CENTER *for* JUDICIAL ACCOUNTABILITY, INC. *

Post Office Box 8220 ***Tel. (914) 421-1200*** ***E-Mail:*** *cja@judgewatch.org*
White Plains, New York 10602 ***Fax (914) 428-4994*** ***Website:*** ***www.judgewatch.org***

Elena Ruth Sassower, Director

BY E-MAIL: hellman@law.pitt.edu
BY FAX: 412-648-2649 (15 pages)
BY CERTIFIED MAIL/RRR 7002-2030-0007-8572-9136

March 17, 2008

Professor Arthur D. Hellman
University of Pittsburgh Law School
3900 Forbes Avenue
Pittsburgh, Pennsylvania 15260

RE: Building Evidence-Based Scholarship on Federal Judicial Discipline (& Selection) – CJA's March 6, 2008 Letter to the Chief Justice & Accompanying Critique

Dear Professor Hellman:

This follows our recent exchange of e-mails – the last of which was my March 3, 2008 e-mail to you, entitled "Joining Scholarship with Documentary Evidence", expressing the hope that we might work collaboratively "to achieve the essential goal of ensuring the integrity of federal judicial discipline and, related to it, federal judicial selection."

CJA was then finalizing a letter to Chief Justice Roberts and Critique of the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980, critically commenting upon your catalytic role in the "Judicial Improvements Act of 2002" and your article "*The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors*"[1]. For this reason, drafts of both the letter and Critique were attached to my March 3, 2008 e-mail to you to afford you the opportunity to dissuade us from those critical comments. I received no response.

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* The **Center for Judicial Accountability, Inc.** (CJA) is a national, nonpartisan, nonprofit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.

[1] University of Pittsburgh Law Review, Vol. 69, No. 2 (forthcoming 2008), http://ssrn.com/abstract=1015858 (subject to revision).

On March 6, 2008, our finalized letter to the Chief Justice and Critique were hand-delivered to the Executive Secretariat of the Judicial Conference and to the Supreme Court. They are posted on CJA's website, www.judgewatch.org, accessible *via* the sidebar panel "Judicial Discipline-Federal". A copy of the letter, to which you are an indicated recipient, is enclosed.

As a scholar of federal judicial discipline – indeed, as the most visible scholar of the federal judiciary's new rules for federal judicial discipline – giving public comment in testimony before the federal judiciary, before Congress, in published law review articles, and in the press[2] – the public depends upon you for accurate, unbiased information.

Do you deny or dispute the assertion in the letter, elaborated upon by the Critique, that the new rules "violate and affirmatively misrepresent the congressional statute they purport to implement[fn], 28 U.S.C §§351-364, and do not comply with its requirement of 'appropriate public notice and an opportunity for comment' (§358), at least not in a meaningful, good-faith way"? If you do not deny or dispute this, what is your view of the Judicial Conference's adoption of the rules on March 11, 2008? Do you not agree that this is a matter properly brought to Congress' attention?

Additionally, do you deny or dispute the assertion in the letter, based on the Critique, that the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980 is "superficial, methodologically-flawed, and 'a knowing and deliberate fraud on the public'"? If you do not deny or dispute this, do you agree that such warrants "congressional hearings, disciplinary and criminal investigations, and radical overhaul of the façade of federal judicial discipline"? And isn't this even more compelled if the Chief Justice does not respond – including, as our letter specifies, by taking such action as Congress empowered the Judicial Conference to take, pursuant to 28 U.S.C. §331, to "hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority."?

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[2] In addition to your testimony at the September 27, 2007 "hearing" on the draft rules for federal judicial discipline, your article "*The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors*" itself identifies that it is based on your "testimony at three hearings held by the subcommittees of the House Judiciary Committee...and an article published in Justice System Journal". As for your public comment to the press, publications quoting you include Daily Business Review ("*Circuits wary of plan for policing federal bench*" (November 2, 2007) and National Law Journal ("*Judging federal judges*" (February 18, 2008) and "*Reform plan for federal judicial discipline is altered*" (February 26, 2008)).

