CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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July 18, 2023

TO: Senate Judiciary Committee Chair/Majority Whip Dick Durbin, ESQ.
Senate Judiciary Committee/Courts Subcommittee Chair Sheldon Whitehouse, ESQ.

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: (1) Setting the Record Straight: "Supreme Court Ethics, Recusal, and Transparency Act" – & the mirage of ethics codes & enforcement in the lower federal judiciary – & elsewhere;
(2) Request for your responses & "the most elementary fact-finding", distribution to ALL senators, inclusion on the agenda of the Senate Judiciary Committee's July 20, 2023 meeting, & for the published record of proceedings.

As you know, the Center for Judicial Accountability, Inc. (CJA) is a non-partisan, non-profit citizens' organization that has documented the corruption of federal judicial selection and discipline. This documentation, spanning back to 1991 when the Senate Judiciary Committee was chaired by then Senator Biden, is posted on CJA's website, www.judgewatch.org, accessible *via* the side panels "Judicial Selection-Federal" and "Judicial Discipline-Federal".

In announcing, on July 10th, from the Senate floor that the Senate Judiciary Committee will be marking up and voting on Senator Whitehouse's "Supreme Court Ethics, Recusal, and Transparency Act" on Thursday, July 20th, you, Senator Durbin, stated:

> "…The solution to the problems we're seeing at the Supreme Court is a simple one. They need – like every other court in America – to adopt an enforceable code of ethics. Every federal judge in the country is bound by a code of ethical conduct and a set of ethics rules and enforcement mechanisms except for nine – the nine Justices of the Supreme Court who sit across the street from this building.
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> I first urged Chief Justice Roberts to adopt a binding, enforceable code of conduct over eleven years ago. Sadly, he didn't accept my suggestion. And he continues to ignore the issue today. This is the John Roberts Court. It will go down in history as the John Roberts Court. He has the power and I believe the moral obligation to straighten up this mess and restore the integrity of the Court.
>
> … despite our unpopularity in many public opinion polls, think about if this Congress lived by the same standard or lack of standards as the U.S. Supreme Court…"

This, and similar statements about "hold[ing] Justices to – at a minimum – the same ethical standards as every other federal judge or high-ranking official in the federal government"[1] and implying that 11 years earlier you had appropriately raised ethics concerns to Chief Justice Roberts are false and misleading and based on concealing the incriminating contrary evidence. Most importantly:

- that 25 years ago, CJA filed with the House Judiciary Committee a November 6, 1998 impeachment complaint against all nine justices, who were then Chief Justice Rehnquist and, in order of seniority, Associate Justices Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, *inter alia*, for "'lying to the American People' [and Congress] as to the federal judiciary's adherence to ethical codes and the adequacy of enforcing mechanisms to protect the public from judicial bias and corruption", established by the record of the federal civil rights action *Doris L. Sassower v. Mangano, et al*,[2] which had come before the justices on a petition for a writ of certiorari and supplemental brief, seeking mandatory review under the Court's "power of supervision" of lower federal judges who had "thrown" the case by fraudulent judicial decisions that had wiped out the "rule of law", including with respect to "the principal disqualification statute in the federal system, 28 USC §455", its companion 28 U.S.C. §144, and the 1980 Act for complaints against lower federal judges. Notwithstanding the cert petition and the brief were unopposed and empirically demonstrated that ALL checks on federal judicial misconduct touted by the 1993 Report of the National Commission on Judicial Discipline and Removal were sham and worthless, the nine justices summarily denied the cert petition, without even disciplinary or criminal referral of the lower federal judges and without adjudicating a threshold application, pursuant to 28 USC §455, applicable to them, that they disqualify themselves or make disclosure, thereafter ignoring a judicial misconduct complaint against them based thereon – the particulars of which were set forth in a petition for rehearing, accompanying the impeachment complaint.

- that 22 years ago, by a July 11, 2001 letter to the Senate's majority and minority leaders, who were then, respectively, Senators Daschle and Lott, and a July 11, 2001 letter to the members of the Senate Judiciary Committee, then chaired by Senator Leahy, and July 14, 2001 letters to Senator Clinton and President Bush, CJA alerted them to the House Judiciary Committee's corrupting of its duties pertaining to federal judicial discipline and removal and requested their public support of hearings by the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, chaired by Senator Schumer – or, alternatively, "by some other congressional appropriate body" – transmitting to each CJA's July 3, 2001 letter to Senator Schumer, whose recitation of the pertinent facts (at pp. 16-18) was substantiated by exhibits that the November 6, 1998 impeachment complaint

[1] See the Senate Judiciary Committee's July 10, 2023 press release **"***Durbin, Whitehouse Announce July 20 Vote in Senate Judiciary Committee on Supreme Court Ethics, Recusal, and Transparency Act***",** furnishing a link to the Committee's May 2, 2023 hearing, discussed at pp. 9-10, *infra*.

