

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

DATE: March 15, 2004

TO: Accredited U.S. Supreme Court reporters:
Linda Greenhouse, The New York Times (ligree@nytimes.com)
David Savage, The Los Angeles Times (david.savage@latimes.com)
Gina Holland, Associated Press (gholland@ap.org)
Charles Lane, The Washington Post (lanec@washpost.com)
Tony Mauro, Legal Times (tmauro@legaltimes.com)
Marcia Coyle, National Law Journal (mcoyle@amlaw.com)

FROM: Elena Ruth Sassower, Coordinator
Center for Judicial Accountability, Inc. (CJA)

RE: **BRINGING IN THE EDITORS TO REVIEW CJA's March 1st story proposal & March 3rd supplement:**
CJA's November 6, 1998 impeachment complaint against the Justices, pending *uninvestigated* at the House Judiciary Committee for over 5 years:
"an appropriate starting point for an *evidence-based* investigation into the Court's practices, policies, and procedures with respect to recusal – most importantly, investigation into the critical cert petition stage in cases where a party, *unaided by any media attention*, files a recusal application"

This follows up my March 3rd e-mail, stating I would "call each of you next Monday, unless I hear[d] from you sooner" with regard to CJA's March 1st story proposal and March 3rd supplement.

In the event you were wondering why I had not called last Monday, March 8th, it was because I was focusing my attention on generating yet another primary source document for the news story you are duty-bound to ultimately write. This latest primary source document is an Express Mail letter to Supreme Court Clerk William Suter, dated Friday, March 12th, for delivery to the Court today, Monday, the Ides of March. A copy is attached.

This March 12th letter – already posted on the homepage of CJA’s website, www.judgewatch.org – furnishes (at pp. 2-6) a scandalous “inside view” into how incompetently, dishonestly, and unprofessionally our nation’s most important Clerk’s office operates when, *absent media attention*, it receives correspondence of the nature and seriousness of CJA’s February 12th letters to Chief Justice Rehnquist and the Associate Justices. The letter requests Mr. Suter’s explanation and supervisory oversight. Additionally, it requests (at pp. 7-8) that he provide information as to the Court’s practices, policies, and procedures with respect to recusal – the same information as had been identified by CJA’s March 3rd supplement as essential to an *evidence-based* investigation.

With regard to such practices, policies, and procedures, the letter memorializes (at pp. 5-6) a conversation I had with the Clerk’s office on March 4th. In response to my question about its docketing practices with respect to applications for the Justices’ recusal, I was told that the policy has “never been well-defined”. The shocking explanation for why this should be so was initially that Michael Newdow’s application last fall to recuse Justice Scalia was the first time a party had made an application for a justice’s recusal. This was then altered to a claim that Mr. Newdow’s application was the first time a party’s recusal application had been granted – at least for a substantial number of years.

I will call you on Thursday, March 18th -- if I do not hear from you sooner. In the event you do not recognize ANY obligation to explore this explosive story, exposing a plethora of powerful, fully-documented stories about the worthlessness of “safeguards” for protecting the public from misconduct and corruption of our federal judiciary – including at the House Judiciary Committee -- please forward this memo to your news editors, with a request that they review CJA’s March 1st story proposal and March 3rd supplement posted on our homepage, along with the related documents, also posted, so that they may independently examine your news judgment and underlying conflicts of interest.

Thank you.

Attachment

cc: Michael Janofsky, [The New York Times](http://www.nytimes.com)
michaelj@nytimes.com

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Elena Ruth Sassower, Coordinator

BY EXPRESS MAIL

March 12, 2004

William K. Suter, Clerk
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: (1) Discharging your supervisory responsibilities so as to ensure elementary accountability and professionalism at the Clerk's office of the U.S. Supreme Court [pp. 1-6]; (2) Responding to basic informational inquires as to applications to recuse the Justices, judicial misconduct complaints against the Justices, etc. [pp. 1-2, 7-8].

Dear Mr. Suter:

It is now nearly 5-1/2 years since two extraordinary letters were addressed to you, particularizing conduct by staff at the Clerk's office that was both incomprehensible and grossly unprofessional and requesting information about applications to disqualify the Justices and about judicial misconduct complaints against them. These letters, dated October 14, 1998 and October 26, 1998¹ – to which you did not respond – were written in the context of the case *Doris L. Sassower v. Hon. Guy Mangano, et al.* (S.Ct. #98-106), then before the Court.