To assist you in meeting your scholarly and civic duty to confront this documentary evidence, I am prepared to send you a "hard copy" of the 73-page Critique, its substantiating Compendium of Exhibits, and the three file folders of additional proof accompanying it. However, before going to that effort and expense, please confirm that you will confront this primary source evidence. As you will recall, 5-1/2 years ago, when I sent you an August 13, 2002 letter and substantiating documents, you failed to respond. Among these documents: "*Without Merit: The Empty Promise of Judicial Discipline*", CJA's March 10 and March 23, 1998 memoranda to the House Judiciary Committee, CJA's written statement for the record of the House Judiciary Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary", and CJA's correspondence with the House Judiciary Committee pertaining to its November 29, 2001 "hearing" on the "operations of federal judicial misconduct statutes" – at which you testified and which was the reason for my August 13, 2002 letter to you. Only by ignoring ALL these primary source documents is your article "*The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors*" able to falsely purport and make it appear: (1) that federal judicial disqualification and discipline statutes are efficacious; (2) that the federal judiciary and Congress have been conscientiously meeting their oversight responsibilities to ensure judicial integrity; and (3) that various reports and studies are credible documents, validating the proper functioning of the 1980 Act, among these: (i) the 1993 Report of the National Commission on Judicial Discipline and Removal; (ii) the underlying Federal Judicial Center study of Jeffrey Barr and Thomas Willging; (iii) the Federal Judicial Center's 2002 follow-up study by Messrs. Barr and Willging; and (iv) the 2006 Breyer Committee Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980; with (v) the Federal Judicial Center's 2002 monograph on 28 U.S.C. §§144 and 445 validating the proper functioning of these federal judicial disqualification statutes.

Although I believe your area of scholarship is not federal judicial selection, your article also seeks to justify the federal judiciary's nearly 100% dismissal rate of judicial misconduct complaints by purporting that federal judicial selection involves so "many levels of scrutiny" that it is "not…surprising' that 'instances of misbehavior were rare". This is pointed out in footnote 4 of our letter to the Chief Justice, which concluded as follows:

> "By separate correspondence to Professor Hellman and other scholars, we will invite them to confront the worthlessness of these 'many levels of scrutiny' – starting with the primary source documentary proof directly underlying the 'disruption of Congress' case."

The referred-to documentary proof is posted on CJA's website, accessible *via* the sidebar panel "Judicial Selection-Federal". Again, CJA will go to the effort and expense of providing you with "hard copies", if you will be undertaking scholarship on the subject. Otherwise, please advise as to the scholars on whom you rely for information about federal judicial selection so that we may offer them the "hard copies" of this primary-source evidence to advance their scholarship.

Finally, I take this opportunity to note the comment at the outset of your article wherein you state:

> "...the time is ripe for a fresh look at the regulation of judicial ethics in the federal system. Indeed, notwithstanding its obvious importance, the subject has received little attention from academics.[fn] " (web version, p. 2)

You do not explain why so vital a subject as "the regulation of judicial ethics in the federal system" has "received little attention from academics". What is the explanation? Might it be that they fear that scholarship would require them to expose the worthlessness of such "regulation" in all but a handful of cases? Isn't your own fear of the repercussions you would face for exposing this fraud upon the public – involving the highest echelons of the federal judiciary and the House Judiciary Committee – the reason you did not respond to my August 13, 2002 letter, with its substantiating documentary proof? And doesn't this also explain your failure to contact me following the federal judiciary's September 27, 2007 "hearing" on its draft rules for federal judicial discipline, when I gave you, *in hand*, further documentary evidence for scholarship, including the three judicial misconduct complaints we had filed under the 1980 Act, the fraudulent orders dismissing them, and, the petition for review as to the latter two complaints. As I explained to you at the time, all three complaints involved Judge Ralph Winter, Chairman of the Judicial Conference Committee on Judicial Conduct and Disability, conducting the September 27, 2007 "hearing". Indeed, the latter two complaints had been dismissed by him when he was Chief Judge of the Second Circuit. [3]

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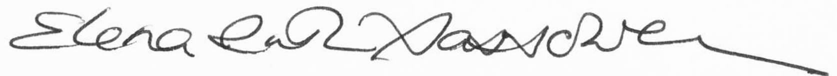
[3] The circumstances of my giving these judicial misconduct complaints to you were as follows: After the "hearing" ended, you were seated at a table presiding over a discussion for students of Pace Law School Professor Jay Carlisle – a discussion I was permitted to join and which included, in addition to Professor Carlisle, seated on your right, Mr. Willging, seated on your left. As I recollect, during the discussion, I suggested, as a fruitful area of scholarship, examining judicial misconduct complaints handled by Judge Winter when he was Chief Judge – to which you responded with interest. I then gave you the complaints when the discussion concluded, further suggesting another fruitful area of scholarship: examining complaints handled by those members of the Breyer Committee who had been chief circuit judges – beginning with Justice Breyer – as to whom I stated I had some particularly interesting orders dismissing complaints.

Please advise, as soon as possible, so that we may be guided accordingly in reaching out to such scholars of federal judicial discipline as exist. Consistent with fundamental legal principles, your failure to respond will be deemed to admit the truth of the facts, law, and legal argument presented by CJA's March 6, 2008 letter to the Chief Justice and accompanying Critique. It will be so represented in our intended advocacy.

Thank you.

