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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

September 11, 1998

Paul D. Kamenar, Executive Legal Director
Washington Legal Foundation
2009 Massachusetts Avenue, N.W.
Washington, D.C. 20036

RE: *Amicus* and other assistance, *Sassower v. Mangano, et al.*, U.S. Supreme Court #98-106

Dear Mr. Kamenar:

Thank you for your prompt return call and readiness to review the cert petition and supplemental brief in our §1983 civil rights action, *Sassower v. Mangano, et al.*, #98-106 -- on the Supreme Court's September 28th conference calendar. A copy is enclosed, together with a copy of the materials lodged with the Clerk of the U.S. Supreme Court[1]: (1) the compendium accompanying CJA's written statement to the House Judiciary Committee in connection with the Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17]; and (2) the exhibits to our July 27, 1998 letter to the Chief of the Public Integrity Section of the U.S. Justice Department, Criminal Division [SA-47].

These materials empirically explode the "all's well" conclusions of the 1993 Report of the National Commission on Judicial Discipline and Removal. Demonstrated by the petition is the breakdown of checks on federal judicial misconduct, identified by the Report as existing within the Judicial Branch. Demonstrated by the supplemental brief is the breakdown of the checks, identified as existing in the Legislative and Executive Branches. The result of this breakdown of fundamental checks in all three governmental branches is that:

> "the constitutional protection restricting federal judges' tenure in office to 'good behavior' does not exist because all avenues by which their official misconduct and abuse of office might be determined and impeachment initiated (U.S. Constitution, Article II, §4 and Article III, §1 [SA-1] are corrupted by political and personal

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[1] *See* supplemental brief, p. 9, fn. 2.

> self-interest. The consequence: federal judges who pervert, with impunity, the constitutional pledge to 'establish Justice', (Constitution, Preamble [SA-1]) and who use their judicial office for ulterior purposes." supplemental brief, at p. 2

Such state of affairs, endangering the public and spelling the end of the rule of law, calls for strong response from the public interest community -- particularly where, as highlighted by the supplemental brief, everyone in a leadership position, in government and out, has thus far completely jettisoned ethical and professional responsibilities to safeguard the integrity of the federal judicial/appellate/disciplinary processes, shown here to have been completely subverted. This includes the obligation to report judicial and attorney misconduct [A-17-20; SA-6].

It appears that Washington Legal Foundation (WLF) singularly recognizes reporting obligations by its willingness to file disciplinary complaints against judges, as to which you testified on May 1, 1992 before the National Commission on Judicial Discipline and Removal, stating "we have filed misconduct complaints against dozens of state and federal judges for misconduct on and off the bench." (Exhibit "A", p. 90). WLF's championing of this case would reinforce the importance of that ethically-mandated practice, one reflected on its website (Exhibit "B-1"), and powerfully advance the goal of its SCALES project to "Stop the Collapse of America's Legal Ethics". I note from a May 28, 1998 item in the New York Law Journal, "*Group Seeks to Open Disciplinary Process*" (Exhibit "C"), that the SCALES Project, which seeks to "improv[e] the professional standards of the nation's lawyers", petitioned the New York Court of Appeals and the four Appellate Divisions to open New York's closed attorney disciplinary system. This case should, therefore, have added significance for WLF since the underlying issue presented by the cert petition is the unconstitutionality of New York's attorney disciplinary law, as written and applied -- including the Appellate Division, Second Department's imprimatur to grievance committee's claims of "confidentiality" to bar disclosure of information to an accused attorney that would establish its flagrant violations of express jurisdictional and due process requirements[2].

Moreover, WLF should be particularly interested in exposing the National Commission's Report as "methodologically flawed and dishonest". After all, the Report endorsed the efficacy of judicial disciplinary complaint processes, notwithstanding your testimonial assertion that those processes, federal and state, are "generally ineffective" (Exhibit "A", p. 91) -- as to which the Commission did not request from you the substantiating documentation relative to the "dozens" of judicial misconduct complaints you had filed. Likewise, its Report did not address the significance of your critical testimonial observation that the §372(c) statute does not require dismissal of "merits-related" complaints (Exhibit "A", p. 103). Under the circumstances, WLF should certainly join in calling for

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[2] *See* verified Complaint [A-49-100]; Question 4(c) presented by petitioner's cert petition in her prior state Article 78 proceeding, *Sassower v. Mangano, et al.*, [A-117] and legal argument [A-128-129].

a congressional hearing on the National Commission's final Report -- none having ever been had [A-302-304].

I would note that three years ago, in my September 6, 1995 letter to you (Exhibit "D"), which enclosed the litigation file of our case against the New York State Commission on Judicial Conduct[3], I opined that the National Commission's Report had "put back the cause of essential and meaningful reform of judicial discipline on the federal level by at least a generation". I proposed a collaboration with WLF to critique it. The cert petition, which includes, in its appendix, my published article, "*Without Merit: The Empty Promise of Judicial Discipline*", The Long Term View (Massachusetts School of Law), Vol 4, No. 1 (summer 1997) [A-207-220] (Exhibit "F") -- and the materials presented by the supplemental brief -- effectively constitute that critique[4]. As such, this case offers WLF the opportunity to join with CJA in advancing that reform NOW.

Please let us hear from you as soon as possible with your strategy suggestions. At this juncture, our strategy is to reach out to public interest organizations with media connections able to publicize the case and/or willing to sign-on to a letter of support for a petition for rehearing -- in the event the Court denies the cert petition.

Thank you, in advance, for your assistance and advice.

Yours for a quality judiciary,

Elena Ruth Sassower

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

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[3] The evidence, presented by that file, that the NYS Commission on Judicial Conduct was the beneficiary of fraud, without which it could *not* have survived our litigation challenge, was highlighted not only in our Letter to the Editor, "*Commission Abandons Investigative Mandate*", New York Law Journal, 8/14/95 (Exhibit "E-1"), enclosed with my September 6, 1995 letter to you (Exhibit "D"), but in CJA's two subsequent public interest ads, "*A Call for Concerted Action*", NYLJ, p. 3, (Exhibit "E-2") and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", NYLJ, 8/27/97, pp. 3-4 (Exhibit "E-3"). The latter ad, which includes a description of the combined fraud of the New York State Attorney General and federal judges in the *Sassower v. Mangano* §1983 federal action, is part of the record of the case and included in the appendix to the cert petition [A-261-268].

[4] WLF's website lists (Exhibit "B-2"), among its legal studies publications, "*Improving the Judicial Discipline and Removal Process*", authored by Robert Kastenmeier, Chairman of the National Commission during the period of his chairmanship. I would appreciate if you would send us a copy.