United States Court of Appeals
for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604-1805

SPECIAL COMMITTEE REPORT

To: Judicial Council of the Seventh Circuit

From: Special Committee

- Chief Judge Diane P. Wood
- Circuit Judge Frank H. Easterbrook
- Circuit Judge Amy J. St. Eve, Chair
- Chief District Judge William C. Griesbach
- District Judge Jon E. DeGuilio

Date: February 12, 2019; May 8, 2019 (revised)

Re: Complaints Against District Judge Colin S. Bruce
Nos. 07-18-90053, 07-18-90067

Chief Judge Wood appointed this Special Committee to investigate a judicial-misconduct complaint she filed against District Judge Colin S. Bruce (07-18-90053), and she later directed us to investigate a related complaint filed by Thomas W. Patton, the Federal Defender in the Central District of Illinois (07-18-90067). *See* 28 U.S.C. § 353(a); Rules 11(a)(4), (f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. We requested and reviewed document productions from Judge Bruce, the U.S. Attorney's Office in the Central District of Illinois (the "Office"), and two paralegals who work there, Staci Klayer and Lisa Hopps. We also reviewed Mr. Patton's complaint and its attachments. We then interviewed Mr. Patton and Ms. Hopps, as well as leadership in the Office, namely John Childress (former U.S. Attorney), Patrick Hansen (First Assistant U.S. Attorney), and Eugene Miller (Supervisory Assistant U.S. Attorney of the Urbana branch). We further received a response to Mr. Patton's complaint from Judge Bruce and, on November 30, 2018, we held a hearing, in which Ms. Klayer and Judge Bruce testified and Judge Bruce's counsel, Marc Ansel, presented arguments on Judge Bruce's behalf. At the interviews and the hearing, Special Assistant U.S. Attorney

Gregory Brooker attended to represent the Department of Justice's interests and ensure that confidential or privileged information was not disclosed.

We submit this report to explain our findings and recommendations. *See* 28 U.S.C. § 353(c); Rule 17 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Enclosed with this report are copies of the complaints, the emails we reference, and a transcript of the November 30, 2018 hearing. The committee has unanimously adopted this report and its recommendations.

I. Background and Findings

This matter concerns Judge Bruce's ex parte communications with the Office, where Judge Bruce worked for twenty-four years before being appointed to the District Court. Over that time, Judge Bruce unsurprisingly formed several friendships with people working in the Office, including former U.S. Attorney Jim Lewis, Mr. Childress, Ms. Hopps, and Ms. Klayer. Twenty-one of Judge Bruce's twenty-four years at the Office were spent in Urbana—one of the Central District's four branches. For the last three years of his career as a prosecutor, Judge Bruce was the Office's First Assistant U.S. Attorney under Mr. Lewis. President Obama appointed Judge Bruce to the District Court in 2013, and he took the bench in October of that year. Since then, Judge Bruce has remained friendly with many people in the Office, again including Mr. Childress, Ms. Klayer, and Ms. Hopps.

A. Ex Parte Communications

The fact of Judge Bruce's ex parte communications with the Office became public in August 2018. On August 16, 2018, the *Illinois Times* published an article titled "Federal judge engaged in ex parte talk." *See* https://illinoistimes.com/mobile/articles/articleview/id:20331. That article reported on emails Judge Bruce and Ms. Hopps had exchanged during the December 2016 trial of *United States v. Nixon*, No. 15-cr-20057, over which Judge Bruce presided. Ms. Hopps (who does not work in the Urbana branch) did not work on the *Nixon* trial, but the two began emailing about it after Ms. Hopps sent Judge Bruce an email complaining about his absence at Mr. Lewis's going-away party and Judge Bruce responded that he missed the party because of the *Nixon* trial.

In the emails, Judge Bruce criticized one of the prosecutors as "entirely inexperienced" and said that the prosecutor was, among other things, "repeating the bullshit" to which Ms. Nixon testified and turning a "slam-dunk" case into a "60-40" one for Ms. Nixon. Judge Bruce mentioned his boredom and added that he "work[s] hard not to try" cases. That motto, as he later testified, referred to the principle that

judges should not act as advocates during trials, even when cases are poorly tried. Other news outlets followed the *Illinois Times* in reporting on the emails.[2] The coverage and its aftermath prompted Chief Judge Wood's initial complaint and Chief District Judge James Shadid's decision to remove Judge Bruce from all cases involving the United States—a decision that is still in effect.