Yours for a quality judiciary,



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

Enclosures:
(1) my March 3, 2008 e-mail to you
(2) CJA's March 6, 2008 letter to Chief Justice Roberts
(3) CJA's August 13, 2002 letter to you
(not included in the fax herewith)

cc: Professor Jay Carlisle/Pace Law School

Prior to the "hearing", we had also spoken – and I gave you a copy of CJA's September 27, 2007 statement on the draft rules and published article "*Without Merit: The Empty Promise of Judicial Discipline*".

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Monday, March 03, 2008 8:44 AM
To: 'Hellman, Arthur'
Subject: FW: Joining Scholarship with Documentary Evidence -- FW: To be continued
Attachments: 3-3-08-ltr-roberts.doc; critique-cover2.doc; 3-3-08-critique-review.doc

Opps! The Chief Justice is Roberts, not Rehnquist.

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Monday, March 03, 2008 8:40 AM
To: 'Hellman, Arthur'
Subject: Joining Scholarship with Documentary Evidence -- FW: To be continued

Dear Professor,

Your unexpected acknowledgment & appreciation – twice – of my bringing to your attention the change in Rule 25 (c) has reinforced my earnest hope that we may work collaboratively together to achieve the essential goal of ensuring the integrity of federal judicial discipline and, related to it, federal judicial selection.

I wish to foster that possibility. Yet, I know that the within critique of the Breyer Committee Report – and its transmitting coverletter to Chief Justice Rehnquist – still in draft – may not be to your liking as they critically comment on your catalytic role in the "Judicial Improvements Act of 2002" and on views you have expressed in your article "*The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors*".

I am providing you with an advance look at the critique and coverletter so as to afford you the opportunity to advise me on the subject, before these documents are finalized and sent. I do not wish to be unfair or inaccurate in my criticisms of your role and your writings. Do you have any suggestions, other than my including that your article is a "draft... posted on SSRN, subject to revision"? I would be happy to discuss your suggestions and comments with you anytime today up into 10 p.m. or tomorrow until 10 a.m. You can call me at 914-421-1200. My cell phone # is 646-220-7987.

I will be express mailing the critique and transmitting letter to the Chief Justice tomorrow. After that I will write formal letters to you and other scholars and commentators on federal judicial discipline, as well as organizations which purport to care about such issues, requesting their public comment and rebuttal. In so doing, I have only ONE GOAL: ensuring the integrity of federal judicial discipline and selection – processes that are dysfunctional, politicized, and corrupt -- and so-demonstrated by the documentary evidence that CJA has been bringing together for a decade and a half.

Much of this documentary evidence is posted on CJA's website, www.judgewatch.org. Indeed, the documentary exhibits to the critique are also posted: accessible *via* the sidebar panel "Judicial Discipline-Federal". Click on Administrative Office/Judicial Conference and scroll down to 2008 – "work-in-progress". That's where I've hidden them, while circulating drafts for review to our advisory board

Regards.

Elena

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Sunday, March 02, 2008 4:34 PM
To: 'Hellman, Arthur'
Subject: To be continued -- RE: quotations from article posted on SSRN

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Elena Ruth Sassower, Director

BY FAX: 202-502-1144 (9 pages)
BY HAND: 3/7/08

March 6, 2008

Chief Justice John G. Roberts, Jr.
c/o Executive Secretariat of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
1 Columbus Circle, Room 7-425
Washington, D.C. 20544

RE: (1) Request for Judicial Conference disapproval of the proposed new rules for federal judicial discipline as violative & non-conforming with 28 U.S.C. §§351-364 – the Judicial Conduct and Disability Act of 1980;

(2) Request for Judicial Conference hearings on the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980

Dear Chief Justice Roberts:

As you know, the Center for Judicial Accountability, Inc. (CJA) is a national, nonpartisan, nonprofit citizens' organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.

This letter calls upon you, as head of the Judicial Conference of the United States, to prevent its adoption of new rules for federal judicial discipline that violate and affirmatively misrepresent the congressional statute they purport to implement[1], 28 U.S.C §§351-364, and do not comply with its requirement of "appropriate public notice and an opportunity for comment" (§358), at least not in a meaningful, good-faith way.

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[1] Pursuant to 28 U.S.C. §331, the Judicial Conference is charged with responsibility for ensuring "consistency with Federal law" with respect to the federal judiciary's general rule-making power under 28 U.S.C. §2071. The Judicial Conference's promulgation of rules for federal judicial discipline would, likewise, be expected to conform with "Federal law" – in this case 28 U.S.C. §§351-364 – especially, as such Judicial Conference rules, consistent with 28 U.S.C. §358(a), permit the judicial councils to enact non-conflicting implementing rules. These would be governed by §2071 – and its requirement that "rules shall be consistent with Acts of Congress."