[2] The full record is posted on CJA's website, accessible *via* the side panel "Test Cases: Federal (*Mangano*)". The direct link to the record at the Supreme Court is here.

identified as not only having been before the Court in conjunction with the *Sassower v. Mangano* cert petition, but as having been furnished, *in hand*, to the Court's clerk, for transmittal to Chief Justice Rehnquist in his administrative capacity. Among these:

- CJA's critique of the 1993 National Commission Report, as embodied in my 1997 article "*Without Merit: The Empty Promise of Judicial Discipline*" (Massachusetts School of Law/The Long Term View), also summarizing the Supreme Court's failure to perform its "power of supervision" monitoring function in 1993, in connection with federal district and circuit judges who had "thrown" an earlier case, *Elena Ruth Sassower and Doris L. Sassower v. Field, et al.*, by fraudulent judicial decisions, also involving disqualification/disclosure motions – and our first impeachment complaint to the House Judiciary Committee, in 1993 against the lower court judges upon the Supreme Court's denial of a cert petition and petition for rehearing[3];

- CJA's March 10, 1998 memorandum to the House Judiciary Committee entitled "H.R. 1252 (Judicial Reform Act of 1997)" detailing the Judicial Conference's fraudulent claims to the Committee in purporting the 1980 Act to be an "effective disciplinary process" operating "as the Committee intended" and as to the adequacy of 28 U.S.C. §§144 and 455;

- CJA's March 23, 1998 memorandum to the House Judiciary Committee entitled "H.R. 1252 (Judicial Reform Act of 1997)", transmitting to the Committee the proof CJA had furnished to the Administrative Office, for the Judicial Conference, that the 1980 Act and 28 U.S.C. §§144 and 455 are "empty shells" and, additionally, constituting CJA's second impeachment complaint against federal judges – these being the district and circuit judges whose fraudulent decisions in the *Sassower v. Mangano* case would, in May 1998, be before the Supreme Court on a cert petition. As stated (at pp. 10-11), "**Judges who, for ulterior purposes, render dishonest decisions – which they *know* to be devoid of factual or legal basis –are engaging in impeachable conduct**" (bold & italics in original);

- CJA's statement for the April 24, 1998 public hearing of the Commission on Structural Alternatives to the Federal Courts of Appeal, whose five members were all designated by Chief Justice Rehnquist and whose chair was former Supreme Court Associate Justice Byron White, summarizing (at pp. 5-12) and furnishing the case file evidence of the corrupting of both the appellate and disciplinary processes and trashing of 28 U.S.C. §455 by the Second Circuit Court of Appeals in both the *Sassower v. Field* and *Sassower v. Mangano* cases – and stating (at p. 12) that CJA members relate to us

[3] The Supreme Court and Circuit Court of Appeals submissions transmitted to the House Judiciary Committee in substantiation of the June 9, 1993 impeachment complaint are here.

comparable "stories of judicial lawlessness in the Circuit Courts of Appeals";

- CJA's statement for inclusion in the record of the House Judiciary Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary", describing the Committee's rigging of that hearing, stating (at p. 1):

> "The *only* witnesses permitted to testify at the Subcommittee's 'oversight' hearing were those representing the bodies overseen – the Judicial Conference, the Administrative Office, and the Federal Judicial Center." (italics in the original)[4]

- that 19 years ago, by a February 13, 2004 letter, CJA alerted the Senate Judiciary Committee's then ranking member, Senator Leahy, that Chief Justice Rehnquist's January 26, 2004 response to his January 22, 2004 letter inquiring as the justices' procedures and rules for recusal under 28 U.S.C. §455 was "false, misleading, and unsupported" – and so-established by CJA's November 6, 1998 impeachment complaint "pending in the House Judiciary Committee, *uninvestigated*" – and that by an accompanying February 12, 1998 letter to the Chief Justice, with copies to the eight associate justices, CJA had set this forth, identifying that it was being furnished to Senator Leahy and other relevant Congress members "with a request…to not simply invite [the justices'] responses, but [to] secure them, by subpoena, if necessary, as part of the House Judiciary's Committee's long-overdue investigation of CJA's November 6, 1998 impeachment complaint against [them, which] must proceed forthwith."

- that 15 years ago – and as hereinbelow summarized – CJA furnished Senator Leahy, then chair of the Senate Judiciary Committee, and Senator Schumer, then chair of its Courts Subcommittee, with CJA's March 6, 2008 Critique of the "Report on the Implementation of the Judicial Conduct and Disability Act of 1980" – this being the Report of the review

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[4] This *modus operandi* of rigging hearings by excluding indispensable witnesses whose testimony is not favored would be on full display at the House Judiciary Committee's November 29, 2001 purported "oversight" hearing on the 1980 Act and §§144 and 455 – to which I was not invited or given notice, despite the fact it resulted from my July 2001 letters for a Senate Judiciary Committee hearing and I was asked by the House Judiciary Committee to come to Washington to furnish assistance in its preparation. The series of letters reflecting this, culminating in my July 30, 2002 letter containing an analysis of the transcript of the November 29, 2001 "oversight" hearing, and my subsequent letters to two of the witnesses, including Professor Arthur Hellman, are exhibits in the bound Compendium to CJA's March 6, 2008 Critique of the Breyer Committee Report, *infra*, germane to its discussion (at pp. 12, 20-25, 25-31, 48) of the 2002 Federal Judicial Center "follow—up research on chief circuit judge orders dismissing complaints", requested by the House Judiciary Committee's chair and ranking member, the subsequently enacted "Judicial Improvements Act of 2002", and the duplicates of CJA's three impeachment complaints, whose originals should have been in the House Judiciary Committee's files.

committee appointed by Chief Justice Rehnquist in 2004, with Associate Justice Breyer as its chair, which Justice Breyer presented to Chief Justice Roberts at the Supreme Court in September 2006.

