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BY PRIORITY MAIL

September 13, 1998

Diann Rust Tierney, Associate Director
ACLU -- Washington, D.C. Office
122 Maryland Avenue, N.E.
Washington, D.C. 20002

RE: Re-evaluation of ACLU's legislative advocacy positions; request for *amicus* support for the cert petition in *Sassower v. Mangano, et al.*, S.Ct. #98-106

Dear Ms. Rust Tierney:

Following up our lengthy phone conversation on Friday, September 11th, enclosed is a copy of the April 16, 1988 letter (Exhibit "A") in which ACLU joined with more than 80 other organizations in opposing H.R. 1252 *in its entirety*. Although the letter did not specifically address section 4 of H.R. 1252, relating to federal judicial discipline, it did address section 6, relating to federal judicial disqualification by asserting "judges are already removable for bias or prejudice". It also provided a phone number and contact person at the Alliance for Justice, also a signator of the letter. The Alliance's own position paper particularized opposition to both those sections (Exhibit "B"). As to section 6, the Alliance was more specific "Judges are already removable for bias or prejudice for or against a party pursuant to 28 U.S.C. §§144 and 455." As to section 4, the Alliance asserted that judicial discipline under 28 U.S.C. §372(c) "is working well" and relied upon the 1993 Report of the National Commission on Judicial Discipline and Removal.

The efficacy of §§144, 455, 372(c) -- statutes designed to safeguard against biased, abusive, and unfit judges -- is now before the U.S. Supreme Court in a petition for a writ of certiorari in the §1983 federal civil rights action, *Sassower v. Mangano, et al.* (S.Ct. #98-106). The petition contains in its appendix [A-295; A-391] the March 10th and March 23rd Memoranda that our non-partisan, non-profit citizens' organization, the Center for Judicial Accountability, Inc. (CJA), submitted to the House Judiciary Committee in connection with its consideration of sections 4 and 6 of H.R. 1252. Included in the Memoranda and in the appendix is CJA's published article [A-207], "*Without Merit: The Empty Promise of Judicial Discipline*", The Long Term View (Massachusetts School of Law), Vol 4, No. 1, summer 1997, pp. 90-97 (Exhibit "C"). The article describes the federal judicial disqualification and disciplinary statutes as having been "gutted" by the federal judiciary and the

National Commission's Report as methodologically flawed and dishonest.

This is borne out by the cert petition and supplemental brief: Indeed, the petition not only demonstrates how the federal judiciary has subverted §§144, 455, and 372(c)¹, but highlights the breakdown of the other checks on federal judicial misconduct identified by the National Commission as existing within the Judicial Branch. As for the supplemental brief, it demonstrates the breakdown of checks on federal judicial misconduct identified by the National Commission as existing within the Legislative and Executive Branches. The result of the breakdown of checks in all three government Branches is that:

"the constitutional protection restricting federal judges' tenure in office to 'good behavior' does not exist because all avenues by which their official misconduct and abuse of office might be determined and impeachment initiated (U.S. Constitution, Article II, §4 and Article III, §1 [SA-1]) are corrupted by political and personal self-interest. The consequence: federal judges who pervert, with impunity, the constitutional pledge to 'establish Justice', (Constitution, Preamble [SA-1]) and who use their judicial office for ulterior purposes." supplemental petition, p. 2.

Enclosed is a copy of the cert petition and supplemental brief, as well as the further supporting materials "lodged" with the Supreme Court Clerk: (1) the evidentiary compendium supporting CJA's written statement to the House Judiciary Committee for inclusion in the record of the Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17]; and (2) the exhibits to our July 27, 1998 letter to the Chief of the Justice Department's Public Integrity Section, Criminal Division [SA-47].

Such documents will enable ACLU to recognize the error of its blanket opposition to H.R. 1252 and to undertake legislative advocacy to fortify the gutted federal judicial disqualification and disciplinary statutes, beginning with pressing for a congressional hearing on the National Commission's Report. As pointed out by CJA's March 23rd Memorandum [A-302-304], the final Report was never the subject of a hearing.

More immediately, they will enable ACLU to recognize the extraordinary opportunity for advancing needed reform presented by the cert petition and supplemental brief and to come forward with *amicus* support for Supreme Court review. To do so in the context of a §1983 civil rights action involving heinous constitutional violations and retaliation against a judicial whistle-blower for legitimate

¹ For citation to the treatises and scholarly assessments of §§144 and 455, see p. 30 of the cert petition. As for the Administrative Office's own statistics on §372(c), see SA-19 of the supplemental brief.