Specifically, we request that you alert the Judicial Conference to the following violations and misrepresentations in the proposed rules governing judicial conduct and disability proceedings under 28 U.S.C §§351-364, that the Conference is scheduled to adopt at its March 11, 2008 annual meeting:

- Rule 3(h), entitled "Cognizable misconduct", whose subparagraph (3)(A), falsely purports that such misconduct "does not include an allegation that is directly related to the merits of a decision or procedural ruling". In fact, 28 U.S.C. §352(b)(1) does not automatically exclude "merits-related" complaints;

- Rule 11, entitled "Review by the Chief Judge", whose subparagraph (c)(1)(B) falsely purports that a complaint "must" be dismissed if the chief judge concludes that it "is directly to the merits of a decision or procedural ruling" and whose other subparagraphs similarly require dismissal of complaints embraced by the two other discretionary grounds for dismissal under 28 U.S.C. §352(b)(1). In fact, 28 U.S.C. §352(b)(1) uses the word "may" – not "must" – with respect to all three of its enumerated statutory grounds for dismissing a complaint, connoting the discretion that Congress gave the federal judiciary NOT to dismiss complaints even on the enumerated statutory grounds, and to consider such facts and circumstances as are appropriate to each complaint – an intent reinforced by §352(b)'s clause that the chief judge's dismissal be by "written order stating his or her reasons", in other words that it do more than identify the statutory ground;

- The commentary to Rule 23 purports that it is "adapted from the Illustrative Rules" and falsely states "The Act makes clear that there is a barrier of confidentiality between the judicial branch and the legislative." In fact, the commentary to Illustrative Rule 16 admits that statutorily-required confidentiality "technically applies only in cases in which an investigatory committee has been appointed". This candid admission, however, is dropped from the commentary to Rule 23.

Additionally, the "Preface" to the rules purports that the Judicial Conference has promulgated them "after public comment".[2] This is false by its implication that the rules are responsive to the legitimate "public comment" presented. This would be obvious had the Judicial Conference's Committee on Judicial Conduct and Disability disclosed such "public comment" as it had received and ignored, as well as the reasons therefor. The only "public comment" the Committee has publicly disclosed are the written statements and

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[2] The rules are silent as to the sufficiency of its "public notice". On that issue, we refer you to the significant presentation sent to you and the Judicial Conference by Dr. Richard Cordero, specifically his January 9, 2008 submission, accessible from his website, www.judicial-discipline-reform.org, as well as our own, www.judgewatch.org (*via* the sidebar link "Judicial Discipline-Federal").

testimony of the three witnesses it permitted to testify at its September 27, 2007 "hearing" on its originally-circulated draft rules.

CJA was not permitted to testify at this September 27, 2007 "hearing". However, we twice alerted the Judicial Conference Committee on Judicial Conduct and Disability to the above three fatal defects and other significant deficiencies, first by a September 27, 2007 draft statement and then by an expanded October 15, 2007 final statement. Nevertheless, all the defects and deficiencies that we had identified have been retained in the rules and commentary scheduled for the Judicial Conference's adoption.

The foregoing is elaborated upon by CJA's accompanying Critique of the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980, containing a section entitled "THE FEDERAL JUDICIARY'S CHARADE OF PUBLIC COMMENT & ITS CONTINUED SUBVERSION OF FEDERAL JUDICIAL DISCIPLINE BY ITS NEW RULES" (pp. 66-71). Our October 15, 2007 statement, with its particularization of fatal defects and deficiencies, is Exhibit T thereto.

The Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980 had been presented to you by the Judicial Conduct and Disability Act Study Committee, chaired by Associate Justice Stephen Breyer. You then presented it, with Justice Breyer, to the American People, at a press conference, held at the Supreme Court. According to The New York Times, you described the Report as a "very important step on the judiciary's behalf in responding to criticism."[3]. The Supreme Court's own September 19, 2006 press release quotes your praise of the Report as "a thorough and comprehensive study of the judiciary's implementation of the Judicial Conduct and Disability Act of 1980".

Is this really what you believe and what you would have the American People believe? As demonstrated by our Critique, the Breyer Committee Report is superficial, methodologically-flawed, and "a knowing and deliberate fraud on the public". 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:

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[3] "*Federal Judges Take Steps to Improve Accountability*", New York Times, September 20, 2006 article by Linda Greenhouse.

> "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.

Finally, on the related subject of the corruption of federal judicial selection, at issue in the "disruption of Congress" case, *Elena Ruth Sassower v. United States of America*, on last year's Court docket (#07-228)[4], I take this opportunity to bring to your attention that other than the Court's November 26, 2007 denial of my petition for rehearing, I received no response from you, from anyone on your behalf, or from the Associate Justices to my November 14, 2007 letter to you, constituting a complaint against the Court's Clerk, his staff, and the Court's Counsel for their misconduct in the case. A copy is enclosed to afford you and the Associate Justices an opportunity to rectify your disregard of constitutional, supervisory, and ethical duties therein.

