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July 31, 2001

Melissa McDonald, Oversight Counsel
House Judiciary Committee/Courts Subcommittee
B-351A Rayburn House Office Building
Washington, D.C. 20515

RE: Implementing the National Commission on Judicial Discipline and Removal's key recommendation:

> "that the House ensure that its Committee on the Judiciary has the *resources* to deal with judicial discipline matters, and the *resources and institutional memory* necessary to deal with impeachment cases as they arise" (1993 Report, at p. 37, emphases added)

Dear Ms. McDonald:

This is to commend you for your initiative, as Chairman Sensenbrenner's "oversight counsel" newly-assigned to the House Judiciary Committee's Courts Subcommittee[1], in scheduling last Thursday's meeting. This was an appropriate response to CJA's July 3, 2001 letter to Senator Charles Schumer, Chairman of the Senate Judiciary Committee's Courts Subcommittee – a copy of which we had sent to Philip Kiko, the House Judiciary Committee's General Counsel/Chief-of-Staff, under a July 9, 2001 coverletter. The "RE: Clause" of that coverletter placed three important issues before the House

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[1] You have stated that you are not auditing the Subcommittee's operations and reporting back to the full Committee. Rather, you are counsel to the full Committee, assigned to provide auxiliary assistance to the Courts Subcommittee for its normal oversight duties. You further stated that there are three or four other "oversight counsel", similarly assigned to the Committee's other Subcommittees.

Exhibit N

Judiciary Committee[2]:

(1) "the whereabouts of the documentary materials supplied by CJA to the House Judiciary Committee's Courts Subcommittee in substantiation of CJA's Statement for inclusion in the record of the Subcommittee's June 11, 1998 'Oversight Hearing of the Administration and Operation of the Federal Judiciary'"[3];

(2) CJA's request for "[h]earings on federal judicial discipline and removal, including on the 1993 Report of the National Commission on Judicial Discipline and Removal"; and

(3) "CJA's on-going request for access to judicial misconduct/impeachment complaints, received by the House Judiciary Committee -- and *publicly accessible* according to the National Commission's 1993 Report (at p. 35)"

As you know, I went to enormous effort and expense to supply you with duplicate copies of the materials CJA had previously provided the Committee. This, because you informed me that the Committee had *not* been able to recover the originals. With all due respect, locating the originals – and ascertaining what the Committee has been doing with the hundreds, even thousands, of impeachment/misconduct complaints against federal judges presented to it over the years by this nation's citizens -- including those forwarded by members of Congress on behalf of constituents[4] – should be an "oversight" PRIORITY.

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[2] These issues were particularized in CJA's July 9, 2001 letter to Sam Garg, the House Judiciary Committee's Minority Counsel, enclosed with CJA's July 9, 2001 letter to Mr. Kiko.

[3] CJA's Statement for the record of the Subcommittee's June 11, 1998 "Oversight Hearing" is Exhibit "O-1" to CJA's July 3, 2001 letter to Senator Schumer. For the benefit of the indicated recipients of this letter, a copy of the Compendium substantiating that Statement will be furnished to them. This, because the Compendium contains numerous significant documents referred to herein. Compendium documents are indicated by [R-.]

[4] *See* p. 36 of the National Commission's Report, suggesting that the Committee's Chairman encourage members of Congress to forward to the Committee complaints against federal judges that they receive from constituents.

According to the 1993 Report of the National Commission on Judicial Discipline and Removal,

> "Since 1983, the Committee has kept a record of the number and nature of judicial discipline complaints it has received and has reported this data in the Summary of Activities published each Congress. *Every Congress these complaints are archived* and may be made available upon request." (at p. 35, emphasis added)

Inasmuch as the documentary materials that CJA long ago provided the Committee relate to three impeachment complaints against federal judges, these materials should, at very least, have been archived. Indeed, they should have been retained in the Committee's "active files" in light of the procedural history of these complaints, reflected by CJA's voluminous correspondence with the Committee.

