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BY CERTIFIED MAIL/RRR: 7000-1670-0007-4965-0121

September 4, 2001

Melissa McDonald, Oversight Counsel
House Judiciary Committee/Courts Subcommittee
B-351A Rayburn House Office Building
Washington, D.C. 20515

RE: Getting Answers to Legitimate Questions – Including by the Personal Intercession of Congresswoman Nita Lowey, *If Necessary*

Dear Ms. McDonald:

This letter follows up my brief phone call to you on Tuesday morning, August 28th – which you terminated by hanging up on me. This, to avoid answering the legitimate questions raised by my July 31st letter.

Among the questions I did manage to ask *before* you hung up on me – but to which you would *not* respond – were:

(1) whether you are the only staff member at the House Judiciary Committee's Courts Subcommittee handling judicial discipline matters;

(2) whether you had ascertained the whereabouts of the *originals* of CJA's document-supported correspondence with the House Judiciary Committee – *duplicate copies* of which I provided you at our July 26th meeting – including *duplicate copies* of the three documented judicial impeachment complaints I had filed with the Committee, dated June 9, 1993, March 23, 1998, and November 6, 1998;

(3) the statistics as to the number of judicial impeachment complaints received by the House Judiciary Committee during the 103rd – 106th Congresses – inasmuch as those statistics do NOT appear in the Committee's Summary of

Activities for those Congresses, *contrary to prior Committee practice* noted in the 1993 Report of the National Commission on Judicial Discipline and Removal (Exhibit "A", p. 35).

Contrary to your initial pretense, my July 31st letter was addressed to YOU, not to others at the House Judiciary Committee on vacation during the August recess. Consequently, it is YOUR responsibility to have responded to that letter – and all the more so IF you are the sole staff member handling judicial discipline at the Courts Subcommittee.

Before you hung up on me I told you that my questions were prompted by my desire to update CJA's Congresswoman, Nita Lowey, with whose staff I had a meeting later that day, about issues in my July 31st letter with which she was already familiar. Indeed, most of the issues presented in the July 31st letter first appeared in CJA's correspondence to the Committee from 1993-1995, to which Congresswoman Lowey was an indicated recipient. This includes my August 26, 1993 letter to Edward O'Connell, then Counsel to the Courts Subcommittee (Exhibit "B") and my June 30, 1995 letter to Tom Mooney, the Subcommittee's successor Counsel (Exhibit "C"). These key letters, to which the Committee *never* responded, are each identified in my July 31st letter (at pp. 5, 6, 9). Likewise identified are the critical issues they raise which, TO DATE, remain *unresolved*:

(1) what the Committee does with the judicial impeachment complaints it receives in light of Mr. O'Connell's 1993 statement to me that "There has never been an investigation of an individual complaint in the history of the House Judiciary Committee"; and, particularly, *what the Committee does with impeachment complaints: "(a) which are not covered by the [1980] Act [28 USC §372(c)]; (b) where appellate remedies have been exhausted and have shown themselves ineffective; and (c) where the allegations, if true, would constitute impeachable conduct*"?

(2) the Committee's obligation to obtain sufficient budgetary allocations in light of Mr. Mooney's 1995 statement to me that it is budgetary constraints which prevent the Committee from investigating judicial impeachment complaints.

I provided you with copies of these two letters at our July 26th meeting.. This is reflected by my July 31st letter (at p. 5), whose Exhibit "A" is the inventory of the duplicate copy of CJA's 1993-1999 correspondence with the Committee that I gave you.

As my June 30, 1995 letter to Mr. Mooney reflects (Exhibit "C"), Congresswoman Lowey sent two February 7, 1995 letters regarding the Committee's failure to properly acknowledge, let alone investigate, the June 9, 1993 judicial impeachment complaint[1]. One was to me and the other to Mr. Mooney (Exhibits "D-1" and "D-2"). It also reflects that the Congresswoman is a member of the House Appropriations Committee, in a position to assist the House Judiciary Committee in obtaining funding to discharge its investigative duty.

At our July 26th meeting, I recounted to you that shortly after sending the June 30, 1995 letter to Mr. Mooney, I actually went to Congresswoman Lowey's Washington office to discuss with her staff the need to increase the House Judiciary Committee's budgetary allotment for that express purpose. On Monday, August 27th – the day before the phone conversation in which you hung up on me -- I stated that precisely because the Congresswoman is a member on the House Appropriations Committee I wanted to update her as to the status of the threshold issue in my July 31st letter: the need to reinforce the House Judiciary Committee's resources with emergency appropriations.