The *Nixon*-related emails came to light as a result of Ms. Hopps, in late 2017, sharing them with Assistant U.S. Attorney Timothy Bass, after Judge Bruce issued an order finding that Mr. Bass had misled the court in *United States v. Schock*, No. 16-cr-30061. It appears that Mr. Bass then notified certain Office personnel in the Urbana branch of the emails with Ms. Hopps.[3] (Mr. Bass and the *Illinois Times* have also filed Freedom of Information Act requests for the Office's communications with Judge Bruce.) Around May 2018, Elly Peirson, an AUSA on the *Nixon* trial, contacted Ms. Hopps asking for the emails. Ms. Peirson then shared the emails with Mr. Childress, Mr. Hansen, and Greggory Walters, an AUSA and the Office's Professional Responsibility and Ethics Advisor.[4] Mr. Hansen and Mr. Walters subsequently shared the emails with the Department of Justice ("DOJ").

The Office then made the decision (1) to disclose the emails to Ms. Nixon's counsel and (2) to conduct a review to determine what other ex parte communications may exist and whether additional disclosures were necessary. The first of those decisions led to Ms. Nixon filing a motion to supplement in the district court while her case was pending on appeal, attaching the emails—a filing that was initially unsealed (until Judge Bruce *sua sponte* sealed it) and likely how the *Illinois Times* obtained copies of the emails. Judge Bruce denied that motion and the Seventh Circuit denied a similar one she later filed on appeal. After losing her appeal, Ms. Nixon filed a motion for a

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[2] *E.g.*, "Urbana Attorney on judge's emails: 'That's not something that would be done during the trial'," *The News-Gazette*, Aug. 17, 2018, http://www.news-gazette.com/news/local/2018-08-17/urbana-attorney-judges-emails-thats-not-something-would-be-done-during-the; "Aaron Schock's judge removed from cases involving federal government," *CIProud.com*, Aug. 17, 2018, https://www.centralillinoisproud.com/news/local-news/aaron-schock-s-judge-removed-from-cases-involving-federal-government/1378827600; "Federal judge no longer involved in Christensen case," *WAND 17*, Aug. 17, 2018, http://www.wandtv.com/story/38910674/federal-judge-no-longer-involved-in-christensen-case; "US judge off Illinois corruption, kidnapping cases after emails," *Chicago Sun Times*, Aug. 21, 2018, https://chicago.suntimes.com/news/colin-bruce-aaron-schock-brendt-christensen-chinese-scholar-corruption-kidnapping-cases-emails-illinois/.

[3] Mr. Bass has further complained to the Department of Justice about Judge Bruce and the Office's related handling of the Schock matter.

[4] The three men agreed that Mr. Childress would not have control over the matter, given his friendship with Judge Bruce. Mr. Childress had recused himself from appearing before Judge Bruce for the same reason.

new trial in the district court based on Judge Bruce's ex parte emails. *United States v. Nixon*, No. 15-cr-20057 (C.D. Ill. Oct. 25, 2018), ECF No. 173. The government responded to the motion and included extensive excerpts of Judge Bruce's ex parte emails. That motion is still pending. The second of the Office's decisions—to determine if additional disclosures were required—led to several such disclosures, which we have received and reviewed. Those disclosures, in turn, prompted Mr. Patton's complaint, as his office represented many of the relevant defendants. In his complaint, Mr. Patton alleged that Judge Bruce has demonstrated a pattern "of improper *ex parte* communications." Mr. Patton complained about the frequency, nature, and seemingly too-comfortable tone of Judge Bruce's emails with the Office.

