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MEMORANDUM

TO: HOUSE JUDICIARY COMMITTEE CHAIRMAN HENRY J. HYDE
AND HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: ELENA RUTH SASSOWER, COORDINATOR
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.

RE: H.R. 1252 (JUDICIAL REFORM ACT OF 1997)

DATE: MARCH 23, 1998

This Memorandum follows up and reinforces the serious charges made in our March 10, 1998 Memorandum: that the Judicial Conference's opposition to Section 4 and 6 of H.R. 1252 rests on knowing deceit as to the adequacy of 28 U.S.C. §372(c), §144, and §455 and that Professor Stephen Burbank's testimony before this Committee at its May 14, 1997 hearing on H.R. 1252 was "varyingly false, misleading, and uninformed" as to those key sections

The final paragraph of our March 10th Memorandum stated that we would promptly forward to the House Judiciary Committee copies of the evidentiary proof which we had long ago provided to the Administrative Office of the United States Courts -- proof that §372(c), §144, and §455 are "empty shells", which we had requested be presented to the appropriate committees of the Judicial Conference for action. On March 18th, with the enormous job of duplication completed, CJA transmitted to the Republican Majority and the Democratic Minority separate copies of the file of our 2-1/2 year correspondence with the Administrative Office, spanning from July 20, 1995 to March 10, 1998 -- the date of CJA's Memorandum. Such transmittal, by priority mail, should have already arrived.

We had planned to send Professor Stephen Burbank an *identical* file so that he could re-evaluate his May 14th testimony based on the evidentiary materials to which our Memorandum referred. This included his articulated view that the U.S. Supreme Court's decision in *U.S. v. Liteky*, 510 U.S. 540, 114 S.Ct. 1147 (1994), resolved concerns about the recusal statutes (5/14/97 Tr. 60, 65). However, Professor Burbank's response to our March 13th letter (Exhibit "A") requesting that he inform us if he did not wish to receive those materials was to do just that. By e-mail message, he notified us that he not only did not wish to receive them, but had no intention to review them (Exhibit "B"). As pointed out in our March 16th fax to the House Judiciary Committee, with a copy to Professor Burbank (Exhibit "C"), Professor Burbank's refusal to examine these primary source materials does

Exhibit C-1

not thereby relieve him of his obligation -- as a former member of the National Commission on Judicial Discipline and Removal -- to refute, *if he can*, our critique of the National Commission's methodology as "flawed and dishonest" and our analysis of §372(c) and the issue of "merits-relatedness", as set forth in "*Without Merit: The Empty Promise of Judicial Discipline*" [Long Term View (Massachusetts School of Law), Vol. 4, No. 1, summer 1997] -- annexed to our March 10th Memorandum. That analysis critically quotes from Chapter 5, of which Professor Burbank acknowledged himself to be the "principal author" in his May 14th testimony (Tr. 58).

The most obvious forum for Professor Burbank to defend the National Commission's Report and its study of §372(c) -- and for CJA to present to this Committee the significance of the transmitted evidentiary proof in demonstrating that the federal judiciary's unwillingness to "police itself" reaches its upper echelons, namely, the Administrative Office and Judicial Conference -- would be at a hearing on the National Commission's final Report. To date, 4-½ years after the August 1993 Report was issued, there has been no such hearing.

It was in the specific context of H.R. 1252 and the May 14th hearing at which Committee members voiced unfamiliarity with the National Commission' Report[1] that the ABA Commission on Separation of Powers and Judicial Independence made an *explicit* recommendation:

> "Congress should hold hearings on and consider appropriate responses to the 1993 Report of the National Commission on Judicial Discipline and Removal. That process should be completed before Congress considers any proposals for additional legislation or constitutional amendments in the area of judicial discipline and removal." [ABA Report, at 59 (July 4, 1997)]

Sitting as a member of the ABA Commission was none other than Robert Kastenmeier, former chairman of the courts subcommittee and the National Commission's Chairman. In making such recommendation, the ABA Commission plainly believed that familiarity with the National Commission's Report would discourage Congress from modifying §372(c)[2]. In fact, a hearing will

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[1] Congresswoman Zoe Lofgren: "...frankly, I didn't know there had been a report in 1993 until this morning, either. I look forward to reading it." (Tr. 104); Congressman William Delahunt: "I mean, I'm totally unfamiliar with it. I'm not trying to be disingenuous here. I have never even heard of it until very recently." (Tr. 108).

