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Responses

Robert P. Cummins

Of Counsel, Katten, Muchin, Zavis, Pearl & Galler, Chicago, IL

Mervin Block

Stanley N. Katz

Prof. of History, Princeton University

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REPORTING JUDICIAL MISCONDUCT

*Robert P. Cummins**

I think it would be appropriate to echo not only what Tom Sullivan said but what Dan Webb said at the time the Greylord indictments were announced: "There cannot be, we suspect, among the general populous of the Northern District of Illinois anything but great concern over the fact that judges and lawyers are indicted for having engaged in the worst kind of alleged professional misconduct." I think it's prudent to remind ourselves, particularly those of us who are concerned with this profession, that there are many hard-working, underpaid, and decent human beings that serve this community unselfishly by acting as judicial officers and by acting in other public capacities, such as that of United States Attorney. Regrettably, we have many decent judicial officers who are going to be implicitly tainted by the fact that there are some, perhaps, who are morally corrupt.

Tom's remarks provoked me to think in terms perhaps broader than Greylord. The community about which I think we can be concerned today is the community of our profession. Judges are lawyers too, and this profession suffers a very severe defect, in my view.

Now, I have been out after dark, and I think I am a realist in terms of the way our system works in Chicago and in the State of Illinois. But if there is one message that Greylord better convey, it is that the time has come for the legal profession, including the judiciary, to report misconduct. We had better stop kidding ourselves about how long the public is going to accept our unwillingness to report professional misconduct and our apparent willing acceptance of less than honorable performance by lawyers and judges.

A decade or more ago, we dealt with the formulation and adoption of a code of professional conduct for the State of Illinois. If we had been concerned with fulfilling the duties and responsibilities that are unequivocally set forth in that code, and if judges were unequivocally bound and committed to the code's mandate to report misconduct, we might not be discussing Greylord today.

I am not presuming for a moment that those individuals who

* Of Counsel, Katten, Muchin, Zavis, Pearl & Galler, Chicago, Illinois; Chairman of the Illinois Judicial Inquiry Board; B.S. 1958, Purdue University; J.D. 1962, De Paul University.

stand accused before the federal bar are guilty. I am simply suggesting that what has been presented is cogent evidence of too much acceptance, too much approval of less than professional conduct by those of us who practice law and who judge the laws in the State of Illinois. This problem is not indigenous to Chicago or to the Northern District of Illinois or to the State of Illinois.

At the moment, there is a task force of the American Bar Association meeting in jurisdictions throughout the United States encouraging members of the federal and state judiciaries to look beyond imposing ad hoc sanctions, and to look beyond finding lawyers in contempt for ad hoc violations of the Code of Professional Responsibility. Judges throughout the country are getting in touch with the fact that their responsibility is not perhaps to try to resolve the matter of professional misconduct on an ad hoc basis but rather to refer the lawyer who is engaged in that kind of misconduct to the proper disciplinary agency. Hopefully, that kind of a responsible approach will be adopted by the Illinois judiciary.

The concern here is not with every lawyer who engages in some minor grievance that offends a judicial officer. Rather, the concern is serious misconduct, which ought to be dealt with in a disciplinary context. The practicing bar has the same responsibilities as the judiciary to refer matters to disciplinary agencies. Unfortunately, in the context of a Greylord kind of investigation, we find that we're going to have lawyers saying "Hey, what do you expect? I was representing a client; I was pressured. The judge would have rapped my client if I had not gone along with it."

These kinds of justifications are nonsense. As a member of the Judicial Inquiry Board for the past five years, and without treading on a sensitive area of confidentiality, I will tell you this. There are perhaps too many lawyers who are willing to report alleged misconduct of judges when there is no misconduct involved at all. These lawyers think that somehow the Judicial Inquiry Board is going to be a partisan with them to put some pressure on a judge who made a decision that they did not like.

So, while it is a fiction that lawyers are not willing to report judges, it is equally clear that, in many instances, as evidenced by Greylord, they do not have the guts to do it when it counts.