The Critique, which opened with the words "For it is a maxime in law, *aliquis non debet esse judex in propria causa*' – '*No man shall be judge in his own cause*'", stated that the Breyer Committee Report was "a knowing and deliberate fraud on the public" in purporting that the federal judiciary was "doing a very good overall job in handling complaints filed under the Act", and that it was:

> "no less methodologically-flawed and dishonest than the 1993 Report of the National Commission on Judicial Discipline and Removal, on which it substantially draws, and the 2002 Federal Judicial Center's follow-up study, on which it additionally relies. Like them, it is based on hiding the evidence – first and foremost, the thousands of judicial misconduct complaints filed under the Act, which the federal judiciary, not Congress, shrouded in confidentiality and made inaccessible to both Congress and the public, to conceal what it is doing.
>
> The 1980 Act was predicated on assurances by the federal judiciary that it could and would 'police itself', as well as assurances by Congress that it would effect 'vigorous oversight'[fn]. Both premises of the Act are false and so-proven by the accompanying and referred-to documentary evidence. Based thereon, there must be congressional hearings, disciplinary and criminal investigations, and radical overhaul of the façade of federal judicial discipline that currently exists." (at p. 1).

To secure this, on May 13, 2008, I hand-delivered the Critique to Congress, accompanied by a memo addressed to the four leaders of Congress who were then Senate Majority Leader Reid, Senate Minority Leader McConnell, Speaker of the House Pelosi, and House Minority Leader Boehner. The *cc*'s on the memo included the Senate and House Judiciary Committees and their Courts Subcommittees and, specifically, their eight chairs and ranking members, plus Senators Obama, Clinton, and McCain, each running to be president. To each of their offices I hand-delivered the Critique and its substantiating Compendium of Exhibits – and to each of the four leaders of Congress and four leaders of its two Judiciary Committees, I additionally hand-delivered the Critique's three free-standing folders of further documentary proof, consisting of the record of three complaints against lower federal judges that CJA had filed under the 1980 Act and my correspondence pertaining thereto to the Administrative Office of the United States Courts for presentment to the Judicial Conference, spanning from 1995 to 1998. I also furnished everyone with an Executive Summary, which, quoting from the Critique (at p. 3), repeated – and with its underlining:

> "Investigation of the [November 6, 1998] impeachment complaint – beginning with the particulars set forth by CJA's March 10 and March 23, 1998 memoranda to the House Judiciary Committee, referred to therein – would suffice to discredit the Breyer Committee Report, totally."

Two months earlier – and as recounted by my May 13, 2008 memo – I had furnished the Critique, with its evidentiary accompaniment, to Chief Justice Roberts, by hand-delivering it to the Administrative Office and to the Supreme Court under a March 6, 2008 letter, addressed to Chief Justice Roberts as head of the Judicial Conference, stating (at pp. 3-4):

> "…Unless you deny or dispute the Critique's 73-page analysis and the accompanying and referred-to substantiating documentary proof, we respectfully call upon you to take such appropriate steps as Congress empowered the Judicial Conference to take pursuant to 28 U.S.C. §331:
>
> > "hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority.'
>
> Otherwise, we will turn to the President and Congress for their endorsement of 'congressional hearings, disciplinary and criminal investigations, and radical overhaul of the façade of federal judicial discipline' – relief clearly warranted by the Critique.'".

The May 13, 2008 memo also recounted what happened next: the director of the Administrative Office, James Duff, who functioned as secretary to the Judicial Conference, sent me a non-responsive five-sentence March 7, 2008 letter. To this I had replied by a March 10, 2008 letter requesting clarification and particularizing his "profound self-interest" arising from the fact that he had been administrative assistant to Chief Justice Rehnquist from 1996-2000 and "would have reasonably received, in 1998, the key documents referred to by the Critique and included in the Compendium of Exhibits" – and stating: "please confirm that you will be recusing yourself from any participation in, or determination of, this matter, consistent with applicable rules governing conflict of interest". I received no response, thereby demonstrating:

> "the deliberateness with which Chief Justice Roberts and [his secretary to the Judicial Conference] have turned their backs on this last chance to put the federal judiciary's 'house in order' without intervention by the other branches [–] reinforc[ing] the necessity that Congress vindicate the public's rights by demanding the federal judiciary's response to each of the Critique's 20 sections, including under oath, at congressional hearings."

As it turned out, Administrative Office Director Duff's five-sentence letter was five sentences more than I got from the four leaders of Congress, from the four leaders of the Senate and House Judiciary Committees, and from the four leaders of their two Courts Subcommittees. By a June 25, 2008 memo, I inquired as to the status of their review and recited further facts:

- that on May 13, 2008, I had met with Senate Majority Leader Reid's counsel in the Senate Majority Leader's office and during a nearly hour-long meeting had suggested that in evaluating CJA's May 13, 2008 memo and Critique "Congress

should have the assistance of scholars and organizations with expertise in the federal judiciary and judicial independence and discipline issues";

- that I myself had written to scholars[5] and organizations,[6] inviting them "to serve Congress – and the American People – by their scholarship" – but surely they would be more responsive to a direct request from Congress, as to me they had not responded;

- that on May 16, 2008 I had hand-delivered four copies of the May 13, 2008 memo to the Supreme Court for its indicated recipients: Chief Justice Roberts and Associate Justices Breyer, Alito, and Kennedy, and had hand-delivered a fifth copy to the Administrative Office for transmittal to Director Duff and the Judicial Conference – and requested that Congress secure their answers.

