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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

July 17, 2001

Mr. Greg Anrig, Vice-President of Program
The Century Foundation
41 East 70th Street
New York, New York 10021

RE: Using Essential Recommendations from Judicial Roulette
and The Good Judge to Promote *Non-Partisan* Reform

Dear Mr. Anrig:

This follows up our phone conversation together yesterday – and CJA’s efforts, since 1996, to advance the significant recommendations for improving the Senate Judiciary Committee’s confirmation of lower court nominees¹, presented by the Twentieth Century Fund’s Task Force on Judicial Selection in its study, Judicial Roulette.

As discussed, the Century Foundation has a valuable opportunity to resurrect that study and to push for implementation of those and other recommendations at upcoming hearings on “the judicial nominating process”, which Senator Charles Schumer, Chairman of the Senate Judiciary Committee’s Subcommittee on Administrative Oversight and the Courts, has announced his intention to hold.

CJA has already brought Judicial Roulette to the Senator’s attention. In pertinent part, our July 3, 2001 letter to Senator Schumer – reads:

The Senate Judiciary Committee’s failure to discharge its duty to investigate the qualifications of judicial nominees –

¹ Enclosed, for your convenience, is CJA’s August 22, 1996 letter to the Twentieth Century Fund, with enclosures, and the Fund’s September 20, 1996 response, also with enclosures.

notwithstanding its self-promoting pretenses to the contrary – has been powerfully chronicled in the 1986 Common Cause study, Assembly-Line Approval – which made a list of salutary recommendations, most of which appear to be unimplemented today. Other studies, also with unimplemented salutary recommendations, have included the 1988 Report of the Twentieth Century Task Force on Judicial Selection, entitled Judicial Roulette, with a chapter entitled “*Senate Confirmation: A Rubber Stamp?*”, as well as the 1975 book by The Ralph Nader Congress Project, The Judiciary Committees, with a chapter entitled “*Judicial Nominations: Whither ‘Advice and Consent’?*”. These are important resources for the further hearings that your prefatory statement announced would be “examin[ing] in detail several other important issues related to the judicial nominating process*”. (at p. 4).

A copy of the full letter – to which The Century Foundation is an indicated recipient -- is enclosed. Evident from the letter’s detailed recitation of CJA’s *direct, first-hand* experience with the Senate Judiciary Committee is the continued relevance of Judicial Roulette’s recommendations for improving the process of Senate confirmation of lower court nominees, as likewise the recommendations in the studies by Common Cause and The Ralph Nader Congress Project.

Also enclosed are copies of CJA’s coverletters to the public officials who are listed as indicated recipients of CJA’s July 3, 2001 letter to Senator Schumer. By these coverletters, we have called upon such public officials to endorse our request, set forth at pages 16-18 of our letter to Senate Schumer, that his Court Subcommittee also hold hearings on judicial discipline and removal. As our coverletters point out, the threshold hearings that must be held are on the

* “In particular, your upcoming, as yet unscheduled, two hearings on: ‘(1) The proper role of the Senate in the judicial confirmation process. What does the Constitution mean by ‘advise and consent’ and historically how assertive has the Senate’s role been?’; and ‘(2) What affirmative burdens should nominees bear in the confirmation process to qualify themselves for life-time judicial appointments? The Senate process is criticized for being a search for disqualifications. We should examine whether the burden should be shifted to the nominees to explain their qualifications and views to justify why they would be valuable additions to the bench.’”

methodologically-flawed and dishonest 1993 Report of the National Commission on Judicial Discipline and Removal.

As discussed, the Twentieth Century Fund has also studied federal judicial discipline and removal, producing a 1989 report, The Good Judge, which Director Richard Leone described as “an ideal companion piece” to Judicial Roulette². The first – and overriding – recommendation in The Good Judge (at pp. 7-8) by the Twentieth Century Task Force on Federal Judicial Responsibility was for creation of an “auditing mechanism” within the federal judiciary. This was to be “an oversight committee” comprised of members of “the lay public, the bar, and the academy”, with “adequate resources to allow for an annual audit – independent of the staffs of the clerks of the courts, the Administrative Office of U.S. Courts, and the Federal Judicial Center”. The recommended “enabling legislation” was to give the “oversight committee” “complete access to all records” and “the full cooperation of all judicial officers and their agents.” The “oversight committee” was also to produce reports that would go beyond statistics by developing and elucidating caselaw standards for imposition of judicial discipline.