Of course, the National Commission *explicitly* recommended that:

> "The Committee should continue to keep a record of the number and nature of these complaints, and report these data each Congress." (at p. 36)

Publicly, the Committee has failed to "continue" this fundamental record-keeping. CJA pointed this out more than six years ago, when, by letter dated July 10, 1995 to Mitch Glazier, then Assistant Counsel at the Subcommittee [R-95], we noted that the Committee had omitted such statistical data from its "Summary of Activities" for the 103rd Congress – the very first published after the National Commission's 1993 Report. Three years later, our Statement for inclusion in the record of the Committee's June 11, 1998 "Oversight Hearing" pointed out (at fn. 5) that the Committee had replicated this omission in its "Summary of Activities" for the 104th Congress. As discussed, the Committee has continued to omit this statistical data from its "Summary of Activities" for the 105th and 106th Congresses[5].

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[5] Startlingly, the Committee's Summary of Activities for the 106th Congress also omits a Table of Contents.

As to impeachment/misconduct complaints against federal judges being "available upon request", CJA's July 10, 1995 letter to Mr. Glazier [R-95] made such request, *expressly* relying on the National Commission's Report as authority. Mr. Glazier answer, by letter dated July 20, 1995 [R-98], was that he would contact us after the Committee "decides whether such complaints are available for review." In the ensuing six years, neither he nor the Committee has ever contacted us on the subject. Nor has the Committee responded to our subsequent requests for access[6] -- including the request contained in our July 9, 2001 letter.

Plainly, by failing to publish statistical data about its receipt of impeachment/judicial misconduct complaints and by failing to allow access to its supposedly archived complaints, the Committee has thwarted "oversight" of its handling of the complaints – be it by Congress or the public. As "oversight counsel", you should promptly obtain these statistics, requisition the complaints from archives, and examine what, if anything, the Subcommittee did with those complaints *before* they were archived. That the Subcommittee may have done NOTHING AT ALL – not even acknowledge these complaints – is highlighted at page 94 of CJA's published article, "*Without Merit: The Empty Promise of Judicial Discipline*", The Long Term View (Massachusetts School of Law), Vol. 4, No. 1 (summer 1997)[7] [R-11].

As discussed, CJA filed three impeachment complaints with the Courts Subcommittee. The first was presented by letter dated June 9, 1993 [R-35] and arises from the demonstrably fraudulent, retaliatory judicial decisions in the federal lawsuit *Elena Ruth Sassower and Doris L. Sassower v. Katherine M. Field, et. al.*. The second was presented by CJA's March 23, 1998 memorandum (at pp. 7-9, 10-11) [R-21-23, 24-25] and arises from the demonstrably fraudulent, retaliatory judicial decisions in the federal lawsuit *Doris L. Sassower v. Hon. Guy Mangano, et al.*.[8] The third was presented by

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6 *See, inter alia*, CJA's November 8, 1995 letter to Mr. Glazier [R-99].

7 Annexed to CJA's July 3, 2001 letter to Senator Schumer as Exhibit "N-1".

8 Summarized descriptions of both *Sassower v. Field* and *Sassower v. Mangano* appear in CJA's March 23, 1998 memorandum (at pp. 7-11) [R-21-25], with a more substantive recitation and comparison of the two cases in CJA's April 24, 1998 statement to the Commission on Structural Alternatives for the Federal Courts of Appeals (at pp. 4-11) [R-45-52]. *See*, also pages 9-10 of CJA's Statement for inclusion in the record of the Committee's June 11, 1998 "Oversight Hearing".

CJA's November 6, 1998 memorandum and details the impeachable conduct of the Justices of the U.S. Supreme Court in connection with *Sassower v. Mangano* – a case which *expressly and empirically demonstrated* that "there can be no argument for reposing federal judicial discipline in the federal judiciary"[9].

I have provided you with duplicates of these three document-supported impeachment complaints, along with duplicates of CJA's voluminous correspondence with the Committee based thereon, from 1993 to 1999. These expose the dishonesty of claims made in the National Commission's 1993 Report as to the adequacy and efficacy of mechanisms for safeguarding against federal judicial misconduct. You yourself recognized the importance of this correspondence by highlighting, with yellow marker, the inventory I had prepared for you – the one entitled, "CJA's CORRESPONDENCE WITH THE HOUSE JUDICIARY COMMITTEE AND NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL"[10]. So that you don't lose your bearings among the volume of materials that fill the cardboard box I left for review, this all-important correspondence is in the two RED FILE JACKETS. For your convenience, a further copy of the inventory is enclosed (Exhibit "A").