Our review shows that Judge Bruce, since taking the bench in 2013, has frequently had ex parte communications with the Office. Often, these communications occurred around requests for warrant approvals. In many other instances, the ex parte discussions involved draft plea agreements, jury instructions, or docketing issues. In 2017, for example, Ms. Klayer emailed Judge Bruce's chambers a draft plea agreement. Judge Bruce personally responded, "'Nator! No prob. I've got your back." ("Nator" was a nickname Judge Bruce had for Ms. Klayer.) In 2016, Ms. Klayer sent jury instructions to Judge Bruce's chambers the day before a trial. He responded with "'Nator" and a wide-mouthed emoji, and she replied "Wish me luck tomorrow!... New trial presentation software … Praying all goes as planned!..." He told her "[e]verything will be fine." In 2014, to take another example, Ms. Klayer notified Judge Bruce that a mistake had been made and that a docket needed to be resealed. He responded by expressing frustrations with the Drug Enforcement Administration and stating that if he were the First AUSA he would be troubled. He suggested that Ms. Klayer "call Eric [Long]," the then-First Assistant, "and advise." Luckily, he noted, "they have an understanding judge who doesn't get angry."

Judge Bruce had further ex parte communications regarding scheduling matters. He would occasionally contact members of the Office—often Ms. Klayer—either by phone or email asking whether a particular trial would be going forward. In 2017, for example, Judge Bruce emailed Ms. Klayer and asked her to figure out who in the Office intended to proceed to trial before him in the near future and report back. In a related email that she later forwarded to Judge Bruce, concerning four pending cases, Ms. Klayer told two AUSAs in the Office who had trials scheduled in the spring of 2017 before Judge Bruce that he "said it's either a plea or a trial. Period." Similarly, in 2014, Judge Bruce and Ms. Klayer discussed scheduling a defendant's first appearance without copying defense counsel on the email communications. Judge Bruce joked that they should schedule something inconvenient for the defense lawyer, an old friend of Judge Bruce's.

There is also evidence that Judge Bruce had ex parte discussions with probation officers and the government without defense counsel copied regarding a defendant's conduct on bond. In 2014, a probation officer emailed Judge Bruce, his clerk, Ms. Klayer, and Mr. Miller asserting that the defendant had violated a bond condition. The probation officer asked Judge Bruce to "inform the offender that the Court is aware of his noncompliance and request that he abide by all of his conditions of bond." In response, and without copying defense counsel, Judge Bruce said, "I can do what you request." As Judge Bruce has pointed out, the transcript of the subsequent status hearing shows that Judge Bruce did not in fact mention the defendant's bond failures. Judge Bruce testified that this was because he later realized that the proposal the probation officer made had not been approved by defense counsel. Still, according to Judge Bruce's testimony and our interviews, it was fairly common for probation officers to contact the court directly and copy the Office but not defense counsel. This practice has since stopped, at the direction of Circuit Executive Collins Fitzpatrick and Chief District Judge Shadid.

In addition to the *Nixon*-related emails, our review revealed another, though more limited, instance of Judge Bruce communicating with the Office about a pending trial. Following a pretrial-conference misunderstanding between Judge Bruce and an AUSA, Ms. Peirson, about what documents had been filed, Ms. Peirson sent Judge Bruce, copying his clerk and defense counsel, a series of docket entries. Judge Bruce responded to Ms. Peirson privately, stating "My bad. You're doing fine. Let's get this thing done." This email, like the *Nixon*-related emails, prompted a defense motion for a new trial, which remains pending. *United States v. Gmoser*, 14-cr-20048 (C.D. Ill. Oct. 2, 2018), ECF No. 309, 309-1. Judge Bruce explained during the hearing that his comment was intended only to comfort Ms. Peirson after the misunderstanding.

