To: Jordan Frankl, Legislative Assistant for Judicial matters 202-225-6413 5 pages

P 271 548 613 1/3/94

By Fax and Mail:
202-225-3737

As discussed — I await Mr. O'Connell's response to this letter which he received 4 months ago — + signed for at that time!

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

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RE: Judicial

Dear Mr. O'Connell:

This letter follows up our telephone c
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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.

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Counsel Subcommittee on Intellectual Property & Jud. Admin
Room 207 Cannon House Office Bldg
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Room 207, Cannon House Office Bldg
Washington, DC 20515

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Also enclosed is an excerpt from a law review article of Professor D'Amato

Again — thanks for your very professional assistance in this matter. Elena Kagan

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

NINTH JUDICIAL COMMITTEE

Box 69, Gedney Station
White Plains, New York 10605-0069
Tel: (914) 997-8105 / Fax: (914) 684-6554

Professor Anthony D'Amato
"The Ultimate Injustice: When A Court Misstates the Facts"
11 Cardozo Law Review, 1313-1347

"Do Judges routinely display a casual attitude toward the facts of the case? I suggest that practicing attorneys be asked whether they have had cases where the judge's statement of the facts were false. Every practicing attorney to whom I have asked this question has responded in the affirmative; some have told me that the practice is, unfortunately, quite common, and that judicial misrepresentation of the facts of cases has produced a crisis in their professional lives. They feel that their work is subject to the whim of judges who play God with the facts of a case, changing them to make the case come out the way the judge desires. Some say that if they had known that the practice of law would be like this, they would have gone into a different profession...

Apart from these professional concerns, we should also ask ourselves what kind of a judiciary system this society has produced where judges can misstate the facts of a case and then proceed to apply the law to those fictitious facts. Can any person be safe in court if this practice is allowed to continue? If judges can listen to the evidence and then tell a contrary story, what remains of justice? The vaunted system turns to quicksand. Our case may be factually proven, legally required, and morally compelled, but we can still lose if the judge changes the facts. And if we complain--no matter how loudly--higher courts will not be interested in reviewing a 'factual' controversy, and the legal community, as well as the general public, will assume that the facts were those stated by the judges." (11 Cardozo Law Review, 1345-1346)

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