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BY FAX: 202-502-1144 (14 pages)  
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March 10, 2008

James C. Duff, Secretary, Judicial Conference of the United States &  
Director, Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
1 Columbus Circle, Room 7-425  
Washington, D.C. 20544

RE: Request for Clarification of Your March 7, 2008 Letter

Dear Mr. Duff:

Thank you for the courtesy of your March 7, 2008 letter, which I ask that you clarify.

You state that you have “received” a copy of the Center for Judicial Accountability’s March 6, 2008 letter to the Chief Justice. However, you do not state that you have read it or that you are responding to it – let alone that you have done so on behalf of the Chief Justice, to whom, additionally, you do not indicate you are furnishing a copy of your letter.

You refer to the proposed rules as having been “recommended after a period of public comment during which [our] concerns were expressed and considered by the Committee on Judicial Conduct and Disability”. However, you do not deny or dispute that the Committee is not free to propose rules which

“violate and affirmatively misrepresent the congressional statute they purport to implement<sup>[fn]</sup>, 28 U.S.C §§351-364, and do not comply with its requirement of ‘appropriate public notice and an opportunity for comment’ (§358), at least not in a meaningful, good-faith way.”

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\* The **Center for Judicial Accountability, Inc.** (CJA) is a national, nonpartisan, nonprofit citizens’ organization dedicated to ensuring that the processes of judicial selection and discipline are effective and meaningful.

Such is the first subject of our letter.

Nor do you deny or dispute that our March 6<sup>th</sup> letter identified specific violations and affirmative misrepresentations – requiring Judicial Conference disapproval of the proposed new rules based thereon. Instead, you state “The matter is now before the Judicial Conference at its March 2008 session.” This is ambiguous. By referring to “The matter”, do you mean the proposed new rules or the specific violations and affirmative misrepresentations summarized by our March 6<sup>th</sup> letter and elaborated upon by our accompanying Critique of the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980?

With respect to our Critique, your letter makes no reference to it. Did you not receive it from Deputy Assistant Director Wendy Jennis, to whom I hand-delivered the Critique, its accompanying Compendium of Exhibits, and three file folders of further documentary proof at 2:10 p.m. on Friday, March 7<sup>th</sup> – 3-1/2 hours before your letter was faxed to CJA’s number?

Presumably, it is Ms. Jennis to whom you refer when you state: “As you have been informed, you may communicate any continuing concerns directly to the members of the Judicial Conference at their courthouse offices. I understand that mailing addresses for those offices have been offered to you.”

What Ms. Jennis informed me – and this on Tuesday, March 4<sup>th</sup>, when I telephoned to confirm proper protocol – is that while a letter to the Chief Justice in his administrative capacity as head of the Judicial Conference is properly addressed to him c/o the Executive Secretariat of the Judicial Conference, rather than at the Supreme Court, the Executive Secretariat would not distribute the letter to the other 26 members of the Judicial Conference were I to express-mail or hand-deliver 26 copies to the Executive Secretariat for that purpose. Instead, I would have to mail the copies to each of these 26 members at their “courthouse offices”. This, notwithstanding Ms. Jennis agreed that due to the shortness of time before the March 11, 2008 Judicial Conference meeting, the mailed letters would probably not be received by the members’ “courthouse offices” and reviewed by them before departing for the meeting in Washington, D.C.

Consequently, CJA’s March 6<sup>th</sup> letter to the Chief Justice did not designate the members of the Judicial Conference as recipients and enclosed no copies for distribution to them. Rather, it simply requested the Chief Justice to “alert the Judicial Conference” to the specified violations and misrepresentations.

I trust Ms. Jennis also informed you that upon my delivering the original March 6<sup>th</sup> letter to her, at 2:10 p.m. on March 7<sup>th</sup>, with the Critique, Compendium of Exhibits, and three file

folders, I told her that I was, additionally, going to be delivering a duplicate of everything – except the three file folders – to Chief Justice Roberts at the Supreme Court. Indeed, I had asked her to kindly telephone the Chief Justice’s Administrative Assistant, Jeffrey P. Minear, at the Court, to say that I was en route to make such delivery.

I arrived at the Supreme Court before 2:30 p.m. The Court’s security detail telephoned Mr. Minear’s office to confirm that it was expecting the delivery. Thereafter, a member of the Chief Justice’s staff, Cara, came to the area where I was waiting and received from me, *in hand*, the letter, Critique, and Compendium of Exhibits, which I displayed for her.

In short, I would appreciate your advising as to who at the Judicial Conference and/or at the Supreme Court will not just be “receiv[ing]” the transmitted materials, but reviewing them, preliminarily, to their being channeled to the Chief Justice for his own personal review.

