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## RESOLVING JUDICIAL CORRUPTION WHILE PRESERVING JUDICIAL INDEPENDENCE: COMPARATIVE PERSPECTIVES

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Demands for judicial accountability continue to grow worldwide. For example, the World Bank has recently reemphasized the importance of combating corruption. James Wolfensohn, the president of the World Bank, stated that “[w]e need to deal with the cancer of corruption. In country after country, people are demanding action on this issue. They know that corruption diverts resources from the poor to the rich, increases the cost of running businesses, distorts public expenditures, and deters foreign investors.”<sup>1</sup> The World Bank has also specifically cited the need for “a fair and predictable judicial system.”<sup>2</sup>

Judicial corruption certainly exists; I know of no country that is completely free of corruption, with its insidious effect of undermining the rule of law. Attempts to solve judicial corruption, however, can themselves weaken the rule of law if the judiciary comes under the influence or control of the legislative or executive branch. The challenge to all governments, therefore, is to eradicate judicial corruption without intruding on the independence of the judiciary. In this Article, I discuss the problems and issues that arise in combating judicial corruption as well as insights gained from experience in Asia and the United States.

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1. President James D. Wolfensohn, *Strategic Issues of the World Bank Group* (visited Oct. 24, 1997) <<http://www.worldbank.org/html/prddr/trans/so96/art.3.htm>>.

2. *Rethinking the State: World Bank Says an “Effective State” Helps People and Markets Flourish* (last modified June 25, 1997) <<http://www.worldbank.org/extdr/extmel/1380.htm>>.

## I. JUDICIAL CORRUPTION

Judicial corruption has been documented in the United States and throughout the world.<sup>3</sup> A United Nations report states: “[C]orruption is universal. Nowadays, all States, whether developed or developing, suffer from the same phenomenon to varying degrees.”<sup>4</sup> Although the vast majority of judges with whom I have associated worldwide are hardworking, intelligent, and honest, it is undisputed that a few judges are inappropriately influenced in their decisionmaking. For example, three California Superior Court state judges and an attorney were recently investigated and convicted for their involvement in a corruption scheme.<sup>5</sup> The judges received a total of \$100,000 in gifts from an attorney who had cases pending before them. Prior to the indictment, the State’s Commission on Judicial Performance investigated the judges, after which two of the judges resigned and one was removed.<sup>6</sup> In the end, one of the judges pled guilty pursuant to a plea bargain, and the other two judges went to trial and were convicted and sentenced to 33 and 41 months in prison.<sup>7</sup>

A juror in the cases commented, “We hold judges to be above everyone else; they sit on a pedestal.”<sup>8</sup> Judicial corruption not only knocks judges off these perceived pedestals, but also erodes respect for law. An editorial, calling for the judges to be sentenced to jail, stated: “We cannot stress enough how important blind justice is to our society. If a judge can be bought off for a few thousand dollars in car repairs and a membership to a health club, then everybody’s rights are in jeopardy because the only thing protecting our rights is our judiciary.”<sup>9</sup> Public response to the trial provides an important example of both the harm corruption causes the judiciary’s image and the need for judicial accountability.

## II. JUDICIAL INDEPENDENCE

In the face of the harm caused by judicial corruption, some question

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3. See, e.g., U.N. COMMISSION ON HUMAN RIGHTS, THE REALIZATION OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: FINAL REPORT ON THE QUESTION OF THE IMPUNITY OF PERPETRATORS OF HUMAN RIGHTS VIOLATIONS (ECONOMIC, SOCIAL AND CULTURAL RIGHTS), U.N. Doc. E/CN.4/Sub.2/1997/8 ¶¶ 71-80 (1997) [hereinafter U.N. REPORT]; Bracy v. Gramley, 117 S. Ct. 1793 (1997); MARY L. VOLCANSEK, JUDICIAL IMPEACHMENT (1993).

4. U.N. REPORT ¶ 79, *supra* note 3.

5. Anne Krueger & Valerie Alvord, *Former San Diego Judges Guilty*, S.D. UNION-TRIB., Oct. 19, 1996, at A-1.

6. Anne Krueger, *Court Corruption Scandal Led to Reform*, S.D. UNION-TRIB., Oct. 20, 1996, at A-1.

7. Anne Krueger & Valerie Alvord, *Two Ex-Judges, Lawyer Ordered Imprisoned, But Remain Free*, S.D. UNION-TRIB., Feb. 6, 1997, at A-1.