What is the public to think about a profession that does not report the kind of conduct which, if it went on in a public facility and involved anyone else, the police would be there grabbing the one engaging in the misconduct? How many people would decline to report the theft of \$10,000 from an individual? Not many. Yet,

lawyers know about lawyers doing that, and they don't "blow the whistle."

I do think it is apparent that we cannot continue to operate this way for very much longer. Today, we are the only profession that is self-regulated. However, this could change if we do not, as a profession, comply with the Code of Professional Responsibility and the Code of Judicial Conduct. If we, the profession, do not deal with misconduct, the public will surely demand that we relinquish that self-regulation. For example, at the moment, at least one bill is before the United States Senate which would grant the Federal Trade Commission the authority to supervise and monitor the performance of lawyers for the purpose of protecting the consumer.

Let us assume for a moment that you do not care what it means to be a professional, that you are not concerned about truth, honesty, and justice, but that you are in this game only to make a few bucks. Even then, practical reality and the likelihood of losing self-regulation ought to be the motivation, in and of itself, for lawyers to stop looking the other way when they witness professional misconduct.

I have served on the Review Board of the Attorney Registration and Disciplinary Commission for seven years. A very serious problem is implicated by the subject of our talk today, "Policing Bench and Bar: Ethical Imperatives." In my mind, and I know I am simplistic, the ethical imperative is to fulfill our professional responsibility by reporting serious misconduct to the disciplinary agencies that are responsible for dealing with such misconduct. In other words, the ethical imperative is self-fulfilled simply by complying with the Code of Professional Responsibility and the Code of Judicial Conduct. If there is any solace for the whistleblower, if you want to call him that, Mark Twain offered the answer: When in doubt, do right. It will gratify some and astonish the rest.

JUDGES AND THE PRESS: THE POWER
TO SUPPRESS

*Mervin Block**

I have often wondered why no one has ever before investigated Cook County judges on the scale of Greylord, or, in my memory,

* Mr. Block holds a master's degree from Northwestern University Medill School of Journalism and a certificate from Columbia University's Graduate School of Journalism.

on any scale. Who has been at fault? Perhaps most at fault have been those responsible for putting undersirables on the bench and keeping them there.

Has it been the fault of the county chairmen of the political parties who oversee — at a conclave of ward committeemen — the naming of almost all judicial candidates to the ballot? Is it the fault of state and federal prosecutors? Senators who recommend unworthy candidates? Presidents? After all, they appoint federal judges. Or should we blame leaders of the bar? Honest lawyers? Honest judges? How about voters? In fact, the voters may be least blameworthy. In most instances, they know about candidates for judge only by what they read in press.

When I was a newspaper reporter here (and I have been gone twenty years) the press, in general, did an unsatisfactory job in reporting the wrongdoings of judges and prospective judges. In some cases that I have personal knowledge of, the lack of coverage was deliberate. Whether coverage has improved since then, I don't know. During the time I covered the Criminal Courts Building in the 1950's, the pressroom was a hangout for criminal lawyers (a few of whom were lawyer criminals who had been — or later would be — convicted of felonies) and at least one judge who played cards with the regulars. In addition, there were irregulars: assorted characters who hung around waiting for their counsel, their bondsmen, or even their rap partners (co-defendants). Most disturbing to me was that certain pressroom reporters were in cahoots with certain lawyers. These reporters were able to put their fact-finding facilities at the service of their pals; they could ignore cases that merited coverage (the mere presence of a reporter in a courtroom might cause a judge to continue a hearing or transfer a case or even to play it straight); they could cover a case lopsidedly, turning in material damaging to a prosecuting witness or harmful to the prosecutor; they could rummage through the barrel of facts in a case and turn in something favorable to the clients of a crony; or they could intercede (with a judge, prosecutor or witness), which, to be blunt, means, more or less, "fix."

Although I don't have any recordings, I saw — or heard — bits and pieces of this sort of skulduggery while covering the criminal courts daily for two and a half years. Most reporters who came to the building did not engage in improper activities; the hard-core miscreants were few.

He has previously held various positions in the print and broadcast media. He is now a freelance writer.