[2] The ABA submitted a written statement from its then President, N. Lee Cooper, in connection with the May 14, 1997 hearing on H.R. 1252. As to Section 4, President Cooper stated that the ABA "has no policy addressing 'venue' considerations directly", but has a "policy supporting the [1980] Act in principle". President Cooper then relied on the National Commission's study of the Act, which he called "rigorous", to tout the "informal resolutions" facilitated by in-Circuit handling of §372(c) complaints. As to Section 6, President Cooper expressed support "based on policy adopted in 1980". (5/14/97 Tr. 134-5, 136-137).

have the opposite effect if -- as pointed out by CJA's January 26, 1998 letter to ABA President Jerome Shestack[3] -- Congress has in front of it not the rhetorical platitudes that fill the Report of the ABA Commission and that of the National Commission, but the kind of concrete evidence of dysfunction and corruption that we transmitted to the Administrative Office -- copies of which we have now provided this Committee.

Of course, the courts subcommittee did hold a hearing on the National Commission's draft Report -- on July 1, 1993. At that hearing, the Judicial Conference was represented by U.S. District Judge John F. Gerry, Chairman of its Executive Committee of the Judicial Conference. In his written statement, Chairman Gerry assured the subcommittee that the Judicial Conference would take "appropriate action" on the National Commission's recommendations and singled out that:

> "One initial step may well be for the Conference to look into recommendations made on page 128 of the [draft] report for a review of the Conference's own committee structure in the disciplinary and ethics area..." [Tr. at 44]

The recommendations to which Chairman was referring were preserved in the final Report with only grammatical changes:

> "...the Commission believes that the judiciary would be well served by a standing committee of the Judicial Conference to monitor and periodically evaluate experience under the 1980 Act and other formal and informal mechanisms for dealing with problems of judicial misconduct and disability. Although making no specific recommendation in that regard, the Commission did note the current dispersion of authority regarding judicial ethics and judicial misconduct and disability among a variety of Conference committees and the lack of any group responsible for coordinating the collection and analysis of relevant data and the development of policy proposals.
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> Since 1991 the Conference's Committee to Review Circuit Council Conduct and Disability Orders, in addition to its statutory review functions under the 1980 Act, has been assigned the duty to monitor and report on judicial discipline legislation, to serve as liaison and clearinghouse for the circuits on their experience with the Illustrative Rules, and to make recommendations to the Conference on desirable legislative and rule changes. The Committee currently consists of two former circuit chief judges and two former district court judges. It is not clear whether the statutory responsibilities or the composition of that committee would make it the ideal vehicle for an even broader charge. In any event, any such group should include a substantial

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[3] A copy of CJA's letter to President Shestack -- to which the House Judiciary Commitee is an indicated recipient -- is contained in the purple file folder, marked "CJA's 1/27/98 ltr to Barr". *See* pp. 6-8.

> representation of district judges as well as of (current or former) circuit chief judges and, as on some other Conference committees, lawyers who are not judges could make a useful contribution." [Final Report, at 126]

The next sentence in Chapter 5 of the National Commission's Reports, both draft and final, goes on to mention a recommendation of the Twentieth Century Task Force on Federal Judicial Responsibility that "the Judicial Conference establish a representative oversight committee to review experience under the 1980 Act". Without providing the details of the Task Force's recommendation, the Reports concluded:

> "This [National] Commission's 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." [Final Report, at 127]

In fact, only the most scrupulous follow-through by the federal judiciary could have met such need -- since the Task Force's recommendation was *extraordinary*. The details were presented to the National Commission at its May 15, 1992 hearing by U.S. Circuit Judge Abner Mikva, a Task Force member who was a former member of the courts subcommittee[4]:

> "...a committee appointed under the authority of the United States Judicial Conference which would include among its members judges, lawyers, and non-lawyers. And this committee would be empowered to examine all the records of the disciplinary complaints filed in the federal courts, the supporting materials, and the disposition of the complaint. And it would be charged with the responsibility of making an annual report to the appropriate congressional committees concerning the state of enforcement of the legislation, concerning judicial discipline within the federal system..." [Hearings of the National Commission, at 252]

Such proposal had previously been presented by Judge Mikva, almost *verbatim*, to the courts subcommittee at its June 28, 1989 hearing on the bill that established the National Commission. In his written statement, offered jointly with the Task Force's Chairman, Professor A. Leo Levin[5], it had been emphasized that:

> ...such an oversight committee should be quite distinct from the committee of the Judicial Conference charged with reviewing judicial council orders. The latter has an

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[4] The Twentieth Century Task Force also included a current member of the courts subcommittee, Congressman Barney Frank, among its eleven members.