Two members of the Twentieth Century Fund Task Force on Federal Judicial Responsibility, its Chairman, A. Leo Levin, former Director of the Federal Judicial Center, and member Abner Mikva, then Circuit Judge of the Court of Appeals for the District of Columbia, testified in 1989 before the House Judiciary Committee about the value of such “oversight committee”, with Judge Mivka further testifying in 1992 before the National Commission on Judicial Discipline³.

Reacting to this significant recommendation, the 1993 Report of the National Commission *explicitly* claimed that its own

“studies and recommendations, *if implemented*, coupled with periodic reevaluations by the Judicial Conference and oversight by Congress, meet the needs to which the Task Force’s recommendation was addressed.” (National Commission’s

² See Forward to The Good Judge.

³ See House Judiciary Committee’s June 28, 1989 hearing: pp. 375-403; [reprinting of The Good Judge at pp. 554-682]; National Commission on Judicial Discipline and Removal’s May 15, 1992 hearing: pp. 250-269.

Report, at p. 127, emphasis added)

As CJA's coverletters highlight, the National Commission's most critical recommendations are NOT implemented. Indeed, it is now many, many years since CJA made known to the House Judiciary Committee, as well as to the federal judiciary, that the essential recommendations of the National Commission's 1993 Report that might have substituted for the "auditing mechanism" envisioned by The Good Judge have NOT been implemented. CJA's March 23, 1998 memorandum to the House Judiciary Committee (at pp. 3-4) -- which is Exhibit "N-3" to CJA's July 3, 2001 letter to Senate Schumer -- is *explicit* on the subject. The wilful non-response of the House Judiciary Committee and federal judiciary are chronicled in CJA's 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", which is Exhibit "O-1" to CJA's July 3, 2001 letter.

It is, therefore, appropriate that The Century Foundation -- and its Task Force members -- join in publicly endorsing CJA's request for congressional hearings on federal judicial discipline and removal so that the important "auditing mechanism" proposal envisioned by The Good Judge can be contrasted with the unimplemented critical recommendations of the National Commission's 1993 Report.


The vision of Edward Filene was to affect policy. "I want you to do more than find facts, I want you to get those facts out to the people." Getting those facts "out to the people" is a continuous process. Beyond sale and distribution of The Century Foundation's studies, it requires sustained advocacy based on those studies. Otherwise, the only weight those facts have is that of the paper on which they are written.

Over the years, CJA has struggled mightily to advance the salutary recommendations of Judicial Roulette and The Good Judge. We cannot, however, "move mountains" alone. Therefore, following your review of the enclosed materials, we would appreciate if you would invite us to a meeting so that, together, we can chart effective strategies for achieving those recommendations and the good-government goals that underlie them.

Thank you.

July 17, 2001

Yours for a quality judiciary,



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

Enclosures:

- (1) CJA's informational brochure
- (2) CJA's August 22, 1996 letter, with enclosures
- (3) Twentieth Century Fund's September 20, 1996 letter,
with enclosures
- (4) CJA's July 3, 2001 letter to Senator Charles Schumer
- (5) CJA's July 11, 2001 letter to Senate Majority/Minority Leaders
- (6) CJA's July 11, 2001 letter to Senate Judiciary Committee Members
- (7) CJA's July 14, 2001 letter to President George W. Bush
- (8) CJA's July 14, 2001 letter to Senator Hillary Rodham Clinton
- (9) CJA's July 9, 2001 letter to House Judiciary Committee Counsel

cc: Edwin Davis, Common Cause
Ralph Nader, Center for the Study of Responsive Law