I have many unhappy memories of that period. For example, in my first Christmas season there, another reporter handed me an envelope containing cash, which was my share (probably disproportionately low) of the money collected by newsmen in what was an annual door-to-door fund-raising effort in the building. I handed it right back. I also remember at least two bailiffs who came down with envelopes for me from their judges. I remember that one of the judges urged me to keep his gift and buy a hat for my mother. I soon learned why judges gave money to reporters: Judges wanted to stay on good terms with the press; they wanted reporters to mention them favorably in stories or at least not unfavorably. And if a judge would send *me* money, how much more might he send a reporter who had already proved what a good guy he was?

An honest judge, the late Harold P. O'Connell, phoned me after he became Chief Justice of the criminal courts and asked me what he should do about the impending annual solicitation for money by the pressroom gang. I told him not to give one cent. This advice, he replied, reinforced his own attitude. Of course, newspaper readers never knew, when reading about a judge, whether the reporter on the story had been a beneficiary of the judge's generosity. (I myself went to at least one party that a criminal courts judge threw in the basement of his restaurant for pressroom people and the lawyers. I never publicized my acceptance of his hospitality there, but I never fronted for him, either.)

Newspaper editors downtown knew or at least had a good idea how things worked in the criminal courts pressroom and in other pressrooms, particularly in the County Building, where certain other members of the press were also notorious. I later covered the County Building from time to time, but that's another story. Here are a few stories that are pertinent. When I covered the criminal courts, I suggested to the Chief Judge of the Criminal Courts that he appoint a special prosecutor in a brewing scandal. He looked up some law, then said he would name one. I went to the pressroom and phoned in the story to my paper, which I figured would run the story on page one. While I was phoning, an old-time reporter walked in and listened to me. When the dean of the pressroom arrived, the two men went up to the judge's chambers. When they returned, apparently pleased, they told me there would be no special prosecutor. Why did the judge reverse himself? I don't know, but I do know that something about the episode was wrong. It might have been only that the old-timers were miffed

that a punk, particularly one who was not a member of their cabal, had scooped them on a big story. Whatever the explanation, it reflected badly on the judge.

On another occasion, I was in a judge's chambers when the dean of the pressroom told the judge that the prosecutor had a faulty case and that if the judge decided to throw it out, the dean's newspaper would not editorialize against him. So the judge threw out the case. If the dean would behave so brazenly in my presence — and I was the pressroom pariah — I could only imagine what he was doing outside my presence. But I saw and heard enough. Too much. Several years later, an Illinois Supreme Court Justice learned that I was investigating him, so he invited me to visit him at a Loop hotel. I took a sidekick so that the justice could not accuse me of trying to shake him down. The justice, apparently suspecting that I was looking into his corrupt conduct, readily admitted various peccadilloes, but that's still another story.

Later, I wrote an exposé of a Cook County commission that involved several County Board members and the president of the Board himself. After my paper printed several installments, the managing editor, who hadn't read them in advance, killed the rest of the series. The paper's hierarchy was entangled in politics, and the paper had been receiving the county's advertising, more than \$100,000 a year, as I recall, all without bidding. I then went to a prosecutor and asked him what he was going to do about the scandal in the county building. He told me he had phoned the President of the County Board, who, he told me with a straight face, had assured him nothing was wrong. Eventually, the prosecutor went on to the bench.

Another case: an appellate judge invited me to his chambers and showed me a ruling by an appellate court in another district. It excoriated a downstate county judge for looting an estate, but the denunciation omitted his name. I began digging into the judge's background, but after a week or so, my city editor told me to drop it. So I went to the publisher. I told him what I was still trying to pin down. But the publisher told me the judge was a friend of the paper's and that "we owe him one."