Thus, your refusal on August 28th to respond to my legitimate questions was with knowledge that it would thwart my intended presentation for Congresswoman Lowey later that day. As the Congresswoman now has a copy of my July 31st letter – which I left for her at the conclusion of my meeting -- I request that you respond, *in writing*, to that letter and this – with a copy sent *directly* to the Congresswoman. If obtaining responses from you requires the Congresswoman to personally intercede -- including by "command[ing] an hour of debate on a proposition to impeach"[2] on the House floor or other such dramatic step -- please promptly advise.

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[1] ONLY because of earlier intervention by Congresswoman Lowey's office did Mr. O'Connell send me a January 4, 1994 letter (Exhibit "E-1") acknowledging the Committee's receipt of "information" and "documents" – but NOT the June 9, 1993 judicial impeachment complaint -- as to which he made no statement as to what would be done. This was pointed out in my January 31, 1994 letter to Mr. O'Connell (Exhibit "E-2") – to which the Committee *never* responded, even after receiving Congresswoman Lowey's February 7, 1995 letter to Mr. Mooney (Exhibit "D-2").

[2] Such prerogative and the initiating role of the House of Representatives and its Judiciary Committee in advancing impeachment complaints were set forth at pages 33-37 of the *draft* Report of the National Commission on Judicial Discipline and Removal. This was brought to Congresswoman Lowey's attention in my August 30, 1993 letter to her (Exhibit "F-1"). Mr. O'Connell was an indicated recipient of that letter – and received a copy from me at that time. Mr. O'Connell then received another copy more than a year later when it was annexed as an exhibit to my December 2, 1994 letter to him (Exhibit "F-2"). [NOTE: corresponding page 34 from the Commission's *final* Report is part of Exhibit "A" herein]

My July 31st letter (at p. 6) emphasized that your "FIRST PRIORITY", as "oversight counsel" must be "ensuring that the Committee finally obtains the resources necessary to responsibly address the impeachment/judicial misconduct complaints it receives". As you have failed to send us *any* "acknowledgement" of the June 9, 1993, March 23, 1998, and November 6, 1998 judicial impeachment complaints – let alone, as requested by my July 31st letter (at p. 9), an acknowledgement "tailored to the circumstances of these complaints" – it is obvious that the Committee is still NOT responsibly addressing the impeachment/judicial misconduct complaints it receives. Moreover, your failure to have responded to the express request in my July 31st letter (fn. 13) for a copy of the form-letter acknowledgement that you stated, at our July 26th meeting, you had prepared or were then preparing, suggests either that you are embarrassed to show me what it says – or that you have abandoned any attempt to acknowledge impeachment/judicial misconduct complaints.

In light of Congresswoman Lowey's February 7, 1995 letter to Mr. Mooney (Exhibit "D-2"), I am sure she would be most interested in an explanation as to WHY, in the more than SIX YEARS that have since elapsed, there has been NO Committee acknowledgment and investigation of the June 9, 1993 impeachment complaint, arising from the case of *Elena Ruth Sassower and Doris L. Sassower v. Field, et al.* This, even after Mr. Mooney verbally agreed in February 1996 that if the federal judiciary were to dismiss a §372(c) complaint based thereon as "merits related", the Committee would investigate the impeachment complaint.

For the benefit of Congresswoman Lowey – to whom a copy of this letter will be provided -- *Sassower v. Field* is the case referred to in 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) (Exhibit "G") under the heading "Direct, First Hand Experience" (at pp. 95-97). Page 96 reflects both Mr. Mooney's February 1996 verbal agreement and that the federal judiciary fraudulently dismissed the subsequently-filed §372(c) complaint as "merits related". In March 1998, I transmitted copies of the article and the record of the dismissed §372(c) complaint to the Committee in support of CJA's ALL-IMPORTANT March 10, 1998 and March 23, 1998 memoranda (Exhibits "H-1" and "H-2") – the latter of which expressly cited (at p.10) page 96 of the article as to Mr. Mooney's understanding that "the onus would fall on the House Judiciary Committee to undertake an impeachment investigation" if the federal judiciary dismissed the §372(c) complaint as "merits related". Mr. Mooney, by then the Committee's Chief Counsel, did not deny nor dispute this, then or thereafter.

