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202-225-6413
To Jordan Frankl, Legislative Ass't for Judicial Matters

By Fax and Mail:
202-225-3737

16 Lake Street, Apt. 2C
White Plains, New York 10603
August 26, 1993

Edward O'Connell, Counsel
Subcommittee on Intellectual Property
and Judicial Administration
Room 207
Canon House Office Building
Washington, D.C. 20515

RE: Judicial Discipline and Removal

Dear Mr. O'Connell:

This letter follows up our telephone conversation on August 12, 1993 in which you stated that "there has never been an investigation of an individual complaint in the history of the House Judiciary Committee".

If so, the Report of the National Commission on Judicial Discipline and Removal is highly misleading in suggesting, as it does, that the House Committee on the Judiciary is an available mechanism for addressing complaints of judicial misconduct.

We refer you, specifically, to pages 33-39 of the Draft Report[1], which identify the House Committee on the Judiciary as the proper recipient of complaints regarding judicial misconduct. Nowhere is it stated or even suggested that individual complaints alleging impeachable conduct not within the purview of the 1980 Act will not be investigated by the Committee.

Indeed, both Michael Remington and William Weller, Director and Deputy Director, respectively, of the National Commission on Judicial Discipline and Removal, informed me that the House Committee on the Judiciary was the appropriate place for review of our complaint against District Court Judge Gerard L. Goettel and Circuit Court Judge Jon O. Newman.

Such position was shared by Francis Lorson, the Chief Deputy Clerk of the Supreme Court to whom I made inquiry immediately following that Court's June 4, 1993 denial of our Petition for Rehearing. Mr. Lorson stated that investigation of the misconduct alleged in our Petition for Rehearing was the

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[1] Page references are to the Commission's Draft Report since the the Final Report is not yet available from the Government Printing Office.

responsibility of the House Committee on the Judiciary. It was for this reason that we filed our June 9, 1993 complaint with you.

Since there appears to be substantial contradiction as to the investigatory role of the House Committee on the Judiciary--and its Subcommittee on Intellectual Property and Judicial Administration--we believe a statement on the subject by you, as counsel to the Subcommittee, and by Allen Erenbaum, counsel to the Committee, is appropriate. Inasmuch as both you and Mr. Erenbaum are liaisons to the National Commission on Judicial Discipline and Removal, we trust you will be particularly concerned about ambiguities which its Report creates.

Obviously, where complaints received by the House Committee are properly within the scope the 1980 Act and can be handled by the judicial mechanism, there is no need for investigation by the Committee.

The important question is what the House Committee does with complaints, such as ours: (a) which are not covered by the Act; (b) where appellate remedies have been exhausted and have shown themselves ineffective; and (c) where the allegations, if true, would constitute impeachable conduct. If, as you indicated by telephone, the answer is nothing--such fact should be unequivocally reflected in a "clarification" to the Commission's Report.

Certainly, one would not infer from the Report that the sole purpose of the House Committee's receiving complaints is so that it can play score-keeper: compiling statistical tabulations of the "number and nature of judicial discipline complaints received" for publication in its "Summary of Activities" (at p. 36). What is the purpose then?

We note that page 39 of the Draft Report refers to the Commission's analysis that "well over 90 percent of the complaints [received by the Committee] do not raise genuine issues pertinent to judicial discipline or impeachment". In light of your statement to me that "there has never been an investigation of an individual complaint in the history of the House Judiciary Committee", are we, therefore, correct in assuming that the nearly 10 percent of the complaints received by the House Committee which do raise serious "discipline or impeachment" issues are not investigated? Are these complaints simply "archived" by the House Committee (at p. 36) and allowed to lie fallow, without follow-up. A direct answer to this question is essential since our complaint--which, indisputably, raises serious "discipline [and] impeachment issues"--is plainly within the aforesaid 10 percent category.

It is shocking to believe that such serious complaints--which citizens take the time and trouble to present in the interest of protecting our system from dishonest and unethical federal judges--would simply be ignored <u>without</u> investigation by the House Committee responsible for such review.

Very truly yours,

Elena Ruth Sassower

ELENA RUTH SASSOWER

cc: Michael J. Remington, Director
William J. Weller, Deputy Director
National Commission on Judicial Discipline and Removal
Francis J. Lorson, Chief Deputy Clerk, U.S. Supreme Court
Congresswoman Nita Lowey
Jeffrey M. Shaman, Senior Fellow and Project Director
American Judicature Society
Charles Stephen Ralston, Esq.
NAACP Legal Defense and Educational Fund

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By Fax and Mail:
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July 22, 1993

National Commission on Judicial Discipline and Removal
2100 Pennsylvania Avenue, N.W.
Suite 690
Washington, D.C. 20037-3202

ATT: William J. Weller, Deputy Director

RE: Commission Meeting
Friday, July 23, 1993

Dear Mr. Weller:

After several messages left for you, we received a call from your office saying that, due to the press of business, you were unable to speak with us personally.