The October 14, 1998 letter was also an improvised judicial misconduct complaint against the Justices, based on their wilful failure to adjudicate a September 23, 1998 application for their disqualification and for disclosure pursuant to 28 U.S.C. §455, while summarily denying the *Sassower v. Mangano* cert petition. It – and the October 26, 1998 letter -- were reprinted in the appendix to the petition for rehearing therein to substantiate the single "Issue" presented on rehearing: "the Justices' official misconduct...ris[ing] to a level warranting impeachment" (at p. 2). Based on the rehearing petition, CJA filed a November 6, 1998 impeachment complaint against the Justices with the House Judiciary Committee – sending nine copies to

¹ These October 14, 1998 and October 26, 1998 letters – and the related correspondence hereinafter referred to, including the September 23, 1998 disqualification/disclosure application to the Justices -- are posted on CJA's website, www.judgewatch, where they are accessible via the panel, "Test Cases-Federal (Mangano)".

the Clerk's office under a November 6, 1998 coverletter to then Chief Deputy Clerk Francis Lorson for distribution to each of the nine Justices.

Now, almost 5-1/2 years later and in the context of that November 6, 1998 impeachment complaint, as yet *uninvestigated* by the House Judiciary Committee, we again bring to your attention incomprehensible and grossly unprofessional conduct by staff at the Clerk's office – in the event you are not already aware of it. Additionally, we reiterate our unresponded-to requests for the information sought by our October 14, 1998 and October 26, 1998 letters, which we now supplement with further information requests.

As to the latest example of incomprehensible and grossly unprofessional conduct by staff at the Clerk's office, I have been unable to obtain from the Clerk's office an explanation, let alone an apology, for its handling of a Federal Express package containing CJA's February 12, 2004 letter to Chief Justice Rehnquist and CJA's February 12, 2004 coverletter to the Associate Justices. These letters, each bearing the RE clause:

"The Supreme Court's impeachable repudiation of congressionally-imposed obligations of disqualification & disclosure under 28 U.S.C. §455 and disregard for the single recommendation addressed to it by the 1993 Report of the National Commission on Judicial Discipline and Removal that it consider establishing an internal mechanism to review judicial misconduct complaints against its Justices" (p. 1),

expressly invited the Justices' response to our showing, based on the November 6, 1998 impeachment complaint, that the Chief Justice's identical January 26, 2004 letters to Senators Leahy and Lieberman as to the Court's practices, policies, and procedures with respect to 28 U.S.C. §455 were false and deceitful.

Yet, the Clerk's office did NOT distribute CJA's important February 12, 2004 letters to the Justices so that they might evaluate their duty to Senators Leahy and Lieberman – and to Congressmen Waxman, Conyers, and Berman, who had authored correspondence based on Chief Justice's January 26, 2004 letters, including for a House Judiciary Committee hearing. Rather, our letters were returned by the Clerk's office under an incomprehensible February 17, 2004 coverletter, bearing your name and purportedly signed by "S. Elliott"². Such coverletter was NOT addressed to me, as author and signator of the February 12, 2004 letters, nor sent to CJA's address, identified by the letterhead of both letters. Rather, it was addressed and sent

² The signature consists of a generic squiggle.

to Doris L. Sassower at her home address³. As to its three-sentence content, under a RE clause, "Doris L. Sassower v. Guy Mangano, et al. No. 98-106", it was as follows:

"The enclosed petition for rehearing in the above case was postmarked February 12, 2004, and received in this office February 17, 2004. The papers are returned for the following reason: Rehearing was denied November 30, 1998. This case is considered closed and no further action can be taken."