[5] Professor Levin teaches at the same law school as Professor Burbank: the Law School of the University of Pennsylvania.

> operational function; it is charged with decisionmaking in the individual case. The former has an oversight function and the two are not compatible." [6/28/89 Tr. 392-395]

Thus, the Task Force's proposal was for an independent mechanism to "audit" on an unrestricted and on-going basis, the actual records of §372(c) complaints by a membership that included lay persons. This was far different from -- and vastly superior to -- the very restrictive, one-time examination done by the National Commission, where only court-connected consultants were permitted access for review of what was deemed a "cross-section of §372(c) records [*See "Without Merit: The Empty Promise of Judicial Discipline"*, pp. 93-94]. Moreover, the oversight commission was to have an important role in "creating a body of precedent that could prove useful in the administration of our system of judicial discipline" [6/28/89 Tr. 394-395; Hearings of National Commission 5/15/92 Tr. 253].

This Committee should be aware that notwithstanding Judge Gerry recognized that the National Commission's views on structural change within the Judicial Conference amounted to a recommendation, there has been *no* change in the Judicial Conference's committee structure dealing with ethics and discipline issues[6]. Moreover, *if* the Judicial Conference has given its Committee to Review Circuit Council Conduct and Disability Orders a "broader charge" -- the advisability of which was unclear to the National Commission -- the recommended expansion of the Committee's membership has *not* occurred[7]. Nor are there any "lawyers who are not judges" among its membership, yet another recommendation of the National Commission.

The fact that as of this date -- almost five years after the National Commission's recommendations (at 107-9) that the Circuits develop case law precedent, interpreting the §372(c) statute -- a recommendation endorsed by the Judicial Conference in 1994 -- much as it had endorsed such case law development in 1986 -- the Circuits have still not generated case law on §372(c) -- only reinforces that the Judicial Conference has failed to exercise meaningful oversight over how §372(c) is being implemented. As pointed out by CJA's article (p. 95), the federal judiciary is deliberately failing to create case law so as to keep the "merits-related" category broad and undefined and thereby dump -- in knee jerk fashion -- virtually every §372(c) complaint as "merits-related".

Since Professor Burbank asserted at the May 14th hearing on H.R. 1252 that the Judicial Conference had taken the National Commission's Report "very seriously" and had addressed "most of the problems" and its "recommendations to the judiciary" -- in the process throwing in unfavorable comparisons with Congress' response (5/14/97 Tr. 56, 59) -- he should be called upon to assess the significance of the Judicial Conference's failure to follow-through in revising its committee structure

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[6] We have been unable to ascertain how much money, if any, of the federal judiciary's $3,000,000,000 budget is earmarked for oversight of §372(c).

[7] *If* it has been expanded, it is by a single judicial member

for ethics and disciplinary matters, as recommended by the National Commission Chapter 5 -- and its failure to develop case law to resolve the "substantive ambiguity" of the 1980 Act -- also recommended by the National Commission's Chapter 5. And he should explain why Congress should be satisfied in relying on an increasingly "stale" National Commission Report from 1993, rather than annual reports of an oversight committee of the Judicial Conference, such as endorsed by the Twentieth Century Task Force. In Professor Burbank's words "...there is even less basis for concern about the adequacy of the existing system today than there was before the Commission was established." (5/14/97 Tr. 56, 59).

The Judicial Conference's disinterest and disdain in providing meaningful oversight over the federal judiciary's implementation of §372(c) in the aftermath of the National Commission is *empirically* demonstrated by the file of CJA's 2-1/2 year correspondence with the Administrative Office -- in the person of Jeffrey Barr, its Assistant General Counsel[8]. Mr. Barr is staff counsel to the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders and, according to him, the *only one* at the Administrative Office handling §372(c) issues[9]. This is in addition to his other work responsibilities, to which Mr. Barr gives priority. Before coming to the upper ranks of the Administrative Office, Mr. Barr was one of the two court-connected consultants to the National Commission, which the federal judiciary permitted to examine a supposed cross-section of §372(c) complaints. It is to Mr. Barr that CJA's article refers (pp. 96-97) when it states that presumably the federal judiciary was well pleased by his consultants' study when it promoted him to the Administrative Office.