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[4] As recognized by the 1993 Report of the National Commission on Judicial Discipline and Removal:

> "...the appointment process is relevant in a prophylactic sense to the question of judicial discipline and removal. If the appointments process operated perfectly to select only the most qualified and honest judges, the need for disciplinary action should be significantly reduced, if not eliminated. For this reason it has often been suggested that the solution to the problem of misconduct within the federal judiciary is not an improved disciplinary process, but rather a more careful appointments process." (at pp. 83-84).

This is highlighted by the following exhibits to CJA's accompanying Critique: Exhibit A-4 (pp. 5-7); Exhibit A-6 (pp. 2-3); Exhibit A-8 (p. 3); Exhibit I (pp. 2-4), and Exhibit L-7 (pp. 1-16), in particular, summarizing CJA's evidentiary presentations, beginning in 1992, establishing the corruption of federal judicial selection at every level of the process.

Scholars have yet to address these primary-source evidentiary presentations, ultimately culminating in the "disruption of Congress" case. This includes Professor Arthur Hellman, the most prominent commentator on the new draft rules, whose materially false and misleading article, "*The Regulation of Judicial Ethics in the Federal System: A Peek Behind Closed Doors*", University of Pittsburgh Law Review, Vol. 69, No. 2 (forthcoming 2008 – http://ssrn.com/abstracts=1015858), actually seeks to justify the federal judiciary's nearly 100% dismissal rate of judicial misconduct complaints by purporting that federal judicial selection involves so "many levels of scrutiny" that it is "not...surprising" that "instances of misbehavior were rare" (p. 38 of web version draft, subject to revision).

By separate correspondence to Professor Hellman and other scholars, we will invite them to confront the worthlessness of these "many levels of scrutiny" – starting with the primary source documentary proof directly underlying the "disruption of Congress" case.

In any event, please advise whether, pursuant to the 1993 recommendation of the National Commission on Judicial Discipline and Removal,

> "....that the Supreme Court may wish to consider the adoption of policies and procedures for the filing and disposition of complaints alleging misconduct against Justices of the Supreme Court" (Report of the National Commission on Judicial Discipline and Removal, at p. 123),

the Justices have adopted such "policies and procedures".

Thank you.

Yours for a quality judiciary,

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

Enclosures: (1) Critique, Compendium of Exhibits, & 3 file folders
(2) November 14, 2007 letter-complaint

cc: Professor Arthur Hellman
Dr. Richard Cordero
The Public & The Press

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Elena Ruth Sassower, Director

EXPRESS MAIL: EB 502223137 US

November 14, 2007

Chief Justice John G. Roberts
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: Misconduct Complaint against U.S. Supreme Court Clerk William K. Suter & His Staff – Now Expanded by a Misconduct Complaint against the Court's Counsel Scott S. Harris: Docket #07-228: *Elena Ruth Sassower v. United States of America*

Dear Chief Justice Roberts:

This follows up and supplements my October 26, 2007 misconduct complaint against U.S. Supreme Court Clerk William K. Suter and his staff, addressed to you "in your administrative capacity, as you bear ultimate supervisory oversight responsibilities over Mr. Suter and how the Supreme Court Clerk's Office operates."

Yesterday, I received a three-sentence November 6, 2007 letter from the Court's Legal Office, signed by Counsel Scott S. Harris, to which I cannot imagine you would approve.

Conspicuously, the letter – which does not identify my October 26, 2007 complaint as having been addressed to you and does not identify that you referred it to the Legal Office – also does not indicate that you were being furnished a copy of the letter.

I am, therefore, annexing a copy to support my initiation of a misconduct complaint against Mr. Harris for his deceitful cover-up of my serious and substantial complaint against Mr. Suter and his staff. Such new complaint is directly within your purview: the Legal Office "owe[s] [its] existence to the Chief Justice's general authority as Court manager" and was "created by the Chief Justice to assist in carrying out administrative needs of the Court", 22 Moore's Federal Practice, Civil §401.07[2].

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I draw your attention to the second sentence of Mr. Harris' letter, baldly purporting:

> "The actions taken by the Clerk's Office in this matter have been consistent with Court rules and policies."

Such claim by Mr. Harris is <u>without</u> identifying which "Court rules and policies" he is talking about. Not even Mr. Suter had the temerity to purport "consisten[cy] with Court rules and policies". Rather, as chronicled by my October 26, 2007 complaint, Mr. Suter wholly <u>ignored</u> my requests that he justify the actions of the Clerk's Office with respect to my decisive September 17, 2007 and October 9, 2007 motions, shown to be invidious and "protective" of the Government in shielding it from accountability. Indeed – and by way of supplement to my October 26, 2007 complaint – I have yet to receive any response from Mr. Suter to my October 26, 2007 letter to him, which accompanied and substantiated the complaint. No "Court rules and policies" could possibly permit the indecent, unprofessional behavior particularized by that October 26, 2007 letter and by my October 9, 2007 motion, with its annexed September 21, 2007 letter to Mr. Suter, also unresponded-to by him.