September 13, 1998

exercise of First Amendment rights, should make ACLU all the more eager to champion this case. Since you indicated that *amicus* requests are handled by Steve Shapiro, Legal Director in ACLU's New York office, a copy of this letter, together with a duplicate copy of the cert petition, supplemental brief, and "lodged" materials, are being sent to him. We respectfully request ACLU's *amicus* assistance -- including its help in garnering support of other organizations -- maybe even the 80 or so organizations who were signators of the April 16th letter (Exhibit "A"). This organizational backing will be particularly important in the event the Court does not accept review at its September 28th conference, in which case we will be filing a petition for rehearing. As part of such rehearing petition, we hope to include a list of organizations urging review and expressing their grave concern for the profoundly dangerous state of affairs detailed by the cert petition and supplement, as to which the public is completely unprotected.

To improve the likelihood of the Court meeting its difficult "supervisory" and ethical duties in this case, we also ask ACLU's help in obtaining press coverage. Obviously, ACLU has a great many media contacts, whereas CJA has been so shut out by the media that we have had to rely on extremely expensive public interest ads to "get the message out". Two of these ads are part of the record in *Sassower v. Mangano, et al.* and included in the cert appendix: "*Where Do You Go When Judges Break the Law?*" [A-269], which cost CJA nearly \$20,000 (NYT, 10/26/94, Op-Ed page; NYLJ, 11/1/94, p. 9) and "*Retraining 'Liars in the Courtroom' and on the Public Payroll*" [A-261], which cost us over \$3,000 (NYLJ, 8/27/97, pp. 3-4) (Exhibits "D-1" and "D-2"). The latter ad, as well as "*Without Merit: the Empty Promise of Judicial Discipline*", were inserts to CJA's informational brochure, which I gave Nadine Strossen, in hand, on March 14th, when I met her at the dinner capping the conference at Harvard Law School, "Remembering and Advancing the Vision of Justice William J. Brennan". As I recall, after my initial conversation with Ms. Strossen, I went over to her a second time for the express purpose of highlighting the ad's significance and the need for action by the public interest community.

I note that Ms. Strossen, as well as Ira Glasser, are each members of the so-called "Citizens for Independent Courts", which purports to concern itself with issues of judicial independence. Vindicating judicial independence is a featured "reason for granting the writ" (cert petition, p. 21). The premise of judicial independence is that judges render decisions based upon the law applied to the facts in the cases before them, unaffected by external pressures and influences. Yet, in the cases described by "*Where Do You Go When Judges Break the Law?*" and "*Retraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibits "D-1" and "D-2"), the judges were wholly guided by external considerations in their flagrant protectionism of the high-ranking state defendants and political leaders, sued for corruption. The proof? As particularized by "*Retraining 'Liars'...*", the judges falsified and disregarded the uncontroverted and incontrovertible facts in the record before them -- and the law flowing from those facts -- and annihilated the most fundamental adjudicatory standards so as to "dump" the cases.

September 13, 1998

I understand that "Citizens for Independent Courts" is largely funded by George Soros' Open Society Institute, which provided the Twentieth Century Fund with more than \$200,000 to support its development of a "nonpartisan coalition and blue ribbon committee seeking to increase the importance of an independent judiciary". The Open Society Institute also provided at least \$200,000 to ACLU, including \$100,000 "to support public opinion research on issues relating to judicial independence and restrictions on access to the courts". This, in addition to providing Alliance for Justice with \$45,000 for "focus group research to look broadly at public attitudes toward the federal judiciary and to examine ways to strengthen judicial independence" (Exhibit "E").

Last week, I telephoned ACLU for information about its "public opinion research" on "judicial independence". I was told by Loren Siegel, ACLU's public education director, that the money designated for that purpose was already spent and that ACLU's report on the research was "proprietary". Ms. Siegel stated that she would need to know more about CJA before she could provide me with information about the report. In response to her request for written materials about CJA, I told her she could access information about CJA from our website -- www.judgewatch.org. That was at 11:15 a.m. on Thursday morning, September 10th and, despite my follow-up call to her on Friday, she did not get back to us. Inasmuch as the enclosed materials more than substantiate CJA's credentials as an organization which both appreciates and has been on the "frontlines" in battling to protect "judicial independence", we request that you and Mr. Shapiro so inform Ms. Siegel.

Since time is of the essence on the cert petition, your prompt attention would be greatly appreciated.

Yours for a quality judiciary,



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

Enclosures

cc: Steven R. Shapiro, Legal Director/ACLU
Nadine Strossen, President/ACLU
Ira Glasser, Executive Director/ACLU
Loren Siegel, Public Education Director/ACLU