Judge Bruce's ex parte communications occasionally continued after he had entered judgment in a criminal case. For example, in July 2016, the Seventh Circuit affirmed Judge Bruce's lengthy sentence of a drug trafficker. Judge Bruce forwarded his ECF notice of the decision to Jason Bohm, an AUSA, and Mr. Miller, saying "Nice job. Thanks." Likewise, in 2015, Judge Bruce congratulated Mr. Bohm on a successful appeal concerning the supervised-release terms another judge had imposed on a defendant. Judge Bruce added: "Good ammo for your Speed argument also. Top notch." At the time, Mr. Bohm was working on a consolidated appeal filed by two cousins—Rico and Jermaine Speed—who had pleaded guilty before Judge Bruce and were challenging the supervised-release terms he had imposed. In fact, when Jermaine Speed (represented by Mr. Patton) filed his opening brief, Ms. Klayer forwarded it to Judge Bruce "given the issues that were raised on appeal." This was a reference to Jermaine Speed's argument that Judge Bruce had not made adequate factual findings before imposing a certain

term. Judge Bruce responded "Unbelievable. Thanks for the early warning." Months later, after the Seventh Circuit affirmed Judge Bruce's judgment, he wrote to Mr. Bohm, "Well done, sir. Well done."

We have also found some evidence that Judge Bruce engaged in ex parte discussions in person or over the phone with Office members. These discussions generally related to the scheduling matters already addressed or to criticisms Judge Bruce had for Office leadership of particular AUSAs' performances. There is one memorandum, however, written by an AUSA, indicating that Judge Bruce had an ex parte discussion with an AUSA regarding the potential mental-health issues of a defendant. Judge Bruce could not recall the discussion at the November 30, 2018 hearing, and he has since adamantly denied that it occurred.[5]

We have found no evidence that Judge Bruce had a pattern of engaging in ex parte communications regarding civil cases before him.

B. Additional Findings and Testimony

Judge Bruce's ex parte communications concerned some of the individuals with whom we spoke. Mr. Hansen, the Office's ethics advisor, was both surprised at and disappointed in the volume and nature of the discussions. He told us that the Office planned training for December 2018 to rereview the impropriety of ex parte communications. Mr. Miller, as the supervisor of the Urbana branch, and thus better steeped in the culture of the Urbana courthouse, was unsurprised by the scheduling-related ex parte emails, though he noted that there was no good reason not to involve defense counsel in those discussions.

More context is necessary in evaluating Judge Bruce's conduct. As an initial, and important, matter, we have seen no evidence and received no allegation that Judge Bruce's conduct or ex parte communications impacted any of his rulings or advantaged either party. *Nixon* and *Gmoser* involved jury trials, and Mr. Patton's complaint does not point to any unfair ruling of Judge Bruce's. And with the exception of the *Nixon*-related and appeal-related emails, we have seen no evidence of Judge Bruce discussing the merits of pending cases with the Office ex parte. Judge Bruce also has admitted that some of his communications were flatly inappropriate and others were unwise; and in both cases these sorts of ex parte communications are not to be repeated, he has

[5] Our review also revealed that Judge Bruce had frequent communications with Office members about personal matters. We do not generally consider such non-case-related emails to be ex parte, nor do we find them generally troubling, and so we do not address them here. While some interviewees expressed a concern that Judge Bruce remained too friendly with members of the Office, no evidence suggested that Judge Bruce had an inappropriate relationship with anyone at the Office.

acknowledged. As to the *Nixon*-related emails, Judge Bruce has said that he now realizes, and should have realized at the time, that they were improper. He noted that he wrote the emails because he was frustrated in having to miss Mr. Lewis's going-away party because of the *Nixon* trial, that he, of course, did not expect that the emails would ever be made public, and that he believed he was speaking personally with a friend, who was not involved in the *Nixon* matter. Again, however, they were improper; he says that they can be "correctly characterized as a misstep or a blunder."

As to scheduling-related and other ministerial emails (including emails relating to plea agreements and jury instructions), Judge Bruce initially found little objectionable in them, believing them to be "permissible for the efficient operation of the court." At and after the hearing, though, he recognized that they conflict with the Code of Conduct for United States Judges (for reasons explained below). To that end, Judge Bruce has adopted several specific measures to limit ex parte communications. These include:

- On August 21, 2018, Judge Bruce "adopted a new policy of not communicating with any counsel about anything, including scheduling, administrative or ministerial matters." He also directed his clerks to stop these communications. He and his chambers will instead instruct the parties to file a motion, "even for the simplest ministerial matters."
- Around the same time, Judge Bruce drafted and prepared a standard response for any ex parte outreaches, advising counsel that she must include opposing counsel on any communication with the court.
- In mid-November 2018, Judge Bruce "created a new rule" that requires parties submitting jury instructions to include opposing counsel on the emails, even when those instructions are also filed on the docket.
- In December 2018, Judge Bruce resolved an email-related problem which he attributed to some of the ex parte communications. Before, when individuals emailed his chambers email address, that email would come to his personal work email account, from which he would respond. (He was surprised, in fact, to learn that many of the at-issue emails started with communications to the chambers email address.) Now, emails to the chambers email will populate in a separate inbox.