Please, therefore, identify what you have been doing with the June 9, 1993 judicial impeachment complaint in the month since our July 26th meeting when I provided you with a full duplicate copy – including a duplicate copy of the fraudulently dismissed §372(c) complaint relating thereto.

Likewise, please identify what you have been doing with CJA's March 23, 1998 and November 6, 1998 judicial impeachment complaints[3], arising from the case of *Doris L. Sassower v. Mangano, et al.* – as to which I also provided you with complete duplicate copies at our July 26th meeting, This includes, as to the federal district and circuit judges, a copy of the record of the §372(c) complaints against them – which the federal judiciary also fraudulently dismissed as "merits related". It also includes, as to the U.S. Supreme Court justices, who failed to implement the suggestion in the National Commission's 1993 Report (at p. 123) that they devise a procedure for addressing judicial misconduct complaints against themselves, inasmuch as they are exempt from §372(c), a copy of an *improvised* judicial misconduct complaint against the justices, filed with the Court, which the justices simply ignored.

Although you inferred, during my August 27th and 28th phone calls to you, that you had been spending time in preparing for the October hearing on §§372(c), 144, and 455, it did not seem to me that your preparations included review of ANY of the primary source materials I had provided you on July 26th – *virtually all of which are part of the three judicial impeachment complaints*. You did not take the opportunity of either of these conversations to ask me even a single question about these materials, let alone to commend me on the groundbreaking contribution they make to advancing a genuine understanding of what is happening, *on the ground*, with these statutes and the hoax perpetrated on Congress and the American People by the National Commission's 1993 Report.

Frankly, it defies belief that you could have reviewed the materials and not have had ANY questions to ask me, particularly as you are a rank novice on §§372(c), 144, and 455 and the National Commission's 1993 Report, having joined the Subcommittee in July, after working in unrelated areas in the private sector. You yourself admitted to me at our July 26th meeting that you had not yet finished reading the National Commission's Report and were only halfway through my article, "*Without Merit*" (Exhibit "G"), the second half of which is a critique of the National Commission's methodologically

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[3] As noted by my July 31st letter (at p. 4), CJA's March 23, 1998 memorandum (at pp. 7-9, 24-25) doubles as a judicial impeachment complaint against the district and circuit judges in *Sassower v. Mangano.*

flawed and dishonest Report.

By contrast, I've had years of in-the-trenches experience with §§372(c), 144, and 455, combined with study of the National Commission's Report, going back to when it first came out in draft in June 1993 – analyzing it and comparing it to the final August 1993 Report and to the underlying consultants' studies. This, in addition to direct, first hand experience with the now defunct National Commission, the significance of which I tried to explain to you at our July 26th meeting until you snapped at me with your comment that you were not interested in "individual cases"[4].

The fact that our July 26th meeting was occasioned by YOUR July 19th phone call to me, requesting that I come down to Washington, *as soon as possible*, TO ASSIST YOU in preparing for October hearings on §§372(c), 144, and 455, shows that you recognized you could learn something from me (Exhibit "I-1"). This was when you *only* had before you my July 3, 2001 letter to Senator Schumer, Chairman of the Senate Judiciary Committee's Courts Subcommittee and, presumably, my July 9, 2001 transmittal coverletter to Sam Garg, the Committee's Minority Counsel (Exhibit "I-2") – a copy of which I had sent to the Subcommittee's Counsel, Blaine Merritt, and the Committee's General Counsel/Chief of Staff, Philip Kiko (Exhibit "I-3").

Please, therefore, advise as to whether you have been so diverted by your *other* duties at the Subcommittee that you have NOT yet reviewed the primary source materials I provided you on July 26th. In particular, have you reviewed the §372(c) complaints from *Sassower v. Field* and from *Sassower v. Mangano*[5] – including the two petitions for

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[4] This comment came as I tried to help you understand why, if the National Commission did not view §372(c) as furnishing a remedy for the judicial misconduct committed in *Sassower v. Field*, its obligation was to designate the case as the "convincing demonstration of the inadequacy of the 1980 Act". According to the National Commission draft Report (at p. 6) – and, thereafter, its final Report (at p. 6)—it would take "a convincing demonstration" for the Commission to recommend an alternative to the present system. Notwithstanding your impatience with "individual cases", *Sassower v. Field* and *Sassower v. Mangano* each present such "convincing demonstration".