As for Mr. Harris' imperious third and final sentence:

> "No response will be provided to future correspondence on these issues.",

it slams the door to what Mr. Harris knew would be my responding request that he specify the "Court rules and policies" to which he was referring and that he do so in the context of the facts, law, and legal argument presented by the documents substantiating my complaint, *to wit*, my undocketed and unreturned October 9, 2007 motion, which disappeared in the Clerk's Office as if in "a black hole", and my unresponded-to October 26, 2007 letter to Mr. Suter.

I would further note that upon receipt of Mr. Harris' letter yesterday, I telephoned the Court's Legal Office (2:42 p.m.) to clarify whether a copy had been provided to you. I spoke with Tanya Powell, who told me that Mr. Harris was on the phone, but would call me back. I received no return call.

Please advise as to whether you endorse and approve of Mr. Harris' handling of my October 26, 2007 complaint against Mr. Suter and his Clerk's Office staff and, if not, what steps you will take consistent with the "guidance"[1] of Canon 3B(2) of the Code of Conduct for United States Judges, which binds all other federal judges:

> "A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge."

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[1] Report of the National Commission on Judicial Discipline and Removal, p. 122 (1993).

Finally, inasmuch as the Associate Justices also share responsibility for the proper functioning of the Court's Clerk's Office and Legal Office, I respectfully request that the enclosed eight copies of this letter be distributed to them. Such is additionally germane to their consideration of my October 26, 2007 petition for rehearing, whose first section is based on the same misconduct by Mr. Suter and his staff as is the subject of my October 26, 2007 complaint. The rehearing petition is on the Court's conference calendar for this Tuesday, November 20, 2007.

Thank you.

Yours for a quality judiciary,

ELENA RUTH SASSOWER
Petitioner *Pro Se*

Enclosures

cc: Supreme Court Counsel Scott S. Harris
Supreme Court Clerk William K. Suter
The Supreme Court Associate Justices
United States Solicitor General Paul D. Clement

Supreme Court of the United States
Washington, D. C. 20543

THE LEGAL OFFICE

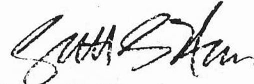
November 6, 2007

Elena Ruth Sassower
Center for Judicial Accountability
P.O. Box 8220
White Plains, New York 10602

Dear Ms. Sassower:

Your October 26, 2007, complaint against Clerk William Suter and other employees of the Supreme Court Clerk's Office has been referred to this office. The actions taken by the Clerk's Office in this matter have been consistent with Court rules and policies. No response will be provided to future correspondence on these issues.

Very truly yours,



Scott S. Harris
Counsel

(202) 479-3282

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY E-MAIL: hellman@law.pitt.edu
BY FAX: 412-648-2649 (16 pages)
BY CERTIFIED MAIL 7001-0320-0004-5457-4750

August 13, 2002

Professor Arthur D. Hellman
University of Pittsburgh School of Law
3900 Forbes Avenue
Pittsburgh, Pennsylvania 15260

RE: Ascertaining the *true* purpose of the November 29, 2001 "oversight hearing" of the House Judiciary Committee's Courts Subcommittee on 28 USC §§372(c), 144, and 455 – and the *real* reason you were invited to testify

Dear Professor Hellman:

Thank you for having your secretary, Janet, so immediately return my voice mail message yesterday to advise that you are on vacation and would not be back until early September[1]. I appreciate your courtesy.

My voice message – and this letter -- are occasioned by your testimony before the House Judiciary Committee's Courts Subcommittee at its November 29, 2001 "oversight hearing" on 28 USC §§372(c), 144, and 455. By way of background, such hearing was prompted by my vigorous advocacy in the first two weeks of July 2001 and resulted in the Subcommittee's "oversight counsel" requesting that I come down to Washington, as soon as possible, to assist in the hearing's preparation. After doing so on July 26, 2001, I was totally excluded from all aspects of the hearing's preparations, my written request to testify ignored, my phone calls to "oversight counsel" unanswered, and I was not even informed of the hearing date so that, at very least, I might be a spectator and submit a written statement for the record.

[1] Janet indicated that you check your e-mail regularly and that I should send this letter by e-mail.

In the event you do not know who I am[2], I am the coordinator and co-founder of the Center for Judicial Accountability, Inc. (CJA), a non-partisan, non-profit citizens' organization, whose *direct, first-hand experience* with §§372(c), 144, and 455, with the National Commission on Judicial Discipline and Removal and its methodologically-flawed and dishonest 1993 Report, and with the House Judiciary Committee's Courts Subcommittee was long ago summarized by 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). For your convenience, a copy is enclosed.