Further, as Judge Bruce has correctly argued, the scheduling-related emails about which Mr. Patton complains do not in fact show Judge Bruce prejudging potential future motions from the defense. After he had those communications with Ms. Klayer

(discussed above), which related to four pending cases, he granted joint or defense requests to continue the trial.

Judge Bruce also has emphasized that scheduling matters or handling ministerial tasks ex parte was a part of the Urbana-courthouse "culture," stemming back at least to his predecessor District Judge Michael McCuskey. Judge Bruce explained that he engaged in similar ex parte communications when he was a prosecutor and that as a judge he thought ex parte communications about minor matters were the "default." This view is consistent with Ms. Klayer's testimony and Mr. Miller's interview. It is also consistent with three affidavits of former Urbana courthouse personnel that Judge Bruce submitted. Those affiants stated that ex parte communications regarding scheduling and ministerial matters were commonplace. Judge Bruce and the affiants also indicated that ex parte communications were not unique to the U.S. Attorney's Office—Judge Bruce, his staff, and others often engaged the Federal Defender's Office ex parte over scheduling and ministerial matters as well. According to Judge Bruce, these communications typically happened over instant messaging because, apparently, the Central District of Illinois and the Federal Defenders share computer systems. Those communications, again according to Judge Bruce, are not retained.

Finally, it is worth noting that there has been a changing of the guard in the Office. On January 2, 2019, the Senate confirmed John C. Milhiser as the U.S. Attorney for the Office. In his previous capacity as acting U.S. Attorney, he made Gregory M. Gilmore the Chief of the Criminal Division for the Office on December 11, 2018.

II. Discussion

This matter presents two concerns. The first is whether Judge Bruce's pattern of ex parte communications violated judicial-ethics rules or norms. American courts rightly disdain unnecessary ex parte communications. *See, e.g.*, *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 506 F.3d 350, 356 (4th Cir. 2007); *United States v. Carmichael*, 232 F.3d 510, 517 (6th Cir. 2000). They are not only inconsistent with our adversarial process, but also risk advantaging one party and creating an appearance of impropriety and unfairness. *See, e.g.*, *United States v. Napue*, 834 F.2d 1311, 1318–19 (7th Cir. 1987); *In re Taylor*, 567 F.2d 1183, 1188 (2d Cir. 1977). That is why the Code of Conduct for United States Judges generally prohibits ex parte communications. Canon 3(A)(4) states that a "judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers." There are limited exceptions to that rule, including where authorized by law or upon the parties' consent or an expert's advice. Relevant here, Canon 3(A)(4)(b) allows that a judge may:

> [W]hen circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication.

See also ABA Model Code of Judicial Conduct Canon 2.9(A) (similarly providing that ex parte communications are permitted "[w]hen circumstances require it" and for non-substantive matters in which neither party will gain an advantage).

"When circumstances require it" is key. As Judge Bruce now concedes, the majority of his ex parte communications did not "require" the exclusion of defense counsel; they were often a matter of simple convenience, happenstance, and habit. We of course recognize that certain circumstances will require ex parte communications, including genuine emergencies and emails relating to warrant applications. But no witness or interviewee has provided a good reason why defense counsel should not be involved in the routine scheduling and ministerial discussions that our review shows Judge Bruce often had ex parte. Whether the practice of ex parte communications is attributable to Judge Bruce or the Urbana-courthouse culture, as Judge Bruce has contended, it in our view violates Canon 3 and judicial norms.