I received no response.

As you, Senator Durbin, were then, as you are now, the Senate majority "whip" – in other words, second in command to the Senate majority leader – and were then, as you have been since 2002, a member of the Senate Judiciary Committee – you were presumably knowledgeable of CJA's March 6, 2008 Critique and my communications about it to Senate Majority Leader Reid and the Senate Judiciary Committee in May and June 2008.

Likewise, you, Senator Whitehouse, were a member of the Senate Judiciary Committee in 2008 – and presumably knowledgeable of the Critique and my communications thereon.

Please each confirm that this is the case – and explain why you and your Democratic Senate brethren did not believe that Congress was mandated to IMMEDIATELY request, if not demand, answers from Chief Justice Roberts, from Associate Justice Breyer, and from the Judicial Conference to the Critique – and to promptly hold hearings thereon.

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[5] These included Professor Charles Geyh, to whom I sent an April 21, 2008 letter, without response from him, and who I thereafter *cc*'d on six additional letters. Professor Geyh, a "consultant" for the National Commission on Judicial Discipline and Removal and, prior thereto, counsel to the House Judiciary Committee's Courts Subcommittee, submitted written testimony for the Senate Judiciary Committee's June 14, 2023 hearing, by its Courts Subcommittee: "*Ensuring an Impartial Judiciary: Supreme Court Ethics, Recusal and Transparency Act of 2023*" – so-announced by Senator Whitehouse (at 27 mins).

[6] Among these organizations, the Brennan Center for Justice, to which I sent four memos by fax and e-mail on April 3, 2008, April 22, 2008, May 1, 2008, and May 30, 2008, including to James Sample, its then counsel for its Democracy Program-Fair Courts Project, without response. Mr. Sample, who left the Brennan Center in 2009 to become a professor at Hofstra University Law School testified at the Senate Judiciary Committee's June 14, 2023 hearing.

This is precisely the course that you have taken in the wake of the April 6, 2023 ProPublica article "*Clarence Thomas and the Billionaire*" and its subsequent reporting. As illustrative:

- the Senate Judiciary Committee's April 10, 2023 letter to Chief Justice Roberts, signed by every Democratic Committee member, urging him to take responsive action and giving notice of your intent to hold a hearing;

- the Senate Judiciary Committee's April 11, 2023 letter to Chief Justice Roberts, inviting his testimony at a May 2, 2023 hearing or that of such associate justice as he would designate;

- the Senate Judiciary Committee's April 27, 2023 letter to Chief Justice Roberts, signed by every Democratic Committee member, asking "key questions" about the "Statement of Ethics Principles and Practices" enclosed with Chief Justice Roberts' April 25, 2023 letter declining the invitation to testify.

How do you explain the difference?

Is it your view that the Critique, chronicling the actuality that Supreme Court justices corrupted their offices, in furtherance of conflicts of interest, is not exponentially more serious and substantial than the "appearance" of bias pertaining to Justice Thomas and the other justices and the non-reporting of gifts and spousal income, about which you have been exclusively focusing?

Likewise, is it your view that the active facilitating role of the Administrative Office and Judicial Conference in the lower federal judiciary's gutting of 28 U.S.C. §§455 and 144 and the 1980 Act, demonstrated by the Critique, is not exponentially more serious, substantial, and irreparably injurious to litigants and the public than their cover-up and improper disposition of the 2011 complaints against Justice Thomas – the exclusive subject of the Senate Judiciary Committee's May 17, 2023 hearing, by the Courts Subcommittee "*Review of Federal Judicial Ethics Processes at the Judicial Conference of the United States*".

What findings of fact and conclusions of law did the Senate Judiciary Committee and its Courts Subcommittee make, in 2008, with respect to the Critique and my correspondence thereon? Is there anything in the Critique's 20 sections or in my May 13, 2008 and June 25, 2008 memos that did not check out 100%?

As no one, ever, has denied or disputed the accuracy of the Critique and my correspondence about it, on what basis have each of you been purporting and implying that lower federal judges, by contrast to the Supreme Court justices, adhere to codes of conduct and disqualification/disclosure rules and operate a functioning complaint process – indeed, that the legislative and executive branches do, likewise.[7]

[7] This is summed up by the Associated Press' July 11, 2023 headline: "*Senators call for Supreme Court to follow ethics code like other branches of government*".

