

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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By Priority Mail  
By Fax: 202-822-6068

August 13, 1996

Nan Aron, President  
Alliance for Justice  
2000 P Street, N.W.  
Suite 712  
Washington, D.C. 20036

RE: Coalition for non-partisan reform

Dear Nan:

This letter follows up my lengthy--albeit on-the-run--conversation with you on August 2nd at the ABA Annual Convention in Orlando. In that conversation, I proposed that a coalition of organizations be formed for the purpose of advocating an agreed-upon set of recommendations for reform of the federal judicial confirmations process.

As head of the Alliance's Judicial Selection Project since 1984, you are personally familiar with the federal judicial confirmation process. The "rubber stamp" nature of that process has already been the subject of research, analysis, and recommendations. Among the excellent reports on the subject--which either quote you or refer to the Alliance for Justice--are "Assembly-Line Approval: A Common Cause Study of Senate Confirmation of Federal Judges" (1986) and "Judicial Roulette: Report of the Twentieth Century Fund Task Force on Judicial Selection" (1988).

Unfortunately, these reports--and their important recommendations--"sit on shelves, gathering dust". You may recall that at this year's ABA's Mid-Year Convention in Baltimore, I made that point as a member of the audience at the program entitled "Running the Gauntlet: A Critical Look at the Federal Judicial Selection and Confirmation Process"--in which you were a panel participant.

For your convenience, the Common Cause recommendations, summarized in its 1986 report at pages 4-5 and detailed at pages 25-33, are annexed hereto. Also annexed are pages 7-8 of the 1988 report of the Twentieth Century Fund relating the Senate Judiciary Committee's confirmation of lower court federal judges.

August 13, 1996

These non-partisan recommendations, designed to make the judicial confirmation process effective and publicly-accessible and accountable, can be embraced by organizations of all political and ideological stripes. Therefore, it is CJA's hope to build a coalition of organizations--particularly those involved in judicial selection issues--to advance, by concerted action, specific agreed-upon recommendations for reform, starting with the judicial confirmation process.

As I mentioned to you, I already discussed this coalition proposal with Mike Pendleton, Deputy Director of the Center for Law and Democracy of the Free Congress Foundation, who was most enthusiastic about the prospect. He readily recognized that notwithstanding the diametric ideological and political divergence between Free Congress Foundation and Alliance for Justice, both organizations have a common interest in ensuring that the confirmation process is functioning in accordance with cognizable standards and procedures.

From our direct, first-hand experience with the Senate Judiciary Committee in the context of its confirmation of Justice Lawrence Kahn, CJA can attest that it is not remotely functioning on any such level. That experience is documented in our June 28, 1996 letter to Chairman Orrin Hatch--a copy of which I left for you with the concierge at the Dolphin Hotel, but which you apparently forgot to pick up. Another copy is enclosed.

Both Alliance for Justice and Free Congress Foundation were opposed to Justice Kahn's confirmation. Indeed, when I mentioned Justice Kahn to you, your immediate response was to the effect that he was horrible and a disaster--a view similar to that expressed to me by Mike Pendleton, although predicated on different grounds.

Our June 28th letter provides Alliance for Justice and Free Congress Foundation with a common ground for action. It details the existence of ideologically-neutral opposition to Justice Kahn--dispositive of his unfitness for judicial office. Yet, the Senate Judiciary Committee was completely disinterested in such opposition, which it rejected, without inquiry or investigation--denying us, as well, the opportunity to testify at Justice Kahn's confirmation hearing. The Committee then approved Justice Kahn prior to expiration of the announced date for receipt of written submissions.

Notwithstanding Senate Republican and Democratic leaders each received copies of our June 28th letter--whose serious allegations were completely uncontroverted by Chairman Hatch or anyone else--they blithely entered into an "agreement" between themselves to confirm Justice Kahn's confirmation. The result was Senate confirmation of Justice Kahn on July 16th in

August 13, 1996

"Executive Session"--i.e., without Senate discussion and without any vote.

We expect that the Senate's contempt for the public and citizen involvement in the process of judicial confirmation, as reflected by our June 28th letter and the Senate's subsequent confirmation of Justice Kahn, to be particularly offensive to you. Indeed, in your August 2nd panel presentation at the ABA Convention on the subject of "America: What the Republic Will Look Like in the Twenty-First Century", you recognized the need "to nourish citizen participation in society". This view is consistent with the description which appeared in your "Bio", distributed at the ABA Mid-Year Convention program, that you are "a nationally recognized expert on...citizen participation in policy formulation"

The Free Congress Foundation, through Mike Pendleton, has endorsed our offer to approach Alliance for Justice with our coalition proposal, on its behalf. Since Alliance for Justice is itself a coalition of organizations, you know the strength coalitions can bring to reform efforts. We, therefore, trust that for the benefit of all Americans you will embrace the possibilities represented by working together on issues of non-partisan reform. We ask that you let us know as soon as possible.

We also ask that you set forth the Alliance's views as to each of the recommendations for reform of the federal judicial confirmations process, long ago proposed by Common Cause and the Twentieth Century Fund.

By copy of this letter to Mike Pendleton, we make the identical request to the Free Congress Foundation for its views as to each of the reform recommendations.

Yours for a quality judiciary,

ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc.

Enclosures

cc: Mike Pendleton, Free Congress Foundation