

A. Matthew Boxer, Esq., David P. Anderson, Jr., Karen Kessler and Paul J. Walker dissenting:

We respectfully disagree with the decision by the Committee to dismiss these complaints at this stage and not initiate formal proceedings. In our view, this type of case should be heard and resolved through a public hearing that includes testimony and cross-examination, not following a private, informal conference. Regardless of the ultimate outcome, a more fulsome review and airing of the circumstances here would, we believe, promote the public's confidence in the Judiciary and the system of judicial discipline (and perhaps would be in the Judge's interest as well). See In re Seaman, 133 N.J. 67, 96 (1993).

Under the applicable statute, the decision whether to try a juvenile offender as an adult is to be made by *the prosecutor*, absent clear abuse of the prosecutor's discretion. In rejecting the prosecutor's decision in this case involving an alleged forcible rape of a 12-year-old child and an offender who thereafter spit in the face of the arresting officer, the Judge concluded that the offense was not "especially heinous" beyond the elements of the offense. However, as the Appellate Division noted, that standard of "especially heinous" does not appear in the statutory factors to be applied, which raises additional questions about the circumstances in which the Judge's admittedly inappropriate comments were made. In our view, these circumstances and the

statements at issue should be evaluated in the context of a formal proceeding open to the public.