The second concern, related to the first, is the impact that Judge Bruce's ex parte communications and their disclosure have had on his appearance of propriety and fairness. That appearance matters, of course, for deference to judicial decisionmaking depends on public confidence in judges' integrity and independence. As Canon 1 of the Code of Conduct for United States Judges states, judges must "maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved." Canon 2 similarly states that judges must "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

There has already been negative coverage of Judge Bruce's ex parte emails, many of which have been made public by defense filings in *Nixon* and *Gmoser*.[6] A legal expert, quoted in the *Daily Herald*, said in regard to the *Nixon* emails, "It is an understatement to say that this is outrageous… It's extremely unusual and way beyond the pale." "US judge off corruption, kidnapping cases after emails," *Daily Herald*, Aug. 21, 2018, https://www.dailyherald.com/article/20180821/news/308219966. Another legal expert, a

[6] The motion in *Gmoser* only attached *Gmoser*-specific emails. The *Nixon* motion, however, attached the emails that are attached to Mr. Patton's complaint, concerning several cases other than *Nixon*.

defense lawyer, said in the *News-Gazette* that the *Nixon*-related ex parte emails were "bad"—especially given that they were made with the government during a criminal prosecution—and that they create a concerning "appearance" for Judge Bruce. "Urbana Attorney on judge's emails: 'That's not something that would be done during the trial'," *The News-Gazette*, Aug. 17, 2018, http://www.news-gazette.com/news/local/2018-08-17/urbana-attorney-judges-emails-thats-not-something-would-be-done-during-the. That same lawyer, in commenting on the *Gmoser*-related emails, called them "Incredible." "A rush to judgment? Man serving life asks for new trial," *Illinois Times*, Oct. 11, 2018, https://illinoistimes.com/article-20515-a-rush-to-judgment.html.

The Office has also put many of the ex parte communications in public view. On January 23, 2019, the Office, through Mr. Brooker, filed its response to Ms. Nixon's motion for a new trial. *United States v. Nixon*, No. 15-cr-20057 (C.D. Ill. Jan. 23, 2019), ECF No. 181. That response, which was neither redacted nor filed under seal, identifies emails exchanged between Judge Bruce and the Office (including what has been discussed in this report), quoting many of those emails at length. With the response, the government also provisionally filed under seal approximately 1,230 communications, which had as either a recipient or a sender Judge Bruce and a member of the Office (all of which we previously received and reviewed). Many of these communications appear to be innocuous—and often courthouse-wide—notifications or announcements. A portion pertained to personal communications between Judge Bruce and a member of the Office; and another portion concerned investigation-related communications, like warrant applications. About 100 (by the government's count) constituted potential ex parte communications regarding a case pending before Judge Bruce. *Id.* at 28–29 & n.17. These communications include the *Nixon* and *Gmoser* emails discussed earlier, and more generally, they usually concerned scheduling matters or the provision of documents, such as plea agreements or jury instructions.

Ms. Nixon opposed the documents being filed under seal. On February 4, 2019, the magistrate judge ordered the parties to meet and confer regarding redactions for the communications, and he ordered that when all redaction issues are resolved the court will unseal the redacted communications.

On January 31, 2019, the *Illinois Times* reported on the Office's response in *Nixon*. *See* "Payback is hell," *Illinois Times*, Jan. 31, 2019, https://illinoistimes.com/article-20894-payback-is-hell.html. The article described a "legal mess" that started with Judge Bruce's "dress[ing] down" of Mr. Bass in the *Schock* case, which led to the disclosure of the *Nixon* emails and other ex parte communications between Judge Bruce and the Office. Also on January 31, 2019, the Office filed its response to Mr. Gmoser's motion for a new trial. *United States v. Gmoser*, 14-cr-20048 (C.D. Ill. Jan. 31, 2019), ECF No. 320.

That response was, by and large, derivative of the *Nixon* response's arguments. As with the *Nixon* response, the Office filed the *Gmoser* response with the 1,230 communications.