8. Leslie Wolf, *Judging Former Judges Was Scary, Heart-Rending for “Common People”*, S.D. UNION-TRIB., Oct. 19, 1996, at A-1.

9. *A Subversion of Justice*, S.D. UNION-TRIB., Oct. 19, 1996, at B-8.

why judicial independence should create a barrier to any potentially effective means of ensuring judicial accountability. Judicial independence, however, should not be so lightly dismissed. It, too, is vital for preserving a system of liberty and rule of law.

Judicial independence has been recognized as a universal human right: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. . . ." <sup>10</sup> As stated in the 1995 Principles of Independence of the Judiciary, signed by thirty-four Chief Justices of Asia and the Pacific, judicial independence requires that

- (a) the Judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and
- (b) the Judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature. <sup>11</sup>

So why is judicial independence so important? Maintaining an independent judiciary is essential to the attainment of the judiciary's rule of law governance objective and the proper performance of its functions in a free society. <sup>12</sup> Such independence must be guaranteed by the State and enshrined in the constitution or the law so that any illegal actions by the executive or legislature can be checked. As Alexander Hamilton pointed out, limitations on government "can be preserved in practice no other way than through the medium of courts of justice. . . . Without this, all the reservations of particular rights or privileges would amount to nothing." <sup>13</sup>

Judicial independence ensures that powerful individuals must conform to the law; with an independent judiciary, no one is above the law and no one is below the law. Without it, there is little hope for the rule of law. As Lord Acton memorably stated, "Power tends to corrupt and absolute power corrupts absolutely." <sup>14</sup> To restrain unauthorized exercises of power effectively, judges must be beyond the reach of those who would transfer or remove them because of their decisions.

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10. UNIVERSAL DECLARATION OF HUMAN RIGHTS, G.A. Res. 217, art. 10 (1948); see *International Covenant on Civil and Political Rights*, 999 U.N.T.S. 171, art. 14(1), 6 I.L.M. 368 (1967).

11. Principles of Independence of the Judiciary, signed by Chief Justices of Asia and the Pacific, originally adopted in Beijing, China, in 1995 (copy on file with author).

12. See Paul Ricoeur, *The Political Paradox*, in LEGITIMACY AND THE STATE 250, 270 (William Connolly ed., 1984) ("The independent exercise of justice and the independent formation of opinion are the two lungs of a politically sound state. Without these, there is asphyxiation."); RUSSELL WHEELER, JUDICIAL ADMINISTRATION: ITS RELATION TO JUDICIAL INDEPENDENCE (1988).

13. ALEXANDER HAMILTON, THE FEDERALIST No. 78, at 465, 466 (Clinton Rossiter ed., 1961).

14. BARTLETT'S FAMILIAR QUOTATIONS 521:5 (Justin Kaplan ed., 16th ed. 1992).

Thus, the need for judicial independence is not for judges or the judiciary per se, but for the people. Justice Stephen Breyer explained the importance of an independent judiciary and the role of judges in the following way:

George Washington claimed that “the [true] administration of justice is the firmest pillar of [good] government.” . . . . The good that proper adjudication can do for the justice and stability of a country is only attainable, however, if judges actually decide according to law, and are perceived by everyone around them to be deciding according to law, rather than according to their own whim or in compliance with the will of powerful political actors. Judicial independence provides the organizing concept within which we think about and develop those institutional assurances that allow judges to fulfill this important social role.<sup>15</sup>

Judges’ “important social role” in the preservation of liberty and the establishment of a stable government depends on the strength of judicial independence. “[T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered . . . so long as the judiciary remains truly distinct from both the legislature and the executive.”<sup>16</sup>

### III. TENSION BETWEEN JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY

Although both judicial independence and judicial accountability are vital for maintaining the rule of law, they sometimes seem to conflict.<sup>17</sup> When misconduct is alleged, there will be a demand for action against the judge in question, just as there would be against any governmental actor. Judicial independence should not protect a judge from investigation and censure for a valid charge; judges should not be immune from the demands of justice for misdeeds. Indeed, there are several valid reasons for censure or removal of a judge, such as bribery, other corruption, commission of a felony, and senility.

The issue of prime importance, therefore, is how to detect judicial corruption accurately, to investigate it fairly, and to eradicate it effectively without eroding an independent judiciary. The executive and legislative branches should not be able to use investigations as retaliation for unpopular decisions or to exert subtle pressure on judges through hints or threats of investigation.