Another case: I went to the chief counsel of a Chicago agency and asked for the roster of his attorneys, staff and per diem. For several weeks, he stalled and lied, probably figuring that because of this friendship with my top bosses, I would not push him. But I kept after the list, politely, and he finally gave it to me, perhaps to get rid of a pest. He might have assumed that I wouldn't find any-

thing damaging but that if I did, his friends at the paper would derail me. After weeks of checking every lawyer on the roster, I wrote a three-part series. I wrote about one per diem attorney who had forged a trial transcript to upset a verdict against the agency and about one who cashed checks regularly for a ghost payroller (on the county payroll). I also described in detail how almost everyone was related to a sitting judge, a congressman, the mayor or other political powerhouses. I took pains to point out that having clout doesn't preclude having skill. Even so, my series was never published. And the chief counsel became a judge.

Then there was my story of the appellate judge whose son was on the court's payroll as a full-time baliff even though he was attending law school during the day full-time. My managing editor killed that, too. All that killing — and much more — finally killed me. So I decided to go elsewhere, where they wanted coverage, not cover-up.

No wonder the need for a clean-up.

A HISTORICAL AND SOCIAL PERSPECTIVE ON JUDICIAL CORRUPTION

*Stanley N. Katz**

My credentials for being here are pretty dubious. I am not a lawyer, although for the last fourteen years I have been a professor of law. However, it occurred to me upon reading the title of the panel that maybe I have a biographical story that is relevant to all of this. The point at which I decided not to be a lawyer was when I took my first ethics course in college. It dawned on me then that the area between what is just and what is legal was pretty gray. It is a problem I have not entirely overcome.

I think, though, that there are two kinds of things I might be able to say that would be helpful. First, I speak not as someone who has any professional expertise at all, but as a Chicagoan, that is, someone who was born and raised in this city and who taught at the University of Chicago for seven years. My thoughts relate, I think, to what Tom Sullivan said, quoting himself a few years ago. That is, it was certainly my perception when I lived in Chicago that this was a city in which dishonesty was pervasive at all levels of business and public life. That was perception; my own personal

* Professor of History, Princeton University; B.A. 1955, M.A. 1959, Ph.D. 1961, Harvard University.

knowledge of that was pretty slim. But it was a widely held perception, I think, when I lived here.

Any of you who are native Chicagoans will perhaps sympathize with my shock when I first traveled abroad and introduced myself to foreigners in my various halting European languages. The people I met would first ask me where I was from, I would say Chicago and they would look blank. Finally, when the penny dropped, they would say "Ah, Chicago — rat-at-tat-tat!" We are a long way past this perception of violence today but not, I think, past perceptions of pervasive corruption. It is little comfort to say that there are other places just as bad. I am sure there are, but as a Chicagoan, I think that is not a situation that we ought to put up with.

But of course it is a historical problem, and I am here because I teach the history of law. There are historical points I wish to make briefly. The first is that, while it is difficult for a prosecutor to investigate corruption, it is almost impossible for a historian to do so. People are just not good on the whole about leaving written records of crime. Sometimes they do, but not very often. It is also very difficult for the social scientist to cope with the problem of corruption. Indeed, it was not, so far as I know, until the 1930's that research on corruption was begun.

The great emphasis on the study of how cities work began here in Chicago. One of the first areas of inquiry was the functioning of the judiciary. There were two big studies done in the late 1920's, and early 1930's on Chicago and on the judiciary. They both reported that, although there was a wide perception of illegality and unethical performance on the part of the judiciary, social science could not measure any. The scholars concluded that there probably was not any perceptible incidence of corruption among the judiciary. This was a result which probably astonished people in the city, I think, but it was not possible to continue the perception of illegality from a scientific point of view. Since the 1930's there has not been, so far as I can tell, significant work on the subject of judicial corruption.

Today, it is very difficult for a scholar to say what the situation is. Of course, since the first half of this century technology has advanced significantly. Thus, there are records available now that did not exist in the nineteenth century. The concept of "wire" was a rather different one in the nineteenth century than it is in the meaning Tom Sullivan has given it just now.

From a legal point of view, technology also transforms the situa-

tion, because if one perceived this kind of dishonesty in the nineteenth century, rules against hearsay would have been an almost impenetrable bar against prosecutions. The kind of evidence that we can now get electronically is almost essential to many of these formal legal actions.