In view of your praise for the Federal Judicial Center's research study for the National Commission as "thorough, objective, and thoughtful" and "enormously useful in showing how [§372(c)] has been implemented at the everyday operational level." [Tr. 41], I would like to know whether you ever read "*Without Merit*". If not, I would appreciate your telling me whether now reading the article would alter your testimony, "heavily" drawn from the Federal Judicial Center study [Tr. 41].

Among the deficiencies of the Federal Judicial Center study, reflected by "*Without Merit*" (at pp. 93-97), is that its two court-connected researchers:

(1) allowed the federal judiciary to dictate the strict terms upon which a sample of judicial misconduct complaints could be examined – even though §372(c) complaints are NOT confidential by statute;

(2) failed to appropriately define "merits-relatedness" – the statutory ground upon which the federal judiciary dismisses the overwhelming majority of §372(c) complaints – thereby vitiating their ability to evaluate the correctness of dismissals on that ground;

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2 In light of your expertise in judicial administration, you may be aware that I have testified before the Judicial Conference's Long-Range Planning Committee (1994); before the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts (1995); and before the Commission on Structural Alternatives for the Federal Courts of Appeals (1998). All such testimony is posted on CJA's website: *www.judgewatch.org*, with my testimony before the Commission on Structural Alternatives also accessible from the federal judiciary's website: *www.uscourts.gov* [search: judicial misconduct].

(3) failed to recognize the significance of the federal judiciary's failure to build precedential caselaw on §372(c), *to wit*, maintaining the "merits-related" category broad and undefined so as to facilitate the dumping of virtually every complaint as "merits-related";

(4) failed to interview a single person who had filed a §372(c) complaint or to otherwise design the study to find out about complainants and "what they seek";

(5) shielded from scrutiny the self-serving comments of Circuit Chief Judges and Circuit Executives as to the deterrent value of §372(c) and behind-the-scenes "informal" discipline by acceding to their demands of confidentiality for their interviews.

That Jeffrey Barr, one of the court-connected researchers, was thereafter promoted to Assistant General Counsel of the Administrative Office of the United States Courts and liaison to the Judicial Conference's disciplinary committee, where he refused to take corrective steps when CJA provided him with a copy of the record of a §372(c) complaint evidentiarily demonstrating a federal Circuit's subversion of §372(c) and wilful disregard of key recommendations of the National Commission's Report, endorsed by the Judicial Conference, provides a "frame of reference" for evaluating the integrity of his review of publicly-inaccessible §372(c) complaints for the Federal Judicial Center study.

From reading your testimony, it appears that you yourself have no direct, first-hand experience with filing a judicial misconduct complaint under §372(c) or in moving for disqualification under §§144 and 455. Please confirm that this is correct. If it is, do you know why the Courts Subcommittee invited you to testify at its November 29, 2001 "hearing" when your distinguished background in judicial administration does not appear to include an expertise in judicial discipline and disqualification? Indeed, your November 29, 2001 testimony makes no specific reference to any such expertise or articles you have written on these statutes [Tr. 40]. Nor is any reflected by your testimony before the Subcommittee at its May 14, 1997 hearing on the "Judicial Reform Act of 1997" [Tr. 117-126]. Certainly, had you had expertise as to §§372(c), 144, and 455, it is reasonable to assume that your May 14, 1997 testimony would have addressed, or at least commented upon, the amendments then

under consideration pertaining to those statutes – which it did not. Nor did you testify the following day at the Subcommittee's May 15, 1997 hearing on "Judicial Misconduct and Discipline".

With all due respect, I believe you were invited to testify at the November 29, 2001 "hearing" precisely because you have NO direct, first-hand experience with §372(c) complaints and §§144, and 455 motions – and, therefore, would not be in a position to present the *prima facie* evidence as to what has actually been happening "on the ground" with these statutes -- AND because your expertise in judicial administration does not extend to these statutes – therefore making it less likely that you would be familiar with "*Without Merit*" and CJA's extensive advocacy relating thereto. In short, you "fit the bill" because you could be expected to give a scholarly presentation that would give the Courts Subcommittee what it wanted to hear: an echo of the National Commission's cover-up 1993 Report that the statutes worked "reasonably well" and only needed "fine-tuning".

To do this, however, you had to – and did – give uncritical reliance to the judicial and judicial-connected sources of information you recommended as "Resource materials for Congressional oversight": (1) the federal judiciary's Illustrative Rules for §372(c); (2) the individual Circuit Rules based thereon; (3) the National Commission's Report; and (4) the Federal Judicial Center's underlying study [Tr. 41].

A single example suffices to illustrate the misleading nature of these four "Resource materials". The Illustrative Rules and Circuit Rules – including those of the Ninth Circuit with which you are most familiar [Tr. 41]– have REWRITTEN the §372(c) statute so as to *require* a Chief Judge to dismiss "merits-related" complaints, which, under the statute, he has *discretion* NOT to dismiss. Yet, this REWRITE and its obvious consequences are wholly unnoted by the Federal Judicial Center study and the National Commission's Report.