If judges are guilty of a crime, it stands to reason that they should be

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15. Stephen G. Breyer, *Judicial Independence in the United States*, 40 ST. LOUIS U. L.J. 989, 996 (1996).

16. HAMILTON, *supra* note 13, at 466.

17. *See, e.g.*, VOLCANSEK, *supra* note 3, at 2-3, 169-71.

open to criminal prosecution the same as anyone else.<sup>18</sup> But not all judicial misconduct is criminal. Most governments have some other type of investigation for lesser judicial misconduct. Various investigatory systems are possible, but I suggest that to preserve judicial independence, these investigations should be left primarily to the judicial branch.<sup>19</sup> Giving power to the executive or legislative branch to investigate judges for all misconduct can interfere with an independent judiciary. It provides too ready a tool to harass judges whose judicial opinions are not consistent with the wishes of political leaders.

Because judicial independence depends on the public acceptance of the judiciary as a fair, just, and honest body, the judiciary must carefully structure its investigations to assure the public that the judiciary is taking care of its own problems of corruption. In the end, judicial independence can be preserved only if judges exert the moral leadership and strength of character required to ensure judicial accountability. Benjamin Franklin's statement applies equally to a judiciary: "Only a virtuous people are capable of freedom. As a nation becomes corrupt and vicious, they have more need of masters."<sup>20</sup>

#### IV. ISSUES IN STRUCTURING A WORKABLE APPROACH

While various countries can and do take differing approaches to solving problems of judicial corruption, many common issues and questions remain. A threshold question, for example, is how to define "corruption" or "misconduct." In the California judges case, for example, the judge sentencing the former judges pointed out that "[i]t didn't start out as a criminal enterprise, but it escalated into that."<sup>21</sup> The convicted lawyer was a close social friend of the judges and gave them gifts, which in the end included the extended loan of a car, the use of a vacation home, car repairs, furniture, a computer, and other expensive gifts.<sup>22</sup>

When does a gift or friendship become a bribe or undue influence?<sup>23</sup>

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18. For a description of the process of criminal prosecution of United States judges, see Reid H. Weingarten, *Judicial Misconduct: A View From the Department of Justice*, 76 KY. L.J. 799 (1988).

19. See JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT AND ETHICS § 1.03 (1995); Howard T. Markey, *Federal Judicial Ethics: Choices Made; Choices Due*, in ETHICS IN THE COURTS: POLICING BEHAVIOR IN THE FEDERAL JUDICIARY 1, 3-4 (1990).

20. AMERICA'S GOD AND COUNTRY: ENCYCLOPEDIA OF QUOTATIONS 247 (1994). John Adams and Samuel Adams also identified the central need for morality to preserve liberty: "Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other," *id.* at 10, and "[n]either the wisest constitution nor the wisest laws will secure the liberty and happiness of people whose manners are universally corrupt." *Id.* at 23.

21. *Supra* note 7, at A-27.

22. *Supra* note 5, at A-10.

23. For a discussion of what constitutes bribery, see JOHN T. NOONAN, JR., BRIBES (1985). For a survey of cases on disqualification for bias, gifts, personal relationships, etc.,

Should the appearance of corruption be sufficient to trigger an investigation? I do not suggest that I have conclusive answers to these questions; every system, however, must determine and define what behavior is serious enough to warrant a judicial investigation and sanctions.

A related question is what instructions should be given to judges. Judges should be given notice of what behavior is considered misconduct. Many countries, including the United States, have written canons of ethics or a code of judicial conduct.<sup>24</sup> Such codes provide instructions to new judges and can serve as bases for courses on ethics to present judges.

Because "[t]he corrupted and the corrupter are not accomplices: each is the perpetrator of a distinct offence, subject to its own procedures and punishments,"<sup>25</sup> the judiciary is not the only organization that can help prevent judicial corruption. Countries should also examine the role of the bar associations. The bar should be required to pay close attention to lawyer conduct and determine how it can enforce ethical conduct of lawyers. Some possibilities for education include requiring a lawyer ethics course in law school, having an ethics examination before admission to the bar, and requiring the taking of ethics courses to maintain a license to practice. The bar can also have an investigation department within the bar association, which would have power to disbar lawyers for unethical conduct with judges.