So the history of judicial corruption is very unclear in one way. In another way it is clear, to the extent that the history of judicial selection in this country is relevant. Judicial selection seems to me an important part of this problem. Historically, the fact is that the judiciary in this country, well into the nineteenth century, was an *appointive* judiciary. The idea of the elective judiciary, which we now take for granted, particularly at the municipal level, is a mid-nineteenth century invention, I began by and large in the 1840's but did not become common in this country until the era of the Civil War. By that time, modern democratic theory called for the election of judges, which was the one democratic component in the legal-judicial process. All of the reforms that have come about since that time, such as the California Plan and the Missouri Plan, are by and large counter-reforms of a very recent past. But those attacks on the elective judiciary pushed by the American Judicature Society and other professional groups have not made great inroads into the well-entrenched American preference for the elective judiciary.

What comes along with democracy, as we discovered by the 1830's, is corruption. Neither the United States nor any other government organized on democratic principles has found a way to separate the two. If the political system is opened up enough, corruption soon follows. What happened in the history of the legal system is that by the late nineteenth century there was in this country a very wide perception of the corruption of the elective judiciary. It was most prominent in New York because of the power and the publicity of the Tweed machine. It existed in other places, of course, but I just want to read a couple of quotations about New York, so you will get the sense of it. One of the New York patriots who wrote about all of this described it this way. He said: "The stink of our state judiciary is growing too strongly ammoniac and hippuric for endurance." I do not know what "hippuric" means, and I did not get a chance to look it up, but it sounds bad.

There were a lot of prosecutions of nineteenth century judges, the most famous of which, by the way, was of Justice Cardozo's father, Albert Cardozo, a notorious judge in his own day. The author I have just quoted said of Cardozo's pere: "I think that Na-

ture meant Cardozo to sweep the court room, not to preside in it. . . . He would look more natural in the dock of the Sessions than on the Bench of the Supreme Court." Judge Cardozo resigned before he could be impeached, as it turned out. Some of you may know that the association of the bar of the City of New York was in effect created because of these late nineteenth century judicial scandals. This was an example of the bar trying to pull itself together to resolve its problems by professionalization, which was really just beginning at the end of the nineteenth century.

For me, these reflections raise the question of whether one ought not to think beyond the profession when one is thinking about corruption. I agree entirely with Mr. Cummins when he says that alleged corruption is something that the profession has to take seriously. More rigorous adherence to the rules of professional and judicial responsibility would certainly help. But, as Mr. Sullivan points out, it falls all too often to public authorities who are not professionally members of the bar to address these issues. There are all kinds of political and social reasons why that is so, and not only in Chicago.

We all know what judicial elections are like, whether in Chicago or somewhere else. What is the incidence of sitting judges being rejected in an elective system? It is very low at any time and at any place. What kind of evidence does one need to reject a sitting judge under any one of the various plans that are available? What kind of evidence can realistically be brought forward? What kinds of reasons, and this is really what Mr. Cummins is talking about, are there for the bar not to come forward to attack a sitting judge, particularly in a political system which is corrupt to its core and of which law is only one part? That is what we are talking about, after all. If there are corrupt judges here, I assume that they are not the only corrupt officials in Chicago.

We are talking about systemic corruption, and if that is the case, then it seems to me what we ought to talk about is systemic solutions. I would certainly welcome more aggressive action on the part of the bar here. I should say, by the way, that I have been impressed while serving on the Supreme Court Committee on Professional Responsibility in New Jersey by the vigor of the bar there, and by their eagerness to adopt very tough rules and to police them in what I think is a remarkable way. New Jersey, I think, is just about to adopt a set of professional rules which go considerably beyond the Kutak report. Illinois, however, is not a state that has been notably progressive in this endeavor. I think the Illinois Bar

could do better. But professional rule-making is not going to solve the problem. The problem is a political problem. It is going to be solved, if at all, by systematic and structural political means. For I think we are talking about a basic problem of democracy, and that is something that in fact history does tell us something about.

*QUESTIONS & ANSWERS**

MR. BLOCK: I have a question. As a long-time courtroom observer, I wonder why only three judges have been indicted so far and why it took so long.