CJA's letters to Mr. Barr are organized in separate file folders, together with their exhibits and enclosures. The initial 1995 letters are in MANILLA FILE FOLDERS and, with one exception[10], did not request Mr. Barr to bring them to the attention of the Committee to Review Circuit Council Conduct and Disability Orders. By contrast, CJA's 1996 letters, in RED FILE FOLDERS, requested Mr. Barr to present them to that Committee. This was because of the serious issues relating to the Second Circuit's dismissal of our first §372(c) complaint by an order which was dishonest, in addition to being non-conforming with the Judicial Conference's endorsed recommendation of the National Commission that dismissal orders be reasoned, non-conclusory, and, where appropriate, develop case law precedent. The background to that §372(c) complaint -- and Mr. Barr's failure to present it to the Committee -- are described at pages 95-97 of our article. As to CJA's 1997 and 1998 letters, in PURPLE FILE FOLDERS, which transmitted two additional §372(c) complaints and the full record

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[8] The only exception is CJA's final March 10, 1998 letter, which is *also* addressed to William Burchill, the Administrative Office's General Counsel.

[9] *See* CJA's 1/27/98 ltr to Mr. Barr, p. 2

[10] *See* CJA's 7/20/95 ltr to Mr. Barr, p. 1, relative to the Second Circuit's non-compliance with filing requirements for §372(c) dismissal orders, with its suggestion that Circuits inventory and certify dismissal orders sent to the Federal Judicial Center.

of the case from which they emerged, our request to Mr. Barr was that they be presented to "appropriate persons, committees, and offices in the federal judiciary" empowered to take action based on the record showing "the corruption of the judicial process by two levels of the federal judiciary, which have flouted federal disqualification statutes and the Judicial Conference's own Code of Judicial Conduct, based on the ABA Code -- as if they do not exist." (CJA's 11/24/97 ltr, p. 2)

As reflected by our correspondence, Mr. Barr's response to the shocking evidentiary proof transmitted by those letters that the Second Circuit was subverting §372(c), §144, and §455 -- as well as the judicial process itself -- was to deny their seriousness and to refuse to channel them to the Judicial Conference [*See*, in particular, CJA's 9/20/96 ltr; 11/24/97 ltr; 1/27/98 ltr; 2/27/98 ltr]. Meanwhile, the Judicial Conference was opposing Sections 4 and 6 of H.R. 1252 based on its claims as to the efficacy of those sections and the judicial process. Such dishonesty and duplicity apparently meets with the approval of William Burchill, Mr. Barr's superior, who has failed to return our telephone messages or respond to our March 10, 1998 letter, even to the extent of informing us as to what is happening with those evidentiary materials.

Although chronological review of CJA's one-sided correspondence would provide the clearest and most comprehensive picture of the mockery that the Administrative Office/Judicial Conference has been making of its responsibility to oversee federal judicial discipline, the most significant letter for you to commence your review is the first purple folder containing CJA's November 24, 1997 letter to Mr. Barr. The materials transmitted by that letter -- the full record in *Sassower v. Mangano, et al.* and the two §372(c) complaints based thereon -- are in three BROWN ACCORDION FOLDERS, marked "THE APPEAL", "APPELLATE CASE MANAGEMENT PHASE", and "POST-APPEAL PROCEEDINGS". **The importance of your review of *Sassower v. Mangano* cannot be overemphasized: both for purposes of examining the federal recusal statutes, §144 and §455, and the disciplinary statute, §372(c). The case involves no less than six recusal applications and generated two §372(c)complaints, each with recusal applications[11].**

As reflected by the appellate Brief in *Sassower v. Mangano*, the SOLE issue presented on appeal was the "pervasive bias" of the district judge[12], including his denial of a recusal motion pursuant to §144 and §455 (#1) and of a reargument, reconsideration, and renewal motion based thereon (#2). The sufficiency and timeliness of those motions -- and the applicability of the Supreme Court's decision

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[11] Our intended petition for review to the Second Circuit Judicial Council will include a further application for recusal/transfer.

[12] The subcommittee should have particular interest in the district judge whose fraudulent conduct is here at issue, since he is none other than U.S. District Court Judge John Sprizzo of the Southern District of New York -- the same Judge Sprizzo whose announced disregard of law in the case involving abortion protesters was the subject of a considerable concern and comment at the court subcommittee's May 15, 1997 hearing on judicial misconduct and discipline (Tr. 3, 9-10, 33-34, 36, 38, 40, 50, 54, 85).

in *Liteky*, *supra* -- are discussed in Point I of the Argument section of the Brief (at pp. 31-37). Such argument -- as well as every other argument made in Appellant's Brief -- together with Appellant's meticulously-documented showing that the district judge's decision is a knowing and deliberate fraud -- were completely undenied by Appellees, a fact highlighted by Appellant's Reply Brief [*See* brown accordion folder, "THE APPEAL"]. Nonetheless, the three-judge appellate panel did *not* adjudicate the evidentiarily-established, legally-supported bias issue. Instead, it rendered a no-citation, not-for publication Summary Order of affirmance, which *never* cited the record once, *expressly* did not address the district judge's dispositions on *any* of the motion submissions before him (including the recusal/reargument motions), and purported to "affirm" the judgment by its own *sua sponte* invocation of the *Rooker-Feldman* doctrine -- a doctrine shown to be inapplicable to the material pleaded allegations of Appellant's Verified Complaint, ALL of which the Circuit panel purposefully omitted from its Summary Order.