[5] As discussed on July 26th, the §372(c) complaints in *Sassower v. Mangano* are part of the record in the case as they were filed when it was yet before the Second Circuit.. This provided the Second Circuit and, thereafter, the Supreme Court with an UNPRECEDENTED opportunity to clarify the relationship between appellate remedies and §372(c) disciplinary remedies for judicial bias. Indeed, I showed you the opening paragraph of the petition for rehearing with suggestion for rehearing en banc to the Second Circuit – the same as appears at p. 9 of CJA's March 23, 1998 memorandum (Exhibit "H-2") – and actually read to you the following from the cert petition (at p. 22):

rehearing to the Judicial Council of the Second Circuit, detailing, with reference to the National Commission's Report, the violative nature the "merits related" dismissals? How about the eight recusal applications under §§144 and 455 in *Sassower v. Mangano* – spanning the District Court, the Circuit Court, and the Supreme Court[6] – and inviting the Supreme Court to provide necessary clarification of its confusing decision in *Liteky*, 114 S.Ct. 1147 (1994)[7]? These documents are the PRIMA FACIE evidence that the

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"...only in the rarest case, such as this, where the §372(c) judicial misconduct complaints are incorporated into the record before the Circuit and are an integral part of the questions raised in a petition for rehearing before it, would this Court have the opportunity to give guidance to the Circuits on summarily-dismissed §372(c) complaints. The Circuits are in dire need of guidance from this Court. In the 18 years since Congress enacted §372(c), they have not developed any case law on the interface between appellate and disciplinary remedies, or defined the 'merits-related' ground for dismissal under §372(c), or the discretion afforded by the statute to review even 'merits-related' complaints [A-4]. The deliberateness with which they have done so – leaving the 'merits-related' category vague so as to dump virtually all complaints on that ground and promulgating statutorily-violative implementing rules [A-10] – is underscored by the Second Circuit's disposition of the §372(c) complaints herein, where petitioner expressly challenged it to address these threshold issues."

[6] The ONLY "Question Presented" in the *Sassower v. Mangano* cert petition – apart from the first "Question" as to whether the Supreme Court had a "duty" to accept review under its "power of supervision" by reason of the departure of the District and Circuit Courts from all cognizable adjudicative and ethical standards – was:

"Is constitutional due process denied where, on appeal, the Circuit Court fails to adjudicate the 'pervasive bias' of the district judge, including his denial of a recusal motion under 28 USC §§144 and §455 and, additionally, fails to adjudicate, or to adjudicate with reasons, motions made for its own recusal, pursuant to §455 and the 5th Amendment to the U.S. Constitution?

a. Is it misconduct *per se* for federal judges to fail to adjudicate or to deny, without reasons, fact-specific, fully-documented recusal motions?

b. If so, where is the remedy within the federal judicial branch when §372(c) misconduct complaints against Circuit judges based thereon are dismissed as 'merits related'?"

[7] This is presented at POINT II of the *Sassower v. Mangano* cert petition as follows:

"In *Liteky*, the Court viewed the bias allegations as so insubstantial that the majority disposed of them in two paragraphs. The minority agreed that was all that was required because they were 'unimpressive' (at 1163). This case, by contrast, presents substantial bias allegations of all varieties, extrajudicial, intrajudicial, actual, and apparent, under §§144, 455, and the Fifth

federal judiciary has reduced these statutes to "empty shells". How about CJA's 1995-1998 correspondence with the Administrative Office of the U.S. Courts – the inventory of which is Exhibit "B" to my July 31st letter and referred to in the letter at fn. 12 (p. 7)? If you read this correspondence then you know it transmitted to Jeffrey Barr, Assistant General Counsel of the Administrative Office and formerly a key consultant to the National Commission[8], the aforesaid §372(c) complaints and recusal applications for presentment to appropriate committees of the Judicial Conference so that they could take necessary corrective steps to "keep the judiciary's house in order"? Such correspondence fully substantiates the assertions in CJA's March 10, 1998 and March 23, 1998 memoranda (Exhibits "H-1" and "H-2") that the federal judiciary's subversion of §§372(c), 144, and 455 is with the knowledge of its *highest echelons* and that the Judicial Conference wilfully deceived the House Judiciary Committee about the efficacy of §§372(c), 144, and 455 in opposing sections 4 and 6 of H.R. 1252 [The Judicial Reform Act of 1997/8] pertaining to federal judicial discipline and disqualification.