Among the key letters in this correspondence is my August 26, 1993 letter to Edward O'Connell, then Subcommittee Counsel [R-75]. It not only recounts his extraordinary statement to me, "*there has never been an investigation of an individual complaint in the history of the House Judiciary Committee*", but presents my decisive follow-up question as to what the Committee does with impeachment/judicial misconduct complaints

> "(a) which are not covered by the [1980] Act, 28 USC §372(c)]; (b) where appellate remedies have been exhausted and have shown themselves ineffective; and (c) where the allegations, if true, would constitute impeachable conduct." [R-76]

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[9] *See* petition for a writ of certiorari in *Sassower v. Mangano* (at p. 24).

[10] A footnote to the inventory title supplied the following pertinent references to the House Judiciary Committee and Congress from the National Commission's Report, pp. 32-38, 61-62, 66-67, 127. [Draft Report, pp. 33-40, 63-65, 70, 129].

As further pointed out by that August 26, 1993 letter (at p. 2) [R-76], the National Commission's draft Report identified that "well over 90 percent of the complaints [received by the Committee] do not raise genuine issues pertinent to judicial discipline or impeachment" – thereby revealing that there was somewhere shy of ten percent that did. What then becomes of this less than ten percent?

As CJA's subsequent letters to the Subcommittee show, it took almost two years before we got any kind of response. What we ultimately got is set forth in CJA's June 30, 1995 letter to Tom Mooney, then Subcommittee Counsel [R-92], who conceded that the Committee does *not* investigate impeachment/ misconduct complaints against federal judges filed with it, but confines itself to legislation. This, because of alleged budgetary constraints.

CJA's June 30, 1995 letter to Mr. Mooney proposed ACTION so that the Committee could fulfil its investigative duty [R-93]:

> "a memorandum must immediately[11] issue so that appropriate allocations may be made for such essential purpose. Indeed, sufficiency of the Judiciary Committee's resources was one of the recommendations made by the National Commission:
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> > 'The Commission recommends that the House ensure that its Committee on the Judiciary has the resources to deal with judicial discipline matters…' (pp. 37, 148)."

As I emphasized to you at our meeting, your FIRST PRIORITY as "oversight counsel" should be ensuring that the Committee finally obtains the resources necessary to responsibly address the impeachment/judicial misconduct complaints it receives. Based on my presentation, you have ample reason to believe that an emergency situation exists and that the mountain of documentary materials I gave you evidentiarily proves that the mechanisms identified by the National Commission's 1993 Report as safeguarding against federal judicial misconduct are seriously broken down and corrupted. Most important among these mechanisms is that intended by the 1980 Act, as to which the federal judiciary: (1) has promulgated rules rewriting the 28 USC

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[11] Emphasis in the original June 30, 1995 letter [R-93].

§372(c) statute so as to convert the statutory *discretion* to dismiss complaints that are "directly related to the merits of a decision or procedural ruling" into a mandatory requirement; (2) has failed to develop precedential caselaw as to the standards for exercising discretion to investigate "merits-related" complaints – thereby facilitating the dumping of "merits related" complaints; (3) has promulgated rules making §372(c) complaints confidential – although such confidentiality is NOT required by the §372(c) statute; and (4) has been falsifying and concealing documented allegations of serious judicial misconduct presented by §372(c) complaints by fraudulent dismissal orders. All this and more with the knowledge of the highest echelons of the federal judiciary – administrative and judicial[12].

Based on the evidentiary materials now before you, the Subcommittee cannot, in good faith, blithely direct citizens to file §372(c) complaints with the federal judiciary – assuming such direction is part of the form letter you stated you had prepared or were preparing[13] for the Committee's use in acknowledging receipt of impeachment/misconduct complaints against federal judges[14].

Since, *by your own admission*, you have many other duties at the Subcommittee and will have difficulty finding time to review the volume of materials I provided you at our meeting -- let alone the further documentation I proffered as to the experiences of CJA's members with 28 USC §372(c), as

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[12] Establishing such knowledge is, *inter alia*, CJA's correspondence with the Administrative Office of the United States Courts – transmitted to the Committee in substantiation of our March 10, 1998 and March 23, 1998 memoranda [R-1, R-15] and particularized at pages 6-10 of the March 23, 1998 memorandum [R-20-24]. I provided you with duplicates, as well as copies of CJA's further correspondence with the Administrative Office and U.S. Supreme Court. An inventory of this transmitted correspondence is enclosed (Exhibit "B").