Conspicuously absent was ANY mention of CJA's February 12, 2004 letters to the Justices – even as part of the unidentified "papers...returned" Little wonder – as NO ARGUMENT could possibly be made for not distributing these letters to the Justices. Indeed, the letters establish the deceit of the coverletter in pretending that the rehearing petition had been sent to the Court to obtain relief in *Sassower v. Mangano*. To the contrary, the rehearing petition was sent to the Court as part of CJA's November 6, 1998 impeachment complaint – and, indeed, only as a "convenience"⁴ to the Court, which already had both documents. Such "convenience" was to save the Justices the effort and delay of having to access from the *Sassower v. Mangano* file or their own records the evidentiary proof of their "complete trashing of 28 U.S.C. §455, ethical codes of conduct, and any notion of accountability"⁵ – as to which our February 12, 2004 letters asserted that we were not only inviting their response, but requesting that Congress secure their response,

"by subpoena if necessary, as part of the House Judiciary Committee's long-overdue investigation of CJA's November 6, 1998 impeachment complaint against the Justices. Such investigation must proceed forthwith."⁶

³ It would appear that Ms. Sassower's name and home address were taken from the November 6, 1998 coverletter to Francis Lorson which had transmitted CJA's November 6, 1998 impeachment complaint for distribution to the Justices – as the returned copy of this coverletter (to which had been clipped the impeachment complaint and rehearing petition) was altered by a penned-in circle in red-ink around Ms. Sassower's name and home address on the letterhead. A possibility arising from such inexplicable circling – and reinforced by the absence of any mention of CJA's February 12, 2004 letters to the Justices in the February 17th coverletter returning unidentified "papers" – is that the purported author of the coverletter, "S. Elliot", was, in fact, not shown those February 12, 2004 letters when she prepared the coverletter for mailing by someone else, who, thereafter, inserted the withheld letters into the package.

⁴ CJA's February 12, 2004 letter to Chief Justice Rehnquist, p. 2.

⁵ CJA's February 12, 2004 letter to Chief Justice Rehnquist, p. 5.

⁶ CJA's February 12, 2004 letter to Chief Justice Rehnquist, p. 7; CJA's February 12, 2004 letter to Associate Justices, p. 1.

What follows are my own efforts to investigate and secure an explanation for this incomprehensible, palpably dishonest coverletter – simultaneously exposing to view the unprofessional, unaccountable conduct of the Clerk's office staff.

On Tuesday, February 24th – the day following Doris Sassower's receipt of the incomprehensible February 17th coverletter, with the returned contents of CJA's Federal Express package -- I telephoned "S. Elliott" at the phone number typed in on the coverletter: "(202) 479-3025." From the voice mail greeting, it was clear that "S. Elliott" was a woman whose first name was "Sandy". I left a voice mail message for Ms. Elliott regarding her incomprehensible coverletter. It was then 10:20 a.m.

At 12:05 p.m., after waiting nearly two hours, I telephoned the general number for the Clerk's office (202-479-3011), inquiring as to Ms. Elliott's title and requesting to speak with her supervisor⁷. I was told that Ms. Elliott was a "case analyst" and that her supervisor was Jeffrey Atkins. I do not recall whether I was told this by Claudia Ritchey – or whether, because Mr. Atkins was not then available, I was passed on to Ms. Ritchey as an office supervisor⁸. In any event, I spoke with Ms. Ritchey at length and requested that she obtain a copy of Ms. Elliott's February 17th coverletter and compare it to CJA's February 12, 2004 letters to Chief Justice Rehnquist and the Associate Justices, which I told her were posted on the homepage of CJA's website, www.judgewatch.org. Ms. Ritchey stated she would review the letters from the website and relay my message to Mr. Atkins.

By 4:30 p.m., having received no call from Mr. Atkins – and eager to resend CJA's February 12, 2004 letters to the Court as soon as possible without having them again returned by the Clerk's office under some similarly incomprehensible coverletter -- I again telephoned (202-479-3011). I was put through to Mr. Atkins, who seemed completely "in the dark" as to my phone conversation four hours earlier with Ms. Ritchey. As a result, I was burdened with repeating to him the same facts as I had detailed to her. Mr. Atkins stated he would get back to me following his review of the situation.

⁷ At 6:40 a.m. yesterday, I dialed Ms. Elliott's number (202-479-3025) so as to again hear her voice mail message. This, because I was not certain whether it identified her title. To my surprise, Ms. Elliott picked up the phone. Ms. Elliott stated she had no recollection of this matter – and that I should direct any complaints to her supervisor, Jeffrey Atkins, whose number she gave me (202-479-3263). It seems obvious, however, that if Ms. Elliott has no recollection of this matter, despite my numerous phone calls of complaint to the Clerk's office from February 24th – March 4th regarding her handling of it (as hereinafter detailed), appropriate supervisory investigation was NOT undertaken. Such would have required Ms. Elliott to account for her incomprehensible February 17th coverletter – an accounting she surely should have been able to recall.