Further reinforcing my belief that you had NOT examined the primary source materials

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Amendment, in judicial, appellate, and disciplinary contexts – on a record which is both perfectly protected and relatively compact. As such, it permits the Court to move away from the confusing theoretical abstracts of *Liteky*, which hardly provide a practical guide for the profession or the public, and to grapple with substantive facts to illuminate the meaning of its 'impossibility of a fair trial' standard for intrajudicial bias, as well as the 'appearance of impropriety' standard for extrajudicial bias. This, in addition to exploring its own mistaken assumptions abut judicial bias, particularly of the intrajudicial nature." (at p. 29)

See, also, cert petition, pp. 14, 26.

[8] As set forth in CJA's March 23, 1998 memorandum (Exhibit "H-2", at p. 6):

"Mr. Barr is staff counsel to the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders and, according to him, the *only one* at the Administrative Office handling §372(c) issues. This is in addition to his other work responsibilities, to which Mr. Barr gives priority. Before coming to the upper ranks of the Administrative Office, Mr. Barr was one of the two court-connected consultants to the National Commission, which the federal judiciary permitted to examine a supposed cross-section of §372(c) complaints. It is to Mr. Barr that [my] article refers (at pp. 96-97) when it states that presumably the federal judiciary was well pleased by his consultants' study when it promoted him to the Administrative Office." (emphasis in the original)

See, also, p. 2 of CJA's written statement for inclusion in the record of the House Judiciary Committee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary" [annexed to Exhibit "I-2"]

I provided you on July 26th was your shocking statement to me on August 27th that Chairman Sensenbrenner has a "four witness rule" for hearings and that I might NOT be invited to be one of those witnesses. Similarly, your response to the question I asked you on August 28th as to what, specifically, was the purpose of the October hearing -- to which you gave a vague, halting answer that it was to "look at those statutes" to see "what's working and not working". NO competent professional examining the wealth of primary source materials I provided you could come to a conclusion other than that I am an INDISPENSIBLE WITNESS and that the case of *Sassower v. Mangano*, not only demonstrates, *irrefutably*, that the federal judiciary has gutted §§372(c), 144, and 455, but that "THERE CAN BE NO ARGUMENT FOR REPOSING FEDERAL DISCIPLINE IN THE FEDERAL JUDICIARY"[9]. Such case, taken together with the federal judiciary's *own* statistics on §372(c) complaints[10] and scholarly articles and treatises on §§144 and 455[11], would readily convince *any* competent professional

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[9] CJA's July 31st letter (at p. 5), quoting p. 24 of the *Sassower v. Mangano* cert petition.

[10] The statistics for the last five years, as reported in the Annual Report of the Director of the Administrative Office of U.S. Courts, are as follows: 2000 Report: of 715 complaints, Chief Judges *dismissed all but two* without appointment of any investigative committees. As to the two investigated, these were consolidated and resulted in "a single public censure"; 1999 Report: of 826 complaints, Chief Judges *dismissed all but four* without appointment of any investigative committees. As to the four investigated, two were dismissed and two withdrawn without any action taken; 1998 Report: of 1,002 complaints, Chief Judges *dismissed all but four* without appointment of any investigative committees. As to the four investigated, two were dismissed and two resulted in "two sanctions orders"; 1997 Report: of 487 complaints, Chief Judges *dismissed 100%* without appointment of any investigative committees; 1996 Report: of 588, Chief Judges *dismissed 100%* without appointment of any investigative committees.

[11] *See* p. 30 of the *Sassower v. Mangano* cert petition:

> "'There is general agreement that §144 has not worked well.' Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d 3542, at 555, citing law review articles and quoting from *Statutory Disqualification of Federal Judges*, David C. Hjelmfelt, Kansas Law Review, Vol. 30: 255-263 (1982): 'Section 144 has been construed strictly in favor of the judge...Strict construction of a remedial statute is a departure from the normal tenets of statutory construction.'; Because of this strict construction, 'disqualification under this statute has seldom been accomplished', initially and upon review, Flamm, [Judicial Disqualification: Recusal and Disqualification of Judges (1996)], at 737, '§144's disqualification mechanism has proven to be essentially ineffectual.' Flamm, *ibid*, at 738; 'While the text of sections 144 and 455 appear to create a relaxed standard for disqualification that would be relatively easy to satisfy, judicial construction has limited the statutes' application, so that recusal is rare, and reversal of a district court refusal to recuse, is rarer still.', Charles Gardner Geyh, Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, at 771 (1993)."

that whatever little is "working" about §§372(c), 144, and 455 is massively dwarfed by what is "not working" -- and that a "four witness rule" is altogether inappropriate to the grave and far-reaching issues to be confronted by this Committee and Congress.