MR. SULLIVAN: As to why only three were indicted at the present time, I would urge patience.

I don't know the answer to why judges weren't indicted before. I practiced law for over twenty years and had heard rumors and suspicions and I also saw evidence of corruption with my own eyes. So, when I was presented with an opportunity to do something about it myself, I did not shrink from the task because I had the same feeling that you do, that is, how come we've been waiting all these years?

MR. CUMMINS: Implicit in Mr. Block's question, it seems to me, is that corruption was so rampant in his experience that more should have been done earlier and more should be happening now. In contrast to Mr. Block's experience, I tried cases in our criminal courts for ten years from about '63 to '73 on a fairly regular basis, and they were mostly, if not exclusively, appointed cases. I think I have a reasonably keen ear for the kinds of corruption that, had it been called to my attention, I would have done something about it. In my first-hand personal experience, I did not see the kind of corruption that is suggested by your question. On the one hand, I wonder, Mr. Block, if the corruption was so obvious and apparent to members of the journalistic society, why didn't the journalists blow the whistle? On the other hand, I tend to think that, while the media has a right to criticize judges and lawyers who deserve the criticism, the media sometimes criticizes unfairly. We have had the most outrageous examples of unfair reporting of alleged judicial misconduct in recent times here in the city of Chicago as an incident to this Greylord investigation. The press has pointed the finger at judges without any basis for the accusations. The U.S. Attorney cannot respond to the press, and so the judge suffers from

* The questions and answers are merely representative of the discussion that followed the speeches.

the unfair inference that will inevitably be drawn, that he is corrupt.

QUESTION: I have a question for Mr. Katz. You said that corruption in the courts in Cook County appears to you to be a systemic problem attributable in part to the system we have for choosing judges, the elective system. And I take it from that that you believe that some type of appointive system would result in diminishing potential for corruption. Recently, the Chicago Bar Association has withdrawn support for the merit selection plan appointive system for selecting judges that's now pending in the legislature. The Illinois State Bar Association has similarly withdrawn support. The Cook County Bar Association has never offered support and has consistently refused to support it. The Illinois Justice Association also does not support such a plan. If there is real evidence that systemic corruption is linked to an elective system, how can that message be gotten across to these organizations so that perhaps they'll change their minds?

MR. KATZ: It's a very good question, and you state my case more strongly than I would want to state it myself. I think the nature of an elective system is one of the things that has to be taken into account. It is a political system. A type of merit selection would be an improvement. I recognized that problems also exist with merit selection and that we went to an elective system in this country for some good reasons. Other kinds of reforms would also be necessary in the political system generally.

QUESTION: I'm intrigued by Professor Katz's attempt to drag the carcass of corruption to the door of the elected judiciary. I take it, under your theory of corruption as an analogue of democracy, we can assume that there is no corruption in the Soviet Union or the Eastern Bloc nations.

MR. KATZ: My statement is only meant to point out that I do not think the judges or lawyers are the problem. I think the system is the problem, and I think it is one of the prices we pay, I think, to have a systems as open as we do. I'm not in favor of getting rid of that by closing down the system.

QUESTION: Justice Stamos. I want to make the observation that we are lawyers and judges and yet already we've convicted lawyers who haven't been tried yet. It seems something permeates the atmosphere here. The presumption of innocence has gone out the window. We talk about it as if they have already been convicted and given a fair trial and promptly executed. I think as lawyers

and judges we should perhaps hold ourselves back until after it is all over, and then do a good critique on it.

Where is the presumption of innocence? You have a trial going on where a witness gets up and mentions the names of two judges and accuses them of corruption. They are not even indicted. They may be subsequently. I don't know. But at the present time they're not. It is as though you appear before the Un-American Affairs Committee and somebody says Mr. X and Miss Y are Communists, period.

I think it's unfair. I think we're premature. If there are going to be convictions, there will be adequate and proper time to talk and have a critique and see. But at the present time, I think it's unfair to anybody that has been indicted or is about to be indicted for lawyers and judges to be talking about corruption, as if it has been proved beyond a reasonable doubt. I think it's unfair and it's unbecoming of us to do that because jurors will no doubt read of this discussion. The people who are going to read about it and see it on television are potential jurors and they're going to say, why, the judges and lawyers and their peers have already found them guilty without hearing any evidence.