[13] As I requested at our meeting, I would appreciate a copy of such form letter. CJA's previous request for a copy of the acknowledgement letter used by the Committee received no response. *See* CJA's November 8, 1995 letter to Mr. Glazier (pp. 3-4) [R-101-102].

[14] According to the National Commission's 1993 Report (at p. 35), "Today the Committee responds to every complaint with a letter acknowledging receipt of the complaint and directing the complainant's attention to the 1980 Act." The Report further suggested (at p. 36), "With a few changes, the Committee's responses to judicial complaints could be even more informative. The acknowledgement letter should tell complainants that the 1980 Act does not contemplate sanctions for judges' decisions or issues relating to the merits of litigation..."

well as with the other supposed safeguards against federal judicial misconduct -- CJA respectfully requests that you make a recommendation to Chairman Sensenbrenner consistent with the National Commission's recommendation, fully quoted in the RE: clause of this letter. Specifically, CJA requests that you recommend that professional staff – or at least an attorney – be engaged, FULL-TIME, to review and report on the overwhelming evidence already before you that the mechanisms of federal judicial discipline and removal are dysfunctional and corrupted. As this evidence encompasses CJA's June 9, 1993, March 23, 1998, and November 6, 1998 impeachment complaints, such review would have the added benefit of confirming that the misconduct complained-of rises to a level warranting impeachment of a significant number of federal judges, including the Supreme Court justices.

CJA's last letter to the Committee in the second red file jacket, dated February 16, 1999, expressly inquired as to what steps the Committee would be taking to investigate these three "fully-documented, *readily-verifiable* judicial impeachment complaints – each involving systemic corruption in the federal judiciary, annihilating anything resembling 'the rule of law'." The Committee never responded.

For your convenience, enclosed is a copy of that February 16, 1999 letter (Exhibit "C"), written on "the first business day after the end of the Senate's impeachment trial of...President [Clinton]" to remind the Committee that its "impeachment responsibilities are not over":

> "There remain hundreds of judicial impeachment complaints, pending in the House Judiciary Committee, filed by citizens no less entitled to 'their day in court' than Paula Jones. Their complaints assert that they were deprived of that 'day' by the misconduct of federal judges – misconduct rising to a level warranting impeachment and removal.
>
> Among these hundreds of judicial impeachment complaints are three filed by the Center for Judicial Accountability, Inc. (CJA)..."

We look forward to the Committee's belated response to that letter. Indeed, inasmuch as the Committee never sent us letters acknowledging any of our

three impeachment complaints[15] – contrary to the recommendation in the 1993 Report of the National Commission (at p. 36) that the Committee "continue to acknowledge every judicial discipline complaint" -- we also look forward to finally receiving from the Committee acknowledgement letters tailored to the circumstances of these complaints. Such letters should *explicitly* recognize the Committee's oversight and investigative duty in cases of judicial misconduct:

> "(a) which are not covered by [1980] Act, [28 USC §372(c)]; (b) where appellate remedies have been exhausted and have shown themselves ineffective; and (c) where the allegations, if true, would constitute impeachable conduct." [R-76]

Certainly, eight years after my August 26, 1993 letter to Mr. O'Connell [R-75] – with the benefit of CJA's document-supported advocacy to aid it -- the Committee should be able to make this clear and declarative statement, as likewise to unequivocally state that:

> "Judges who, for ulterior purposes, render dishonest decisions – which they *know* to be devoid of factual or legal basis – are engaging in impeachable conduct."[16]

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc. (CJA)

Enclosures

cc: James F. Sensenbrenner, Jr., Chairman, House Judiciary Committee
ATT: Philip Kiko, General Counsel/Chief-of-Staff,
House Judiciary Committee
[By Certified Mail/RRR: 7000-1670-0007-9431-0117]
Sam Garg, Minority Counsel, House Judiciary Committee
[By Certified Mail/RRR: 7000-1670-0007-9431-0124]

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[15] As to the Committee's wilful failure to provide a letter acknowledgment of the June 9, 1993 impeachment complaint, *see* CJA's unresponded-to January 31, 1994 letter to Mr. O'Connell [R-80].

[16] *See* our March 23, 1998 memorandum (at pp. 10-11 [R-24-25]) and our Statement for inclusion in the record of the Committee's June 11, 1998 "Oversight Hearing" (at p. 9) [emphases in the original]. *See* also, our June 9, 1993 impeachment complaint, stating "fabrication of fact and perversion of law is <u>not</u> part of the judicial function." [R-36].