Inasmuch as I spoke with Subcommittee Counsel Blaine Merritt on July 9th and he mentioned nothing about any upcoming hearing on §§372(c), 144, and 455 – it seems fairly obvious that my July 9th letter (Exhibit "I-2") – which I had nearly completed when I spoke with him – and which transmitted a copy of CJA's written statement for inclusion in the record of the Committee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary" -- is the catalyst for the hearing on those statutes. That letter *expressly* requested, based on the voluminous documentation that CJA had furnished the Committee in support of the March 10, 1998 and March 23, 1998 memoranda (Exhibits "H-1" and H-2") through November 1998:

> "that the House Judiciary Committee endorse our request to Senator Schumer that the Senate Judiciary Committee's Court[s] Subcommittee hold a hearing on federal judicial discipline and removal. In the alternative,...that the House Judiciary Committee hold its *own* hearing or that it arrange for a joint hearing with the Senate Judiciary Committee's Court[s] Subcommittee." (at pp.)

CJA's referred-to voluminous documentation was not unfamiliar to Mr. Merritt. Quite the contrary. He was among my key contacts at the Subcommittee in 1998 when I provided the Subcommittee with the *original* materials supporting the March 10, 1998 and March 23, 1998 memoranda. Moreover, on February 19, 1999, in the course of hand-delivering a "hard copy" of my previously-faxed February 16, 1999 letter to the Committee– the same as is Exhibit "C" to my July 31st letter -- I had a lengthy meeting with Mr. Merritt[12], at which time I left him with a file jacket containing a duplicate copy

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Also, law review articles cited in footnotes of the written statement of then California Attorney General Daniel E. Lungren, printed at p. 88 of the transcript of the Subcommittee's May 14, 1997 hearing on the Judicial Reform Act of 1997 [H.R. 1252] for the propositions that "§455(a) has not been an effective vehicle for the removal of judges where reasonable questions about impartiality and fairness have been at issue." and "§144 has been so narrowly construed by the federal courts that it would be entirely unrecognizable by its [congressional] author were he alive today. Suffice to say...the judiciary...has rendered the statute a hollow and meaningless tool as a means of preventing judicial bias."

[12] I recall Mr. Merritt reiterating what Mr. Mooney told me in June 1995 – that the Committee doesn't have the resources to investigate impeachment complaints and that if it were to do so it would have to operate "24/7" and would need another dozen staffers.

of the Supreme Court papers in *Sassower v. Mangano*, including the November 6, 1998 impeachment complaint.

As I expect you will share this letter with Mr. Merritt, please ask him the role my document-supported July 9th letter played in prompting him to discuss with you the "idea" of holding a hearing on §§372(c), 144, and 455 – and advise as to what he says.

Finally, you have not notified me as to whether you are ready to receive and review, in preparation for the October hearing, the additional documentation I proffered to you on July 26th as to the experiences of CJA's members and others with §§372(c), 144, and 455. Please advise when these materials may be sent to you and when I may notify CJA members and others that they may call you. As many had already expressed to me their desire to testify, I can state, for a certainty, that they will be appalled and outraged to hear that because of Chairman Sensenbrenner's arbitrary "four witness rule"[13] not only will they not be able to individually testify, but, possibly, NO member of the public will be able to testify on their behalf, including CJA. While you took exception to my characterizing as a "show" a hearing at which those having *on-the-ground experience* are *not* permitted to testify, their characterizations, you may be sure, will be considerably more colorful.

On that note, I will close by quoting Professor Robert A. Destro of Catholic University School of Law, who told the Subcommittee at its May 14, 1997 hearing on the Judicial Reform Act of 1997 [H.R. 1252]:

> "litigators and their clients have important stories to tell. The discipline system in this country – whether you're dealing with lawyers or judges –is severely broken down. It simply does not produce results. People are frustrated" [5/14/97 transcript, p. 115].

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[13] As I noted in our August 28th conversation, Committee hearings under prior Chairman Hyde do not appear to have been limited by a "four witness rule". Among these, the Committee's May 15, 1997 hearing on Judicial Misconduct and Discipline – at which 14 witnesses testified, *Congresswoman Lowey among them* -- and the Committee's May 14, 1997 hearing on the Judicial Reform Act of 1997 [H.R. 1252] – at which 13 witnesses testified.