We wish you and the members of the National Commission to understand the significance presented by the case of Sassower v. Field, detailed in our July 14, 1993 letter. You advised us, by letter dated July 20, 1993, that our aforesaid letter has been circulated to the Commission members.

The Commission's Draft Report states:

> "...absent a convincing demonstration of the inadequacy of the 1980 Act, we would not recommend...an alternative...". (at p. 6, emphasis added)

Such statement follows the Commissioners' conclusion on the very same page that:

> "Our analysis of experience under the 1980 Act and other formal mechanisms of discipline within the judicial branch reveals that existing arrangements are working reasonably well..." (at p. 6, emphasis added)

The Draft Report identifies appellate review as the primary formal disciplinary mechanism, other than the 1980 Act (Chapter V). As outlined in our July 14, 1993 letter, the case of Sassower v. Field establishes, unequivocally, that the appellate process cannot be counted on to provide protection or redress to

the victims of judicial misconduct--even where the appellate record provides uncontroverted documentary evidence of judicial misconduct that is not only unethical, but criminal in nature.

Your July 20, 1993 letter recognizes that we had exhausted the appellate process:

> "The record...strongly suggests that you have arduously tried to avail yourself of all avenues of appeal short of a request for review of your complaint by the House of Representatives..." (at p. 2, emphasis added)

We are struck by the fact that you--as Deputy Director of a national commission that has been studying the adequacy of the 1980 Act--did not suggest to us that our disciplinary complaint lay within the purview of that Act. The fair inference is that you do not regard the 1980 Act as a disciplinary mechanism for us, the innocent victims of vicious judicial retaliation, or for the public, whose interest in a judiciary of integrity has been equally violated.

If your view is shared by the members of the Commission, we would respectfully ask that they identify Sassower v. Field as the "convincing demonstration of the inadequacy of the 1980 Act" (referred to at page 6 of the Draft Report), so that appropriate alternate legislative recommendations can be made, in accordance with the Commission's mandate. To assist the members of the Commission, we request that you retrieve from the House Judiciary Committee the appellate record--a full copy of which you had received from Edward O'Connell and, according to your July 20, 1993 letter, returned to him.

Additionally, it would appear from your July 20, 1993 letter that although the Ninth Judicial Committee's critique of the federal judicial screening process "will be included in the Commission's records", it has not been circulated to the members of the Commission. If that is the case, we draw your attention, specifically, not only to the excerpt from pages 83-5 of the Draft Report (cited at pages 5-6 of our July 14, 1993 letter), but to the following further statement made by the Draft Report:

> "Given the recent prosecutions of federal judges, it would be helpful to know exactly where, if anywhere, the appointment and confirmation process went wrong in each case. Neither the Justice Department nor the Senate has engaged in such self-examination, internally asking whether information is extant in the background investigation files to suggest the potential for judicial misconduct and, if so, whether this

> information was ignored by both the executive branch and the Senate." (at p. 66) (emphasis added)

As documented by the Ninth Judicial Committee's critique, such information has, indeed, been "ignored by both the executive branch and the Senate". In that respect, as well as others not included in the Draft Report, our critique presents the Commission with the kind of empiric research which is not only "helpful to know", but absolutely essential.

Nonetheless, no one from the Commission's staff has as yet communicated with us either about the critique or about the additional information, subsequently obtained, which our July 14, 1993 letter identified (at p. 7) as "invaluable to your Commission prior to rendition of its Final Report".

In view of the Commission meeting scheduled for tomorrow, we respectfully ask that each of the Commissioners be provided with a copy of the critique and the correspondence to Senate Majority Leader Mitchell relating thereto. Only in that way can the Final Report reflect the extraordinary documentary evidence which you now have in hand, but have not incorporated for evaluation by the Commissioners.

We understand that the Commission will be holding a public meeting on Wednesday, July 28th--but that no testimony will be taken at that time.

Because, as hereinabove set forth, the Draft Report expressly identifies that a "convincing demonstration" of the inadequacy of the 1980 Act would be critical to its recommendations and because we believe that Sassower v. Field serves such catalytic purpose, we are prepared to make the trip to Washington to answer any questions the Commissioners may have on that case. That we can, in addition, discuss the Ninth Judicial Committee's critique--whose shocking findings mandate dramatic recommendations in the Final Report--must be seen as a unique opportunity for the Commission in its "eleventh-hour deliberations".

We respectfully request that copies of this letter be distributed to Commission members at tomorrow's meeting and that same, likewise, be made part of the official record of the Commission.

Very truly yours,

DORIS L. SASSOWER

ELENA RUTH SASSOWER

cc: Congresswoman Nita Lowey
Edward O'Connell, Counsel
House Subcommittee on Intellectual Property
and Judicial Administration
Charles Stephen Ralston, Esq.
NAACP Legal Defense & Educational Fund

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