Based on the substantial and serious nature of the Critique, there must be findings of fact and conclusions of law. This, not only with respect to the violations and affirmative misrepresentations in the proposed rules for federal judicial discipline – the first subject of CJA’s March 6<sup>th</sup> letter – but as to the second, *to wit*, the fraudulence of the Report to the Chief Justice on the Implementation of the Judicial Conduct and Disability Act of 1980 – as to which, based on our Critique, our letter calls upon the Chief Justice:

“to take such appropriate steps as Congress empowered the Judicial Conference to take pursuant to 28 U.S.C. §331:

‘hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority.’”

Finally, if you have reviewed the Critique, you know that you suffer from profound self-interest, comparable, if not greater, to the self-interest of Sally P. Rider, a member of the Judicial Conduct and Disability Act Study Committee, summarized at pages 8-9 of the Critique.

Indeed, as Ms. Rider’s predecessor as Administrative Assistant to Chief Justice Rehnquist, a position you held from 1996-2000, you would have reasonably received, in 1998, the key documents referred to by the Critique and included in the Compendium of Exhibits. The first of these is CJA’s May 29, 1998 letter – annexed as Exhibit A to CJA’s November 6, 1998 impeachment complaint against Chief Justice Rehnquist and the Associate Justices (Exhibit D-2). As stated at footnote 3 of the impeachment complaint, the May 29, 1998 letter was hand-delivered to the Court’s Clerk, who personally accepted it for Chief Justice

Rehnquist as head of the Judicial Conference, along with the essential underlying documents: (1) CJA's March 10, 1998 memorandum to the House Judiciary Committee (Exhibit B); (2) CJA's March 23, 1998 memorandum to the House Judiciary Committee (Exhibit C-1); (3) CJA's 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 A-1); (4) CJA's November 24, 1998 letter to Jeffrey Barr, Assistant General Counsel for the Administrative Office (Exhibit C-2); and (5) CJA's April 24, 1994 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals (Exhibit I).

These documents, all part of the cert petition and supplemental brief in the 1998 case seeking the Court's mandatory review under its "power of supervision", or at minimum, disciplinary and criminal referrals of the subject lower federal court judges (Exhibits F, G), underlie: (1) the September 23, 1998 letter-application to the Justices for their disqualification and disclosure pursuant to 28 U.S.C. §455 (Exhibit E-2); and (2) the October 14, 1998 improvised misconduct complaint against the Justices (Exhibit E-3).

These two further documents; as well as CJA's culminating November 6, 1998 impeachment complaint (Exhibit D-2, E-1), would, likewise, have reasonably been forwarded to you, as Chief Justice Rehnquist's Administrative Assistant, consistent with the duties of that position.<sup>1</sup>

As stated at the outset of the Critique:

"Investigation of the impeachment complaint – beginning with the particulars set forth by CJA's March 10 and March 23, 1998 memoranda to the House Judiciary Committee, referred to therein – would suffice to discredit the Breyer Committee Report, totally." (p. 3, underlining in the original).

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<sup>1</sup> Reflecting the duties of the Chief Justice's Administrative Assistant is the Supreme Court's April 14, 2006 press release announcing Mr. Minear's appointment:

"The administrative assistant position was created by statute in 1972. The administrative assistant serves as the Court's chief of staff and aids the Chief Justice in his overall management of the Court, provides research in support of the Chief Judge's public addresses and statements, and monitors developments in the field of judicial administration and court reform. The administrative assistant also assists the Chief Justice with his other statutory responsibilities as head of the Third Branch of government. These include the Chief Justice's role as chairman of the Judicial Conference of the United States, chairman of the board of the Federal Judicial Center, and chancellor of the Smithsonian Institution."

Consequently, please confirm that you will be recusing yourself from any participation in, or determination of, this matter, consistent with applicable rules governing conflict of interest.

We look forward to your response – one faithful to your pledge, upon being appointed by Chief Justice Roberts to be Director of the Administrative Office of the United States Courts, “We’re going to be the most responsive and respected office in the federal government”, as quoted by the press.<sup>2</sup>

Yours for a quality judiciary,



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

P.S. After faxing and hand-delivering CJA’s March 6, 2008 letter to the Chief Justice, I noticed minor typographical errors. Enclosed is a superseding letter, making such corrections. Apologies for any inconvenience.

cc: Jeffrey P. Minear, Administrative Assistant to Chief Justice Roberts  
The Public & The Press

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<sup>2</sup> “Lawyer to Head U.S. Courts Office: Roberts Hails Change as ‘Fresh Start’ for Hill and Judiciary”, Washington Post, April 21, 2006, as reported by Greg Stohr, Bloomberg News.