I await your prompt response and, particularly, as everyone should now be back from August recess.

Yours for a quality judiciary,

Elena Ruth Sassower

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

cc: Congresswoman Nita Lowey [By Hand]
James F. Sensenbrenner, Jr., Chairman, House Judiciary Committee
ATT: Philip Kiko, General Counsel-Chief of Staff /House Judiciary Committee
[By Certified Mail/RRR: 7000-1670-0007-0498-0577]
Sam Garg, Minority Counsel, House Judiciary Committee
[By Certified Mail/RRR: 7000-1670-0007-4965-0138]

TABLE OF EXHIBITS TO CJA's SEPTEMBER 4, 2001 LETTER TO MELISSA McDONALD, OVERSIGHT COUNSEL, HOUSE JUDICIARY COMMITTEE/COURTS SUBCOMMITTEE

Exhibit "A":	Pages 32-37 of the 1993 Report of the National Commission on Judicial Discipline and Removal
Exhibit "B":	Elena Sassower's August 26, 1993 letter to Edward O'Connell, Counsel, House Judiciary Committee's Courts Subcommittee
Exhibit "C:	CJA's June 30, 1995 letter to Tom Mooney, Counsel, House Judiciary Committee Courts Subcommittee
Exhibit "D-1":	Congresswoman Nita Lowey's February 7, 1995 letter to Elena Sassower
"D-2":	Congresswoman Lowey's February 7, 1995 letter to Mr. Mooney
Exhibit "E-1":	Mr. O'Connell's January 4, 1994 letter to Elena Sassower
"E-2":	Elena Sassower's January 31, 1994 letter to Mr. O'Connell
Exhibit "F-1":	Elena Sassower's August 30, 1993 letter to Congresswoman Lowey
"F-2":	Elena Sassower's December 2, 1994 letter to Mr. O'Connell
Exhibit "G":	"*Without Merit: The Empty Promise of Judicial Discipline*", The Long-Term View (Massachusetts School of Law), Vol. 4, No. 1 (summer 1997)
Exhibit "H-1":	CJA's March 10, 1998 memorandum to the House Judiciary Committee
"H-2":	CJA's March 23, 1998 memorandum to the House Judiciary Committee
Exhibit "I-1":	CJA's July 19, 2001 letter to Melissa McDonald, Oversight Counsel, House Judiciary Committee Courts Subcommittee
"I-2":	CJA's July 9, 2001 letter to Sam Garg, Minority Counsel, House Judiciary Committee, transmitting CJA's written statement for inclusion in the record of the House Judiciary Committee's June 11, 1998 "Oversight Hearing" --with 7/9/01 fax coversheet to Blaine Merritt, Courts Subcommitee Counsel
"I-3":	CJA's July 9, 2001 letter to Philip Kiko, General Counsel/Chief-of-Staff/House Judiciary Committee – with certified mail/return receipt

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TEL : 9144211200

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Return Receipt Fee (Endorsement Required)	2.10	Postmark Here
Restricted Delivery Fee (Endorsement Required)	1.50	Clerk: KYRB
Total Postage & Fees	$ 7.55	09/04/01

Sent To: HJudiciary Cmte
Chairman Sensenbrenner
Street, Apt. No.; or PO Box No.: Room 2138 Rayburn Philip
City, State, ZIP+4: Washington, DC 20515

PS Form 3800, May 2000 See Revers

7000 1670 0007 0498 0577

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
HJudiciary Committee
Chairman Sensenbrenner
Att: Philip Kiko
General Counsel Chief of Staff
Room 2138 Rayburn
Washington, DC 20515

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* B. Date of Delivery

C. Signature
X
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SEP 07 2001

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7000 1670 0007 0498 0577

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

20515

Postage	$ 3.95	UNIT ID: 0136
Certified Fee		
Return Receipt Fee (Endorsement Required)	2.10	Postmark Here
Restricted Delivery Fee (Endorsement Required)	1.50	Clerk: KYFH72
Total Postage & Fees	$ 7.55	09/04/01

Sent To: Sam Geo HJudiciary Cmte
Street, Apt. No.; or PO Box No.: B-351C Rayburn Build
City, State, ZIP+4: Washington, D.C. 20515

PS Form 3800, May 2000 See Reverse for Instructions

7000 1670 0007 4965 0138