Certainly, topping the list of "Research materials for Congressional oversight" should be the legislative history of the §372 statute. This is additionally so because of the Illustrative Rules and Circuit Rules each purport that §372(c) is "essentially forward-looking and not punitive" -- a premise accepted by the Federal Judicial Center study, on which the Report of the National Commission relies. That Congress ever intended that misbehaving federal

judges be allowed to "get off the hook" when made the subject of legitimate complaint – as the federal judiciary uniformly permits them to do -- is a matter that not only needs to be verified from the legislative history, but revisited.

Obviously, too, the legislative history of §372(c) is important in reinforcing that the statute did NOT make §372(c) complaints confidential – presumably because Congress understood that access to complaints is a *sine qua non* for meaningful, independent oversight over the federal judiciary's self-policing.

So that you may come to your *own* conclusions as to the Subcommittee's real intention in inviting you to testify -- while denying invitations to myself and others having *direct, first-hand experience* in filing §372(c) complaints and §§144 and 455 disqualification motions -- I am mailing you a copy of my July 30, 2002 letter to Melissa McDonald, "Oversight Counsel" of the Courts Subcommittee, inquiring as to the hearing's true purpose[3]. Also being mailed are my prior July 31, 2001 and September 4, 2001 letters to Ms. McDonald, referred to by my July 30, 2002 letter. However, before reading these three letters, I recommend you read:

(1) CJA's "ALL IMPORTANT" March 10, 1998 and March 23, 1998 memoranda to the House Judiciary Committee, annexed as Exhibits "H-1", "H-2" to my September 4, 2001 letter; and

(2) CJA's written statement submitted to the Courts' Subcommittee for inclusion in the record of its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary", annexed as part of Exhibit "I-2" to my September 4, 2001 letter.

After you have reviewed the foregoing, I would greatly appreciate your insight and suggestions as to how best to secure the public's right to meaningful mechanisms for judicial accountability, such as do NOT presently exist. Surely, you will agree that it is a grotesque and dangerous deceit for the Subcommittee to publicly pretend at a rigged "hearing" on §§372(c), 144, and 455 that it is discharging its oversight responsibilities and to accept praise for its oversight from testifying witnesses, when, in fact, it refuses to confront decisive *prima facie* evidence of the federal judiciary's subversion of

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[3] Prefacing the letter is my July 31, 2002 coverletter to Philip Kiko, the House Judiciary Committee's Chief of Staff/General Counsel, and to Sam Garg, its Minority Counsel.

§§372(c), 144, and 455 AND refuses to even acknowledge, let alone investigate, its own receipt of judicial impeachment complaints, which, without any statistical record being kept, it simply "shelves", if not destroys.

As I believe your invitation to testify at the November 29, 2001 "hearing" came from Subcommittee Chairman Howard Coble[4], I trust you will be sufficiently outraged by the enclosed to see fit to ask him about the hearing's true purpose – and to inquire as to what corrective measures he will take to address CJA's groundbreaking advocacy, as reflected by "*Without Merit*", our March 10, 1998 and March 23, 1998 memoranda, our June 11, 1998 statement for the record, and our subsequent correspondence, whose obvious significance I hope you yourself would want to address.

Needless to say, I would be pleased to provide you with copies of the *primary-source* materials on which CJA's advocacy is based so that you may revise your testimony and advance much-needed scholarship on the crucial issues of federal judicial discipline and disqualification. Indeed, I would be honored.

Thank you.

Yours for a quality judiciary,

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

All enclosures mailed
"*Without Merit*" e-mailed and faxed

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[4] I would appreciate if you would provide me with a copy of the invitation letter you received, as well as any other documents from the Subcommittee in connection with the "hearing".

Subj:	**November 29, 2001 "Oversight Hearing"**
Date:	8/13/02 11:39:40 AM Eastern Daylight Time
From:	Judgewatchers
To:	hellman@law.pitt.edu
File:	**8-13-02-hellman.ZIP** (23170 bytes) DL Time (115200 bps): < 1 minute

Dear Professor Hellman:

I apologize for disturbing your well-deserved vacation.

Attached herewith is my letter to you concerning the November 29, 2001 "Oversight Hearing" of the House Judiciary Committee's Courts Subcommittee on 28 USC 372 (c), 144, and 455 -- at which you testified. Also attached is my published article, "*Without Merit: The Empty Promise ofJudicial Discipline*" (The Long Term View, Massachusetts School of Law, Vol. 4, No. 1, summer 1997).

These are also being faxed to your office at the Law School. As reflected by my letter, the mailed copy will enclose additional materials.

Thank you.

Elena Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)
(914) 421-1200

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