's the intention of