

THE JUDICIAL COUNCIL OF THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

June 5, 2007

FRANK H. EASTERBROOK
Chief Judge

No. 07-7-352-22

IN RE COMPLAINT AGAINST A JUDICIAL OFFICER

MEMORANDUM

Complainant has been convicted of making statements that the recipients (and the jury) interpreted as threats of death or mayhem. He contends that a district judge wrongly understood statements left on his voice mail as threats and reported them to federal agents, who investigated complainant. He was not charged in connection with those statements, but the judge later presided over the criminal trial when complainant was indicted for transmitting threatening communications through interstate commerce.

There are two ways to understand complainant's position. One is that the district judge misunderstood the recorded message and should not have interpreted it as a threat or commenced an investigation. So read, the complaint is outside the scope of the Judicial Conduct and Disability Act of 1980. Like any other citizen, a judge is entitled to report to law-enforcement officers acts that seem threatening; all citizens enjoy an absolute privilege in doing this. What is more, the judge acted prudently. Complainant insists that the message—that "I didn't know that dead men could talk"—referred to another judge who had recently died. The recipient of such a message cannot know what is in the speaker's mind and could perceive it as a threat, justifying an inquiry to find out whether there was a real risk.

The other way to understand the allegation is that complainant believes that the message that the judge understood as a threat should have led the judge to recuse himself from the criminal prosecution. So understood, the complaint is incompatible with the statutory rule that the 1980 Act may not be used to

obtain review of adverse decisions. Complainant could have asked the judge to recuse himself but apparently did not; certainly the issue was not raised on appeal.

Any complaint that is “directly related to the merits of a decision or procedural ruling” must be dismissed. 28 U.S.C. §352(b)(1)(A)(ii). “Any allegation that calls into question the correctness of an official action of a judge ... is merits related.” Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006). A decision not to recuse oneself is “an official action of [the] judge” covered by the norm that the 1980 Act may not be used to obtain review of a judge’s rulings in litigation. Standard 2, *supra*, at 146.

Complainant apparently believes that he has been misunderstood and is not a danger to anyone. But the evidence (which the jury credited) in the criminal prosecution shows that he made multiple threats of violence (including the use of explosives to blow up an entire office building). The appellate opinion recounts some of these. Complainant obviously experiences difficulty expressing himself in a civil fashion. His complaint begins: “Personally, I think this judge is an insane, flaming psychopath, and dangerous, and needs to demonstrate to me, that his mind is free of some compulsion to hurt me.” According to the complaint, the judge’s report about the threat “was made through some rotten-ass, corrupt federal agents” There is much more in the same vein. If complainant wishes to avoid potential misunderstandings, he should engage in less overwrought insult-slinging.