In addition to these basic issues, a plan to check judicial corruption should also address (1) the role of prosecutors, (2) the role of courts, (3) what type of accounting is required, (4) how open the process will be, (5) how complaints should be made, (6) by whom complaints should be made, and (7) how to check less serious but troublesome conduct.

## V. APPROACHES OF COUNTRIES IN ASIA AND THE PACIFIC

In my work with the Conference of Chief Justices of Asia and the Pacific, I have had the opportunity to conduct an informal survey of various nations' approaches to dealing with judicial corruption. Although this survey is not intended to be a comprehensive textbook of comparative methods, it is useful to consider various approaches and not assume that all nations must follow a particular model.

In the over twenty responses I received from Asian and Pacific countries, most indicated that they use a combination of their chief justice and a commission or judicial council to guard against judicial misconduct.<sup>26</sup>

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see RICHARD E. FLAMM, *JUDICIAL DISQUALIFICATION: RECUSAL AND DISQUALIFICATION OF JUDGES* 103-286 (1996).

24. *E.g.*, YANG DI-PERTUAN AGONG, *JUDGES' CODE OF ETHICS* (Malaysia); *CODE OF CONDUCT FOR UNITED STATES JUDGES* (1997); see SHAMAN, *supra* note 19, § 1.02 (providing a history of the development of the United States code).

25. U.N. REPORT at ¶ 75, *supra* note 3.

26. *See, e.g.*, BASIC LAW, art. 89 (H.K.); LETTERS PATENT XVIA (4)-(8) (1991) (H.K.); BANGLADESH CONST., art. 96, 116; MALAYSIA CONST., art. 125; Judicial Disciplinary Act

One-fourth of the nations involve their Ministry of Justice (executive branch).<sup>27</sup> Other responses included the use of an ombudsman and the free press.<sup>28</sup> Australia, Brunei, New Zealand, and Japan, like the United States, allow judges to be removed only through impeachment.<sup>29</sup> Slightly more than half the countries appoint judges for life or until a fixed retirement age; the remainder, however, appoint judges for a fixed term of years.<sup>30</sup>

Virtually all of the countries have statutes or regulations establishing the procedure to investigate, adjudicate, and take corrective measures for judicial misconduct.<sup>31</sup> Although a total of 238 actions were brought for judicial misconduct in 1996 in the twenty-one countries surveyed, one-half of the countries reported that they had taken no action for judicial misconduct.<sup>32</sup> Of the actions taken, the vast majority were for judicial incompetence—only one was for corruption and five were for bribery.<sup>33</sup> Most countries, although not all, stated that they were satisfied with the current procedures.<sup>34</sup>

What can be learned from the experiences of these Asian and Pacific countries? First, the breadth of approaches reinforces the understanding that there is not just one way to combat judicial corruption successfully. Several countries, for example, have more than one individual or body that is involved in the fight against judicial corruption.<sup>35</sup>

Second, the fact that most countries lodge primary responsibility for investigation and action in the judicial branch further corresponds with the importance of judicial independence. One may wonder about the one-fourth of the countries that employ the executive branch for investigation.

Third, two-thirds of the Chief Justices are involved in guarding against judicial corruption.<sup>36</sup> The involvement of a chief justice or head of a regional

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(Jan. 20, 1956, stat. 381) (as amended) (Republic of Korea); SEYCHELLES CONST., art. 134(1); SINGAPORE CONST., art. 98(3), 111; PHILIPPINES CONST., art. 8, §§ 6, 11; FIJI CONST., art. 109; PAKISTAN CONST., art. 209; SOLOMON ISLANDS CONST. §§ 80, 87; SRI LANKA CONST., art. 107.

27. *E.g.*, New Zealand, Singapore, Thailand, Tonga, Vietnam (survey responses on file with author).

28. *E.g.*, Solomon Islands, Mongolia, Papua New Guinea, Brunei, Philippines (survey responses on file with author).

29. AUSTL. CONST., art. 3, § 72(ii); Supreme Court Act § 8 (Brunei); Judicial Council Act of 1991 (Nepal).

30. Survey responses on file with author.

31. THE PUNJAB CIVIL SERVANT (EFFICIENCY AND DISCIPLINE) RULES, 1975 (Pakistan); Judicial Disciplinary Act (Jan. 20, 1956, statute 381) (as amended) (Republic of Korea).