⁸ I have been told that Ms. Ritchey has supervisory responsibilities over correspondence, phones, and "front-line" matters. My attempts to obtain a more precise job title for her culminated in my calling Chief Deputy Clerk Chris Vasil (202-479-3027) at about 11:40 a.m. yesterday. He responded to such inquiry by putting me on "hold" – where I remained for at least five minutes until I finally hung up.

Six days later – on Monday, March 1st – with no return calls from Mr. Atkins, Ms. Elliott, Ms. Ritchey, or anyone else from the Clerk's office – I called again (202-479-3011). It was 9:30 a.m. and I believe I left a voice mail message for Mr. Atkins. At 11:50 a.m., I again telephoned, this time requesting to speak with Chris Vasil, on whose voice mail I left a message. I called Mr. Vasil again 3-1/2 hours later, at 3:10 p.m. (202-479-3027) – at which time he picked up the phone. Mr. Vasil, who, as Chief Deputy Clerk is your “second in command”, then replicated his conduct from 5-1/2 years ago when, as summarized by our October 26, 1998 letter to you (p. 3), he was Deputy Clerk and refused to identify whether he had received previous voice mail messages I had left for him. In any event, I proceeded to discuss with Mr. Vasil the pertinent facts pertaining to Ms. Elliott's incomprehensible coverletter and Mr. Atkins' failure, as her direct supervisor, to get back to me as to the status of his supervisory review, including with advice for resending the February 12, 2004 letters to the Court for delivery to the Justices. During our conversation, a call waiting signal came through and I asked Mr. Vasil to hold on for just a moment. I was back on the line within perhaps five seconds, but Mr. Vasil had already availed himself of the opportunity to hang up. In a fashion reminiscent of his conduct 5-1/2 years ago, also recounted by our October 26, 1998 letter, Mr. Vasil did NOT answer his phone upon my immediate call-back. Rather, his voice mail “kicked in”. As 5-1/2 years ago – so again – Mr. Vasil did not thereafter return the voice mail message I left for him.

The next day, Tuesday, March 2nd, at approximately 12:30 p.m., I again called the Clerk's office (202-479-3011), leaving a voice mail message for Mr. Atkins. He did not call back.

Two days later, on Thursday, March 4th, with no return calls from anyone at the Clerk's office, I telephoned Mr. Vasil (202-479-3027), leaving a voice mail message. It was then 11:40 a.m. and my message stated that if I did not hear back from him as to the status of his supervisory review, I would be calling you directly.

Roughly 3-1/2 hours later, with no return call from Mr. Vasil, I telephoned the Clerk's office at 3:05 p.m., requesting to speak with you. Katie, who identified herself as one of your assistants, took the call. I briefly chronicled for her the pertinent background history to my request for your direct supervisory oversight, but she informed me that you do not take telephone calls and that I should write you.

I then asked Katie about the docketing practices of the Clerk's office with respect to applications for the Justices' recusal. Katie put me on “hold” and a woman identifying herself as Claudia came on. I believe this to be Ms. Ritchey – as I have been informed that there is only one Claudia in the Clerk's office. In any event, Claudia stated to me that the policy with respect to recusal applications has “never been well-defined”. When I questioned her as to why this should be so, Claudia claimed that Michael Newdow's application last fall to recuse

Justice Scalia was the first time a party had made an application for a Justice's recusal. When I took exception and began referring to the September 23, 1998 recusal application in *Sassower v. Mangano*, Claudia asked, "Is this Ms. Sassower?" – and then purported that Mr. Newdow's recusal application was the first time a party's recusal application had been granted, at least during her years at the Court. She then hurriedly transferred my call to Mr. Atkins.

