CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Fax and Priority Mail
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September 20, 1996

Jeffrey N. Barr, Assistant General Counsel
Administrative Office of the United States Courts
One Columbus Circle
Washington, D.C. 20005

RE: 28 U.S.C. §372(c)

Dear Mr. Barr:

Following our telelphone conversation on July 16, 1996, I enclose a copy of the four documents, referred to in paragraph 2 of our March 4, 1996 complaint filed under 28 U.S.C. §372(c). Those documents were itemized in our June 19th fax letter to assist you in accessing them from the Long Range Planning Committee of the Judicial Conference (Exhibit "A"), to whom they were provided in December 1994 in support of our testimony before that body[1]. Unfortunately, you did not see fit to obtain them so as to verify the serious allegations of judicial misconduct, which our §372(c) complaint detailed.

Shockingly, your failure to access those documents did not constrain you from opining that our complaint "smelled unsupported". Indeed, you stated to me that because it "smelled unsupported" you did not consider Judge Kearse's dismissal of our complaint on "merits related" grounds to be "problematic".

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[1] A copy of our testimony was annexed as Exhibit "A" to our first letter to you, dated July 20, 1995. In pertinent part that letter stated:

> "I thank you for agreeing to ascertain what became of the extensive documentary materials we provided to the Long-Range Planning Committee. I was originally informed that such materials were going to be 'scanned' and made part of a permanent record. However, I was thereafter told that this was not done. Obviously, it is our hope that the extraordinary materials we have presented would be maintained and accessible to scholars." (at p. 2)

The letter was then resent to you as Exhibit "C" to our second letter, dated October 1, 1995--with a reminder that we had received no response from you (at p. 2). Perhaps, it is not to much to expect that, belatedly, you will be "good to your word" and ascertain the whereabouts of those materials.

No objective person could possibly consider our March 4, 1996 complaint to be "unsupported" (Doc. 1). That you, the expert who undertook the seminal analysis of the §372(c) mechanism upon whose primary conclusions of the National Commission rest, could make such claim -- and do so in the face of our May 30, 1996 Petition for Review (Doc. 6, pp. 4-8), which you had *in hand* -- provides a standard by which to assess the legitimacy of your evaluation that of the 469 complaints you reviewed for the National Commission, only 12 were problematic (Vol I. Pp. 486-7). This is quite apart from the fact, as pointed out in our Petition for Review (Doc. 6, pp. 7-8), that "unsupported" is not a ground upon which the §372(c) statute authorizes a Chief Judge to dismiss a judicial misconduct complaint and the Illustrative Rules relative thereto are inconsistent.

Several times during our telephone conversation, you told me that you did not want to impugn Judge Kearse. However, since the citizens of this country pay your salary, it is you duty, as liaison to the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders, to address evidentiary proof that the §372(c) mechanism has been subverted by the very judges charged with its enforcement.

The evidence, presented by our §372(c) complaint and highlighted in our Petition for Review, demonstrates that it is Judge Kearse's dismissal decision which is unsupported--indeed, insupportable. Likewise, unsupported and insupportable is the June 26, 1996 order of the Judicial Council of the Second Circuit denying our Petition for Review "for the reasons stated" in Judge Kearse's decision. Those documents, when compared to the record of our complaint, demonstrate that §372(c) is a facade behind which the federal judiciary covers up heinous judicial misconduct.

You will note that in *In Re George Sassower*, annexed as Exhibit "E" to our Petition for Review, the Second Circuit Judicial Council recites, as among the reasons for imposing a "leave to file" requirement upon Mr. Sassower, the following:

> "Not only have his complaints been regularly dismissed as frivolous or plainly related to the merits of litigation, but *he has also pursued the technique of other vexatious litigants of launching new complaints against judicial officers for their actions in dismissing his prior complaints*. Sassower employed that tactic against two former Chief Judges of this Circuit." (20 F.3rd, 45, emphasis added)[2]

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[2] Your consultants' report includes the following quote of a circuit executive:

> "In one case, a *pro se* litigant fileld numerous and repetitious complaints over a period of years. The complaints were snowballing to include complaints about handling the complaints...[The council]...voted to hold the complaints in a separate file, available for public inspection and not to circulate or process them as complaints

Based upon our direct, first-hand experience with Acting Chief Judge Kearse and with the Circuit Council of the Second Circuit in the context of our §372(c) complaint, it seems to us perfectly legitimate that judicial misconduct complaints should be filed against judges who--demonstrably--use their judicial office to cover-up the judicial misconduct they are statutorily-charged with directing for investigation.

Inasmuch as the letter transmitting the Second Circuit Council's decision denying our Petition for Review expressly advises us that "there is no further review of this decision", it is all the more imperative that the issues presented by our May 30, 1996 Petition for Review (Doc. 6) be presented to the Judicial Council's Committee to Review Circuit Council Conduct and Disability Orders". This is appropriate because the documents relating to our complaint establish the judicial subversion of the §372(c) mechanism, aided and abetted by the Judicial Conference's statutorily-violative Illustrative Rules, making mandatory the dismissal of "merits related" complaints.

Please confirm for us, in writing, that that this will be done--as first requested by us in our June 7, 1996 letter to you (Exhibit "B").

As you know, Congress promised "vigorous oversight" over the §372(c) (Final Report of the National Commission, p. 85). Inasmuch as our §372(c) complaint was filed pursuant to discussions with House Judiciary Committee's Chief Counsel, Tom Mooney, at a personal meeting with him in February of this year, we expect the House Judiciary Committee to be particularly interested in the Judicial Conference's response.

Yours for a quality judiciary,

Elena Ruth Sassower

ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

cc: U.S. House Judiciary Committee
Tom Mooney, Counsel
Enclosures: See next page

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if the CJ finds them to be repetitious or outside the ambit of 372(c)."
(Research Papers, Vol. I, p. 647)

We request to know the identity of the circuit whose circuit executive made such statement so that we may take advantage of its "available for public inspection" file of "repetititve or outside the ambit" judicial misconduct complaints.

Enclosures:

(1) Documents referred to at para. 2 of March 4, 1996 complaint:
  (a) Petition for Rehearing En Banc to the Second Circuit
  (b) Petition for Writ of Certiorari (Supreme Court)
  (c) Petition for Rehearing (Supreme Court)
  (d) Supplemental Petition for Rehearing (Supreme Court)

(2) June 27, 1996 transmittal letter from Second Circuit
  [Doc. 8]
(3) June 26, 1996 Order from Judicial Council of Second Circuit
  [Doc. 9]
(4) July 8, 1996 letter from Second Circuit
  [Doc. 10]

(5) CJA's updated informational brochure