32. Survey responses on file with author.

33. *Id.*

34. *Id.*

35. For example, in Australia the governor-general acts in council on an address from both Houses of Parliament; in Singapore the Chief Justice investigates with help from the Corrupt Practices Investigation Bureau; and in New Zealand the head of a court's investigations are supplemented by the police or serious fraud office if criminal conduct is involved.

36. Survey responses on file with author.

court can provide leadership as well as an opportunity to resolve problems informally.

One troubling finding is that one-half of the surveyed countries reported no action taken during the year. This could mean that only one-half of the countries have any judicial corruption. But it is more likely that some countries are not being aggressive enough in rooting out corruption problems.

## VI. THE UNITED STATES APPROACH

Although the United States' procedure to investigate complaints and take action against judicial corruption has been thoroughly documented elsewhere,<sup>37</sup> I will provide a brief synopsis of the federal experience for comparison. Federal judges appointed under Article III can only be "removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."<sup>38</sup> The power to impeach a judge lies only with the House of Representatives, and only the Senate may try the case.<sup>39</sup> Although Congress may remove judges, it cannot reduce their pay during their lifetime tenures.<sup>40</sup>

The United States has been successful in not only maintaining impeachment as the sole method of removal, but in developing a second method to check less serious problems.<sup>41</sup> In 1939, Congress created Judicial Councils of the Circuits (circuit councils), a decentralized administrative structure.<sup>42</sup> The circuit council now consists of an equal number of trial and appellate judges, with the circuit chief judge as chair, and has power to "take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within [its] circuit."<sup>43</sup> Thus, the administrative power, including the power to investigate judges, was not given to the United States Supreme Court, the Judicial Conference of the United States, or circuit or district courts, but to local independent administrative

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37. See, e.g., Thomas E. Baker, *Background Paper*, in THE GOOD JUDGE: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON FEDERAL JUDICIAL RESPONSIBILITY 19 (1989); Russell Wheeler & A. Leo Levin, JUDICIAL DISCIPLINE AND REMOVAL IN THE UNITED STATES (1979); SHAMAN, *supra* note 19 §§ 1.04, 1.12; VOLCANSEK, *supra* note 3; Breyer, *supra* note 15, at 992-95; Jeffrey N. Barr & Thomas E. Willging, *Decentralized Self-Regulation, Accountability, and Judicial Independence Under the Federal Judicial Conduct and Disability Act of 1980*, 142 U. PENN. L.R. 25 (1993).

38. U.S. CONST., art. II, § 4.

39. U.S. CONST., art. I, §§ 2 & 3. For a discussion of recent Senate trials and the impeachment process, see VOLCANSEK, *supra* note 3.

40. U.S. CONST., art. III, § 1.

41. For a general discussion of the history and functioning of the judicial councils, see J. Clifford Wallace, *Must We Have the Nunn Bill?*, 51 IND. L.J. 297, 311-23 (1976). For an evaluation of the constitutionality of forms of judicial discipline other than impeachment, see Peter M. Shane, *Who May Discipline or Remove Federal Judges? A Constitutional Analysis*, 142 U. PENN. L. REV. 209 (1993).

42. Administrative Office Act of 1939, ch. 501, 53 Stat. 1223.

43. 28 U.S.C. § 372(c)(6)(B).



bodies comprised of judges.

Eventually, these circuit councils came under fire because they rarely disciplined judges, even though they had the power to do so.<sup>44</sup> In addition, circuit councils did not resolve concerns that impeachment was a slow and time-consuming process. In response to this criticism, Congress revised the system of judicial accountability in 1980.<sup>45</sup> It built on an existing statute<sup>46</sup> and used the existing administrative structure of circuit councils. The amended system allowed for the correction of problems less severe than impeachable offenses, but preserved judicial independence by retaining investigations within the judiciary. According to the statute, the chief judge of the circuit is responsible for screening frivolous or irrelevant complaints and has the opportunity to take informal action.<sup>47</sup> A comprehensive study of the 1980 Act process has shown the effectiveness of such informal action. The study stated that one of its “most important findings” was “the continuing importance of informal approaches to judicial misconduct and disability.”<sup>48</sup> If the complaint is not frivolous, is not an issue to be resolved by appeal, and has not become moot, the chief judge appoints a committee of circuit and district judges to investigate the complaint and to report to the circuit council.<sup>49</sup>

The 1980 Act also provides a definition of judicial misconduct, which is keyed to the power of circuit council. The circuit council can consider only complaints that allege facts which show that a judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleg[e] that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability.”<sup>50</sup> Thus, the circuit council is not responsible for determining if judges are involved in inappropriate conduct generally or other details of their personal lives, but whether their conduct affects the effective and expeditious administration of the business of the courts.