Thus, in opening the Senate Judiciary Committee's May 2, 2023 hearing *"Supreme Court Ethics Reform"*, you, Senator Durbin, stated:

> "…Over the course of several decades, Congress and the judicial branch have created a system of ethics laws and standards for federal judges that lay out the clear rules of the road. These rules promote transparency and disclosure. They place guardrails on conflicts of interest, provide mechanisms for investigation and enforcement, and ensure accountability for misconduct. …
>
> We are here today because the Supreme Court of the United States of America does not consider itself bound by these rules.
>
> …the rest of the federal judiciary and the executive and legislative branches have codes of conduct designed to prevent even the appearance of fraud, abuse or corruption. As this chart tells us, the Supreme Court is an outlier on the basics."

The chart you displayed entitled "The Supreme Court Has No Ethics Code of Conduct" asked five questions, running down the left side: "Ethics code of conduct?; "Oversight body for code of conduct?"; "Mechanism to review complaints of misconduct?", "Mechanism to investigate alleged misconduct? "Code of conduct violations can result in sanction or penalties?". All of these were x'd, signifying their absence for the "SCOTUS Justices", in contrast to check marks signifying their presence for "Lower Court Federal Judges", "Members of Congress", and "Senior Executive Branch Officials".

Obviously, the mere existence of any or all five of these features is NOT equivalent to their efficacy, in practice. Yet, Senator Whitehouse's closing comment at the May 2, 2023 hearing gave ringing endorsement of the efficacy of the judicial complaint mechanism for "Lower Court Federal Judges", stating:

> "What we have here is a situation in which very clear policies and procedures exist in the judicial branch of government and are generally administered through the Circuits' Courts of Appeal and they include very basic things like having a place where a complaint about a judge's ethics can be lodged. The Supreme Court doesn't have that. They include very basic things like having staff people assigned to review any complaints that come in, sort out what makes sense and what doesn't, do the usual filtering that people have to do of complaints that come in. I think every Circuit Court does that, the Supreme Court does not. Beyond that, once you've done the filtration, if it looks like a complaint has merit, a staff attorney's work with regard to the other federal judges is to take a look at the complaint and to do a little bit of a factual investigation so that there is a record to decide what is true and what isn't. And that can include asking a question of the judge about what their recollection is of the situation or what their justification is. A factual record gets made. Again, the Supreme Court doesn't do that. …
>
> And I will close by reminding everyone of Ben Franklin's Poor Richard's Almanac which advised that the best way to show that a crooked stick is crooked is to put a straight stick down next to it. And I think the Circuit Courts of Appeal and the way they behave right now overseeing the ethical conduct of federal judges

presents that straight stick."

Senator Whitehouse, on what evidentiary basis have you held up the Circuit Courts of Appeal as the "straight stick" for "overseeing the ethical conduct of federal judges? Are you disputing the accuracy of CJA's Critique, whose conclusion (at pp. 72-73) summed up the situation, stating:

> "The thousands of judicial misconduct complaints filed under the [1980] Act by ordinary citizens – virtually 100% dismissed by chief circuit judges, without appointment of special committees to investigate – are the best evidence of how the federal judiciary has corrupted federal judicial discipline. This is why the federal judiciary, to impede oversight by Congress and the American Public, made them confidential. It is also why the Breyer Committee fashioned a 'study' where citizens would not be interviewed or have the opportunity to testify about their complaints.
>
> The Breyer Committee Report has not put forward a single complaint to support its claim that 'chief judges and judicial councils are doing a very good overall job in handling complaints filed under the Act' (p. 107) and, by its own admission, has not evaluated the efficacy of 'other formal mechanisms', such as 'recusals sua sponte or on motion under 28 U.S.C. §§144 & 455' and 'appellate reversals aimed at improper judicial conduct' (p. 100). By contrast, this critique is substantiated by the three complaints CJA's founders filed under the Act – in other words, by three more than the Breyer Committee has supplied – with each complaint arising from and showcasing the federal judiciary's corrupting of the recusal and appellate 'mechanisms' that the Breyer Committee has not examined.
> …
> The National Commission said that 'absent a convincing demonstration of the inadequacy of the 1980 Act,' it would not recommend change (Exhibit A-1, pp. 95-96, Exhibit A-5, pp. 1-2). Our three complaints and the two cases from which they arise are more than a 'convincing demonstration of the inadequacy of the Act.' They resoundingly prove the federal judiciary's subversion of the Act, including the predicates for excluding 'merits-related' complaints, *to wit*, recusal motions and appellate review.

That was written 15 years ago. What oversight have you done, Senator Whitehouse, of the 1980 Act, when even a cursory glance of the Circuit Courts' OWN statistics for the Act, posted on the Administrative Office's website, reveals the situation to be unchanged from what the Critique chronicled – and to which CJA alerted the Senate Judiciary Committee and Senate leadership seven years before that, in July 2001.[8] Don't you receive complaints from your Rhode Island constituents and from other members of the public against federal judges? What do you do with them? Are you and other members of Congress forwarding them to the House Judiciary Committee, as the 1993

[8] According to Senate Judiciary Committee press releases – and your own – including the July 10, 2023 release "*Durbin, Whitehouse Announce July 20 Vote in Senate Judiciary Committee on Supreme Court Ethics, Recusal, and Transparency Act*", "Whitehouse has engaged in a longstanding oversight effort to ensure transparency and accountability in the federal judiciary…"

National Commission Report recommended?

