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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.

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[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

[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

[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"**
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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
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