More emails may become public and more publicity may follow, given the pending FOIA requests from Mr. Bass and the *Illinois Times*. This publicity would likely further a perception that Judge Bruce has an inappropriate closeness with the Office and made too common a practice of ex parte communications, both of which could undermine the public confidence in Judge Bruce. Indeed, that appearance of impropriety and unfairness is what caused Mr. Patton to file his complaint and what the pending motions filed by Ms. Nixon and Mr. Gmoser assert warrant new trials. Judge Bruce, for his part, initially attempted to downplay the *Nixon*-related emails through court order. In denying Ms. Nixon's motion to supplement the record—with the email attachments that Judge Bruce sealed sua sponte—Judge Bruce stated: "At the time it was sent, and now, I consider the email exchange to be innocuous and merely a private email conversation with someone entirely uninvolved in the case." Although Judge Bruce has, as explained, expressed to us regret over the emails, this explanation remains (to our knowledge) Judge Bruce's only public comment on the matter.

III. Recommendations

In light of these concerns and our findings, we recommend: (1) the Judicial Council issue a public reprimand of Judge Bruce, via the attached draft order and a memorandum adopting the contents of this report in redacted form; (2) Judge Bruce remain unassigned to all cases involving the U.S. Attorney's Office in the Central District of Illinois until September 1, 2019, when the ban will have lasted for approximately one year; and (3) Judge Bruce watch the Federal Judicial Center's 2009 training video, entitled Preserving the Trust: Ethics and Federal Judges (http://fjc.dcn/content/preserving-trust-ethics-and-federal-judges-0), and read the excerpts of the Code of Conduct that are part of the training, before September 1, 2019. *See* Rules 20(b)(1)(D)(i)–(ii) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. We unanimously believe that these measures are appropriate to inform the public that the Council has taken disciplinary and corrective actions, to allow time for negative impressions of Judge Bruce to further recede before he again begins adjudicating the Office's matters, and to educate him on why the Urbana-courthouse culture of ex parte communications that he has described is misguided and prohibited. At the same time, we do not think a harsher punishment is warranted given the corrective actions Judge Bruce has already taken and his commitment to maintaining better practices going forward.

We have carefully considered Judge Bruce's argument that any sanction resulting from this matter be private rather than public. We ultimately disagree with it.

The public criticism of Judge Bruce's ex parte communications, found in news reports and defense motions for new trials, requires, in our view, a public response. Again, the public heeds the judiciary's decisions on the belief that it operates independently and with integrity, and this case suggests that such belief in Judge Bruce's work on cases involving the Office may have waned. Consistent with the Judicial Conduct and Disability Act of 1980, we believe it proper to make public that we have investigated the matter and taken appropriate disciplinary action.

We also appreciate the inconvenience of keeping Judge Bruce unassigned on criminal matters until later this year. The Central District is not a large judicial district, and the Urbana courthouse has only two district judges and one magistrate judge. The temporary arrangement means additional cases for other district judges and that parties and the public may be required to travel to a different courthouse branch for certain cases. That is unfortunate. But in our view it does not outweigh the interest in advancing public confidence in Judge Bruce's impartiality and our handling of this matter, which we believe is served by the temporary arrangement.

Nothing in this report and no action of the Council should be confused as condemnation of Judge Bruce's ongoing friendships with members of the Office. Such relationships are normal, *see, e.g.*, *Cheney v. U.S. Dist. Court for Dist. Of Columbia*, 541 U.S. 913, 916–26 (2004) (Scalia, J., memorandum); *United States v. Murphy*, 768 F.2d 1518, 1537–38 (7th Cir. 1985), and there is ample guidance on when recusal or disqualification based on friendship is appropriate, *see, e.g.*, Committee on Codes of Conduct Advisory Opinion No. 11: Disqualification Where Long-Time Friend or Friend's Law Firm is Counsel, *Guide to Judiciary Policy*, Vol. 2B, Ch. 2 (June 2009). We need not tread that ground here. The bottom line is that a judge's closeness to individuals having cases before him simply does not excuse ex parte communications prohibited by judicial norms and the Code of Conduct.

On a final note, Judge Bruce has welcomed advice from the Special Committee on whether he needs to recuse himself from matters involving Mr. Patton or his office given the complaint that Mr. Patton filed. We believe such advice would be well outside of our scope of authority and that Judge Bruce should consult the Judicial Conference's Committee on Codes of Conduct for any ethical advice.

Thank you for your consideration of this important matter.