And what is the House Judiciary Committee doing with complaints forwarded to it and sent to it directly by members of the public? As identified by the Critique (at pp. 46-48), the House Judiciary Committee's "Summary of Activities" for each Congress stopped recording the number of complaints the Committee was receiving AFTER the National Commission's 1993 Report and in face of its recommendation that the Committee "continue to keep a record of the number and nature [of the] complaints it [receives], and report these data each Congress". This has not changed. The Committee's "Summary of Activities" for each of the past 15 years has continued to NOT report the number. Do you know what the number is, for each of the past 15 years – and for each of the 14 years before that? And do you know whether the House Judiciary Committee has been directing complainants to file their complaints with the Circuit Courts of Appeal under the 1980 Act, including their "merits-related" complaints – and what complainants have reported back.

As for "Members of Congress" – a category that certainly includes congressional leaders, leaders of the Judiciary Committees, and Judiciary Committee members — the evidence pertaining to worthlessness of ethics codes to restrain them from violating the duties of their office with respect to federal judicial discipline and selection is established, resoundingly, by the foregoing – as well as by the further evidence posted on CJA's website, accessible from the side panel "Searching for Champions: Federal". This brings up a menu page with links for the Senate & its Judiciary Committee, the House & its Judiciary Committee, and for such "Senior Executive Branch Officials" as the President, the Justice Department, U.S. Attorneys, and FBI, with evidence establishing that ethics codes, likewise, have zero restraint on their willful violations of the duties of their offices.

Suffice to offer up two examples specifically pertaining to the Senate Judiciary and proving the worthlessness of ethics enforcement complaint mechanisms both for them and "Senior Executive Branch Officials.

Example #1:

> In 2014, by a December 17, 2014 letter to the Senate Judiciary Committee, I formalized my oral notice, spanning the preceding month, of CJA's opposition to confirmation of President Obama's nomination of U.S. Attorney for the Eastern District of New York Loretta Lynch as U.S. Attorney General, based on her conflict-of-interest-driven corruption, in office, as U.S. Attorney, furnishing proof that but for the corruption of the Justice Department's Office of Professional Responsibility, to which, in 2001, I had filed a fully-documented complaint against her, she would never have had a second term as U.S. Attorney – nor been nominated by President Obama to be U.S. Attorney General. The letter raised questions as to whether U.S. Attorney Lynch had disclosed this complaint, as part of the vetting process – including in response to a presumed inquiry about complaints on the confidential portion of the Senate Judiciary Committee's questionnaire, further pointing out the inadequacy of her response to the question as to "Potential Conflicts of Interest".

The Senate Judiciary Committee's response to this December 17, 2014 letter was no response, including as to my request to testify, and I so-alerted then Chair Leahy, then Ranking Member Grassley, and the 18 other Senate Judiciary Committee members, including yourselves[9] – chronicling the situation, as it was unfolding, in successive letters and e-mails – ultimately setting it all forth in a fully-documented March 11, 2015 complaint against the Committee's 20 members and their complicit staff for fraud, corruption, and betrayal of official duties and the public trust, which I filed with the Senate Ethics Committee.

This is the same Senate Ethics Committee about which you, Senator Whitehouse, gave ringing endorsement at the conclusion of the June 14, 2023 hearing "*Ensuring an Impartial Judiciary: Supreme Court Ethics, Recusal, and Transparency Act of 2023*":

> "In closing I'd note that, in terms of peers sitting in judgment of one another, that's what we do in the Senate. That is what the Senate Ethics Committee does. It requires peers who serve on the Senate Ethics Committee to sit in judgment of other senators who have gotten in trouble. And one of the ways in which you make that real is by having talented staff and staff attorneys who go through the process of finding out what the facts are so that proper decisions can be made by the peers or as to each other's conduct.
>
> And in the case of the Supreme Court, not only do you not have the peer review, you don't even have the most elementary fact-finding. …"

In so-stating, are you unaware, Senator Whitehouse, of how the "talented staff and staff attorneys" of the Senate Ethics Committee dumped my March 11, 2015 complaint by an April 14, 2015 letter of its chief counsel/staff director, whose "fact-finding" consisted of a LIE that I had presented "mere allegations, with no evidence or information to support their substantive merit".

Even a glance at the 14-page complaint suffices to reveal the flagrant fraud of your Senate Ethics Committee chief counsel – on par with that of the Justice Department's Office of Professional Responsibility in dumping my fully-documented March 23, 2001 complaint against U.S. Attorney Lynch by a May 3, 2001 letter whose "fact-finding" was the brazen LIE that the complaint was "unsupported by any evidence and without merit".

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[9] *See*, to Senator Durbin, my January 27, 2015 e-mail; my February 5, 2015 e-mail; and my February 13, 2015 e-mail; and, to Senator Whitehouse, my January 27, 2015 e-mail; my February 5, 2015 e-mail; and my February 13, 2015 e-mail.