The 1980 Act also designates a procedure that can lead to impeachment. After an investigation and a report by the circuit council, the factual record can be submitted to Congress.<sup>51</sup> Having a developed record should result in Congress taking less time and make removal less cumbersome than the earlier use of legislative investigations.

In 1990, Congress created the National Commission on Judicial Disci-

44. Wallace, *supra* note 41, at 311-23.

45. Judicial Conduct and Disability Act of 1980, Pub. L. No. 96-458, 94 Stat. 2035 (codified as amended at 28 U.S.C. § 372(c)) (1997).

46. 28 U.S.C. § 372(c).

47. 28 U.S.C. § 372(c)(3); see Charles Gardner Geyh, *Informal Methods of Judicial Discipline*, 142 U. PENN. L. REV. 243 (1993).

48. REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL 113 (1993); see Geyh, *supra* note 47.

49. 28 U.S.C. § 372(c)(4).

50. 28 U.S.C. § 372(c)(1).

51. 28 U.S.C. § 372(c)(8).

pline to review the effectiveness of the 1980 Act. The Commission held hearings, conducted research, and concluded that, while some changes were needed, the 1980 Act was successful overall.<sup>52</sup>

## VII. CONCLUSION

What can be learned from the United States? Although the United States compromise may not work in every country, certain principles emerge from the United States experience. First, judicial corruption is enough of a problem that some formal mechanism is necessary or at least inevitable. No judiciary is completely immune from corruption.

A second lesson is the importance of keeping the process within the judiciary. Keeping judicial oversight within the judiciary protects branch independence and ensures that judges will not face reprisals from other branches for unpopular decisions or feel pressure to make their decisions conform with other branches' policies.

Third, by appointing federal judges for life and preventing pay decreases, the United States Constitution also attempts to prevent financial pressure on judges from other branches. A different financial pressure arises in many countries, however, from unreasonably low pay for judges. The likelihood of corruption is increased when judges are not adequately compensated by the State.

Fourth, the United States system usefully focuses challenges to judges' behavior on whether the court system is prejudiced, which avoids witch-hunts into judges' private lives and keeps the process objective. The United States experience also points out the need for both a system to remove judges for offenses such as bribery as well as a system for correcting conduct less than a removable offense.

Fifth, the United States has chosen to retain regional control over judicial misconduct. Allowing the system to function at the lowest practical level prevents the accumulation of power in one judge or one central body. Regional devolution of power also allows for informal solutions by local chief judges, which the system should encourage. The commission studying the 1980 Act stated: "The continuing success of informal approaches is due

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52. EXECUTIVE SUMMARY REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL 9, 11-12 (1993); REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL (1993); see also Barr & Willging, *supra* note 37 (containing report prepared for the National Commission on Judicial Discipline and Removal generally supporting the Act). The 1980 Act has been extensively debated and discussed. See, e.g., Baker, *supra* note 37, at 3-15; Stephen B. Burbank, *Alternative Career Resolution: An Essay on the Removal of Federal Judges*, 76 KY. L.J. 643 (1987-88); Elena Ruth Sassower, *Without Merit: The Empty Promise of Judicial Discipline*, 4 THE LONG TERM VIEW 90, 92-95 (1997); Note, *Unnecessary and Improper: The Judicial Councils Reform and Judicial Conduct and Disability Act of 1980*, 94 YALE L.J. 1117 (1984-85). The 1980 Act has also been upheld in court, *Hastings v. Judicial Conference of the United States*, 593 F. Supp. 1371 (1984), *aff'd in part and vacated in part*, 770 F.2d 1093 (D.C. Cir. 1985).

in large part to the system of decentralized self-regulation. . . .”<sup>53</sup>

Taken together, these principles suggest that an effective system should have a process in addition to removal with provision for lay as well as lawyer and judge complaints, managed not by an interbranch commission, but by a permanent organization of judicial peers. Most important, any such council or judicial commission should not interfere with the independence of the judiciary. In this way, the rule of law can be preserved by combating corruption without diminishing judicial independence.

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53. REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL 113 (1993).