I think we should perhaps put a little oil on the wheel. We'll have ample time to discuss this, I'm sure, in the years to come. Thank you.

QUESTION: I have a question for Mr. Cummins. You mentioned before how lawyers are under an affirmative duty to police the courts and to report to the Judicial Inquiry Board in particular. I was wondering if you viewed the Judicial Inquiry Board as having any affirmative duty to investigate on its own?

MR. CUMMINS: Yes, part of our function is to investigate. We are not merely a responsive agency. In fact, some members of the judiciary think we are too aggressive.

One of the problems, quite frankly, is that lawyers who have knowledge of misconduct too infrequently step forward. We have too many circumstances where lawyers are reluctant to appear and testify incident to our investigations.

Furthermore, I think it is important that all of us in the audience heard Justice Stamos because I had hoped to make that point at the outset. I note that Mr. Sullivan was particularly cautious about speaking to Greylord. It is not yet the time to be talking about Greylord or even the investigative techniques or things of that kind because we do not have enough facts.

It is important to recognize, as I said earlier, that there have

been too many judges accused, not in the context of testimony in a recent trial, but instead in alleged reports. The U.S. Attorney simply cannot defend those falsely accused judicial officers. It is unfair.

MR. SULLIVAN: I also share what Justice Stamos said. I believe that it is unfair to think in particular terms and convict people before they have even been indicted. As I said in my earlier remarks, they are presumed innocent and they are entitled to a fair trial.

QUESTION: My name is John Powers Crowley. I have a question for Bob Cummins, prompted in part by Justice Stamos' question. If you recall, one of the incidents that started speculation in the press was when one of the people who was arrested was carrying his FBI credentials with him when he was arrested as a shoplifter at Water Tower Place. There was some speculation then that maybe there was something more involved than just an FBI agent turned kleptomaniac. So that started the speculation.

The judiciary historically is practically impotent to respond to criticism of it. It has historically relied upon the bar as a whole to defend it. As Mr. Sullivan said in his earlier remarks, if the Greyhound investigation and its attendant publicity has injured the public's image of the judiciary in some generic sense, it is unfortunate. It is sometimes easy to point a finger at a judge and say he was bribed to give a certain result. Although the judicial decision-making process might appear to someone from the outside to be a very mysterious process, all those within the process acknowledge that we are often able to predict results of case. The cases reveal a certain pattern, especially routine matters. Anyone who is familiar at all with the system knows what the verdict is going to be in ninety-five percent of the routine cases. Yet it only takes one mention of a judge's name in connection with the exchange of money for a favorable verdict. There may be no other evidence that Judge *X* received money, no admissible evidence at all. Is there any ethical obligation on behalf of the United States Attorney to inform the public that a judge accused by the press is not even being investigated because no evidence exists against him?

MR. CUMMINS: John, I think that is a sophisticated question from a sophisticated member of the bar. I think the U.S. Attorney's office would be the first to step forward and make sure that unjustifiable accusations in the media are put in the proper focus, and that those judges are exculpated from the false allegations. Occasionally, newspaper reporters — not the responsible ones but some who

are not so responsible, will call the Judicial Inquiry Board and ask whether we are investigating Judge *X*. Obviously, we do not speak to those matters. And yet, we are then quoted as failing to have denied that Judge *X* is the target of a Judicial Inquiry Board.

So our practice is that if a judicial officer is earmarked in the public arena as having been accused of judicial misconduct, or indeed sometimes accurately identified as subject to an investigation by the Judicial Inquiry Board, and we do not find a reasonable basis to charge that judge with misconduct and thus close the file, we let the public know that as well. That is the only fair thing to do. Fairness demands that simply because someone's name is mentioned, whether it is in a judicial proceeding or on a television news expose show, that there ought to be some mechanism for exonerating that individual more cleanly than simply letting it fade away.