Example #2:

> In 2021, and consistent with the recognition in the 1993 National Commission Report, that sound selection processes are a prophylactic to preventing subsequent misconduct, I alerted the Senate Judiciary Committee to the serious conflict of interest issues that President Biden's four nominees for U.S. Attorney for New York's Southern, Eastern, Western, and Northern Districts would face, upon their Senate confirmations, so that it could vet the nominees as to how they would be handling the conflicts – a situation to which I had initially alerted Committee member Senator Hawley by an e-mailed August 4, 2021 letter, without response to it or to my subsequent two e-mails, on August 11 and August 12.
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> My August 18, 2021 e-mail and September 3, 2021 e-mail which I sent to a significant number of e-mail addresses, including scheduling@whitehouse.senate.gov, chronicled the situation I was facing and requested the e-mail recipients "jointly take responsibility for ensuring that the e-mail is forwarded to all 22 Committee Senate members – and to their counsels and other staff charged with vetting U.S. Attorney nominations." I received no response to the September 3, 2021 e-mail and the Senate Judiciary Committee proceeded to rubber-stamp confirmation of New York's four U.S. Attorneys, without inquiring of them as to how they would be addressing the conflicts of interest to I alerted it.
>
> The consequence? Upon assuming office, they each immediately corrupted their offices by their conflicts of interest, ignoring my letters to them, the last of which was my December 23, 2021 letter to all four, repeating my question as to how they were going to be confronting their conflicts of interest with respect to the public corruption that it was their duty to investigate and prosecute. I received no response.
>
> As for the complaint that my September 3, 2021 e-mail to the Committee stated I would be filing with the Justice Department's Inspector General against the FBI and New York's Acting U.S. Attorneys for their corrupt nonfeasance born of conflicts of interest, I did file it, a September 3, 2021 complaint. Without explanation, and by an unsigned letter from the General Counsel's Office of the Executive Office for United States Attorneys, I was informed by a November 10, 2021 letter that "OIG has chosen not to investigate [my] allegations" and had instead referred it to the General Counsel's Office, which was "not an investigative agency and has no authority to examine [my] allegations".

Finally, Senator Whitehouse, you also stated, in the continuation to your above-quoted closing remarks at the June 14, 2023 hearing:

> "There is not a court in the country, in my estimation, where if a recusal issue was properly raised, there would be no way to determine what the facts actually were as to whether a justice or a judge should recuse or not. It simply does not happen anywhere else. And the idea that the Court, setting aside being unwilling to sit in

> judgment of itself, is unwilling to even have facts found about itself is so out-of-kilter with basic premises of due process, proper procedure, and the American rule of law, that it is a little bit astounding to me. And the fact that we don't even get a proper and honest answer as to the facts, putting aside what we do with them…

On what evidence, Senator Whitehouse, do you base your "estimation" about how every other court, excepting the Supreme Court, determines "facts" germane to a "properly raised" recusal motion? What you say "simply does not happen anywhere else", happens everywhere – and the situation as pertains to the lower federal judiciary was the subject of the cert petition underlying the November 6, 1998 impeachment complaint in the bound Compendium of Exhibits to the Critique. Did you not read it? The second of the petition's two "Questions Presented" – following the first question about the Court's supervisory duty[10] – was about "recusal issues…properly raised", asking:

> "Is constitutional due process denied where, on appeal, the Circuit Court fails to adjudicate the 'pervasive bias' of the district judge, including his denial of a recusal motion under 28 U.S.C. §§144 and 455 and, additionally, fails to adjudicate, or to adjudicate with reasons, motions for its own recusal, pursuant to §455 and the 5th Amendment to the U.S. Constitution?
>
> a. Is it misconduct *per se* for federal judges to fail to adjudicate or to deny, without reasons, fact-specific, fully-documented recusal motions?
>
> b. If so, where is the remedy within the federal judicial branch when [] misconduct complaints [under the 1980 Act] against Circuit judges based thereon are dismissed as 'merits-related'?"

The corresponding Point II included the following:

> "At bar, petitioner made recusal applications at various stages of the litigation, against the district judge, the Chief Judge of the district, the Second Circuit, specific Second Circuit Judges, and against the appellate panel. These applications, based not just on the appearance of bias, but its actuality, were fact-

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[10] This first question asked:

> "Does this Court have a duty to exercise its 'power of supervision' where the record shows that two levels of the federal judiciary have so far departed from adjudicatory and ethical standards as to falsify the record to conceal petitioner's entitlement to a declaration that New York's attorney disciplinary law is unconstitutional, as written and as applied to her[fn]?
>
> a. Does this Court have a duty under ethical codes of conduct to make disciplinary and criminal referrals when a Petition for Writ of Certiorari presents readily-verifiable evidence of official misconduct by federal judges?"

> specific and documented. Yet all were either ignored without adjudication or denied without reasons, except in the case of petitioner's order to show cause under §§144 and 455 for the recusal of the district judge, and her motion for reargument thereof, which the district judge denied for reasons whose falsity was demonstrated on appeal [A-148], but not adjudicated by the appellate panel's Summary Order [A-21]…." (at p. 27).

This situation concerning recusal is not an anomaly – nor confined to the federal courts. All levels of the New York's state courts operate this way, ignoring recusal motions, without adjudication, denying them, without reasons, or denying them by reasons that are false – and this is what exists today, identical to what existed thirty years ago, giving rise, at that time, to the *Sassower v. Mangano* federal action that would culminate in the 1998 cert petition.