This March 4th phone conversation with Mr. Atkins was my first with him since our initial February 24th conversation. In response to my question as to why he had not gotten back to me, Mr. Atkins stated either that he had been intending to – or was just about to. I told Mr. Atkins that if that were the case, I would hang up and he could call me back, thereby sparing me the expense of our long-distance conversation. Mr. Atkins refused this simple courtesy. As I recall, Mr. Atkins did not explain or apologize for Ms. Elliott's incomprehensible February 17th coverletter. He did, however, tell me that I could mail CJA's February 12, 2004 letters to the Clerk's office for distribution to the Justices, acknowledging that he had read the letters – I believe from our website.

Enclosed, therefore, are the contents of the Federal Express package, originally sent to the Clerk's office on February 12, 2004 at a mailing cost to us of \$25 – and which we have now resent by Express Mail at a similarly substantial cost. The contents are enclosed in the same fashion as when we first sent them -- and as Ms. Elliott presumably found them:

(1) CJA's February 12, 2004 letter to Chief Justice Rehnquist⁹, bound with a rubberband around the enclosures indicated by that letter – along with a courtesy copy for the Chief Justice of CJA's February 12, 2004 coverletter to the Associate Justices; and

(2) eight separate envelopes, addressed to each of the Associate Justices, and each containing the February 12, 2004 coverletter to them, stapled to the February 12, 2004 letter to the Chief Justice.

We expect these two letters – to which we have now added copies of this instant letter -- will be promptly distributed to the Justices.

⁹ Typographical errors in the February 12, 2004 letter to the Chief Justice have been corrected and the replacement pages have been stapled to the original first page bearing a February 17, 2004 receipt stamp of the Clerk's office.

CJA also takes the opportunity of this letter to reiterate the requests for information sought by the October 14, 1998 and October 26, 1998 letters – expecting, of course, that your answers will be accurate to the present date. This includes your answers to the three specific inquiries set forth at page 2 of the October 26, 1998 letter as follows:

- “(1) the number of recusal applications, distributed to the Justices, but *not* docketed by the Clerk’s office because the Justices did *not* act on them;
- (2) the number of judicial misconduct complaints against the Justices and whether the complained-against Justices disposed of them by written order; and
- (3) the number of individuals who the Court has barred from *in forma pauperis* status in their petitions for writs of certiorari and extraordinary writs, their names, and/or file/citation number of Court’s orders.”

Finally, and following up on Justice Rehnquist’s vague, but suggestive assertion in his January 26, 2004 letters to Senators Leahy and Lieberman that “any party to a case may file a motion to recuse”, CJA requests information as to recusal applications made by parties – particularly at the critical cert stage.

As to successful recusal applications made by parties at the cert stage, please advise as to how many there have been since Congress passed the current 28 U.S.C. §455 in 1974. Does the Clerk’s office maintain a list of such successful recusal applications? If not, are these successful recusal applications entered on the dockets of the individual cases to which they relate so that their number might be compiled by a review of dockets? Are they permanently retained as part of the case file – and can they be requisitioned for examination as to their content?

As to unsuccessful recusal applications made by parties at the cert stage, please also advise as to how many there have been since Congress passed the current 28 U.S.C. §455 in 1974. What proportion of these unsuccessful recusal applications are denied in orders from the Justice(s), rather than simply not acted on, as with the September 23, 1998 disqualification/disclosure application underlying CJA’s *uninvestigated* November 6, 1998 impeachment complaint. What determines whether a Justice will not act on a recusal application, rather than deny it? Are both categories of unsuccessful recusal applications not docketed by the Clerk’s office – or is it just the not-acted-on applications? Are not-docketed applications preserved as part of the case file – or are they returned, as the Clerk’s office attempted to do with the September 23, 1998 disqualification/disclosure application? Certainly, unless the Clerk’s office maintains a list of these not-docketed recusal applications

March 12, 2004

-- indeed a list of all unsuccessful recusal applications -- their numbers cannot be gauged, nor their contents examined.

We await your expeditious response -- for which we thank you in advance.

Yours for a quality judiciary,



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

Enclosures: (1) your February 17, 2004 letter, purportedly signed by "S. Elliott"
(2) contents of original Express Mail package, mailed February 12, 2004

cc: Chief Justice William H. Rehnquist & Associate Justices
Clerk's Office Staff:
Chris Vasil, Chief Deputy Clerk
Richard Atkins, Supervisor
Claudia Ritchey, Supervisor
Sandy Elliott, Case Analyst
The Public & The Press