Nor is this unique to New York state. It is replicated in state courts throughout the country – and in the District of Columbia. Indeed, in 2007, I presented the Supreme Court with a cert petition pertaining to the D.C. Courts, whose four "Questions Presented" reflected the fraudulence of the appealed-from decisions with respect to disqualification and otherwise:

> "1. Is it a constitutional violation, *prima facie* disqualifying, and misconduct *per se* for a court to conceal and wilfully fail to adjudicate a motion for its disqualification, disclosure, and transfer – and does it have jurisdiction to proceed further in the matter.
>
> 2. Was the District of Columbia Court of Appeals disqualified for interest and for pervasive actual bias meeting the 'impossibility of fair judgment' standard of *Liteky v. United States*, 510 U.S. 540 (1994), from adjudicating these consolidated appeals, entitling petitioner to transfer to the United States Court of Appeals for the District of Columbia, including pursuant to D.C. Code §10-503.18?
>
> 3. Does the District of Columbia Court of Appeals' Memorandum Opinion and Judgment further manifest that Court's interest and pervasive actual bias and is it so materially false and insupportable as to be, in and of itself, unconstitutional under the Due Process Clause?
>
> 4. Does this Court recognize supervisory and ethical duties when a Petition for a Writ of Certiorari presents readily-verifiable 'reliable evidence' of judicial misconduct and corruption?
>
> (1) to make referrals to disciplinary and criminal authorities
>
> (2) to adjudicate the appellate issues, subverted by the underlying judicial misconduct and corruption, where those issues are of constitutional magnitude and public importance…"

The Court, consisting of Chief Justice Robert and, in order of seniority, Associate Justices Stevens, Scalia, Kennedy, Souter, Thomas, Ginsburg, Breyer, Alito, also denied that unopposed cert petition and a petition for rehearing[11] – to which the Senate and Senate Judiciary Committee were directly interested and thereby protected, as the case was the bogus and retaliatory "disruption of Congress" case against me for respectfully requesting to testify in opposition at the Committee's May 2003 hearing to confirm a New York Court of Appeals judge to the Second Circuit Court of Appeals – a request based on the case file evidence of the judge's corruption involving disqualification/disclosure issues at the New York Court of Appeals denying review in two separate major cases – with one of the cases being a lawsuit against the New York State Commission on Judicial Conduct, sued for corruption, "thrown" at both the trial and appellate levels by fraudulent judicial decisions, including, at both levels, with respect to disqualification and disclosure.[12]

Consistent with the accountability and transparency you are urging for the Supreme Court, I look forward to your responses and some semblance of "the most elementary fact-finding" with respect to the foregoing.

Additionally, I request that this letter be distributed to ALL senators and that it be placed on the agenda of the Senate Judiciary Committee's July 20th meeting so that discussion of the important "Supreme Court Ethics, Recusal, and Transparency Act" may be informed by the relevant facts, rather than, as it has been, infused with falsehoods and partisanship on both sides. To assist you in doing this, I am *cc*'ing Senate Majority Leader Schumer and Senate Minority Leader McConnell and

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[11] As in *Sassower v. Mangano*, the Court's clerk and staff engaged in flagrantly improper conduct, including falsification of records, to insulate the justices from their duties and accountability – and the rehearing petition particularized this, substantiated by appendix documents that included my two complaints to Chief Justice Roberts against the clerk and his staff, dated October 9, 2007 and October 26, 2007. To this I would add a November 14, 2007 complaint to Chief Justice Roberts against the Court's counsel, who was then Scott Harris – copies of which I sent for distribution to each associate justice. The ONLY response to these three complaints would be on November 26, 2007, by the standard two-sentence form letter that the Court denied the petition for rehearing, auto-signed by the clerk. Indeed, Chief Justice Roberts would reward Mr. Harris, in September 2013 when, upon the clerk's retirement, he would appoint Mr. Harris to that position.

Suffice to add that Chief Justice Roberts did the same in rewarding Administrative Office Director Duff, who, after covering up CJA's Critique and correspondence, in 2008, stepped down from that position in September 2011 to become CEO of the Newseum – and was welcomed back, three years later, by Chief Justice Roberts, who lauded him in a November 4, 2014 press release stating:

> "Jim earned the full confidence of the Judiciary during five years of exceptional service between 2006 and 2011, and we are fortunate that he has agreed to return."

He served until January 2021 and is now executive director of the Supreme Court Historical Society.

[12] The "disruption of Congress" case is posted, in all its gory glory, on CJA's website, starting with the "Paper Trail to Jail", the "Paper Trail from Jail" – and then the appeals: to the D.C. Court of Appeals and to the Supreme Court. The lawsuit against the Commission on Judicial Conduct, from which it emerged – and whose genesis includes the *Sassower v. Mangano* federal action – is also posted, in full, on CJA's website, accessible *via* the side panel "Test Cases: State (*Commission*)".

will alert the other 19 Senate Judiciary Committee members *via* their webpage messaging systems and provide the link to CJA's webpage posting this letter, which is: https://www.judgewatch.org/web-pages/judicial-discipline/federal/2023-menu.htm.

So that the witnesses who testified at the hearings and other advocates and scholars may furnish their expert opinions as to the significance of the foregoing, I will forward them this letter with a request that they do so.

Thank you.

s/Elena Ruth Sassower

cc: Senate Majority Leader Charles Schumer, ESQ.
Senate Minority Leader Mitch McConnell, ESQ.