This was highlighted by Appellant's Petition for Rehearing with Suggestion for Rehearing *In Banc*, as was the fact that the appellate panel also did *not* address -- or even identify -- the issue of its own bias, which had been the subject of a recusal application at oral argument (#3) [*See* brown accordion file: "POST-APPEAL PROCEEDINGS"]. Such application reiterated a prior motion Appellant had made -- even before the appellate panel was assigned -- to transfer the appeal to another Circuit by reason of the Circuit's bias (#4). That fact-specific motion had been denied *without* reasons by a different panel, presided over by a judge, whose disqualification for actual and apparent bias had been the subject of an affidavit objection (#5) [*See* brown accordion file: "APPELLATE CASE MANAGEMENT PHASE"].

Incorporated by reference in Appellant's Petition for Rehearing with Suggestion for Rehearing *In Banc* were Apellant's post-appeal motion pursuant to §455 for recusal and transfer (#6) -- which combined a motion to vacate for fraud the appellate panel's Summary Order and the "affirmed" judgment of the district judge -- as well as her two §372(c) judicial misconduct complaints: one against the district judge based on his failure to recuse himself and demonstrated *actual* bias and the second against the appellate panel, likewise for failing to recuse itself and its demonstrated *actual* bias. These documents juxtaposed for the Circuit either a judicial or disciplinary remedy to the misconduct of two levels of the federal judiciary that the Petition for Rehearing summarized.

The appellate panel's response was to deny, *without reasons*, Appellant's fact-specific, fully-documented recusal/vacatur for fraud motion. Similarly, *without* reasons, it denied her Petition for Rehearing and, together with the Circuit's other judges, did not request a vote on Appellant's Suggestion for Rehearing *In Banc*. Thereafter, Appellant's §372(c) complaints were dumped as "merits-related" in a dishonest and conclusory order. Such dismissal was by the Second Circuit's Chief Judge, who failed to address -- or identify -- Appellant's contention that he and the Circuit were disqualified for bias and self-interest from adjudicating the complaints, which had to be transferred to another Circuit.

The Second Circuit's subversion of the judicial/appellate/disciplinary processes, reflected by *Sassower v. Mangano*, is shocking in its brazenness -- and especially when considering that the Circuit was on notice of the transcending significance of the case, which *expressly* raised a challenge:

> "whether -- and to what extent -- appellate review and 'peer disapproval' are 'fundamental checks' of judicial misconduct, as claimed by the National Commission on Judicial Discipline and Removal in its 1993 Report -- and whether a remedy for such judicial misconduct exists under 28 U.S.C. §372(c). This Circuit's answer will demonstrate whether judicial discipline should be reposed, as it presently is, in the Circuit." (Petition for Rehearing with Suggestion for Rehearing *In Banc*, p. 1)

Indeed, on the very first page of the Petition for Rehearing with Suggestion for Rehearing *In Banc*, as a footnote to the above-quoted excerpt, appeared the following:

> "This Circuit's answer will be part of a formal presentation by the Center for Judicial Accountability, Inc. to the House Judiciary Committee to remove federal judicial discipline from the federal judiciary, as described in "*Without Merit: The Empty Promise of Judicial Discipline*", by E.R. Sassower, Massachusetts School of Law: The Long Term View, Vol. 4, No. 1, pp. 90-97. (Annexed as Exhibit "A" to Appellant's separately-filed recusal/vacatur motion, See p. 15 infra.)" [*See* brown accordion file: "POST-APPEAL PROCEEDINGS"]

The Second Circuit's continued misconduct, in the face of such notice, set forth in a Petition for Rehearing with Suggestion for Rehearing *In Banc* -- incorporating a fully-documented recusal/vacatur for fraud motion and §372(c) misconduct complaints -- makes plaiin that it believes that Congress will not undertake the "vigorous oversight" it promised when it passed the 1980 Act -- oversight which the National Commission recommended when it failed to endorse the oversight committee proposed by the Twentieth Century Task Force. As our correspondence with Mr. Barr reflects, oversight by the Judicial Conference is non-existent.

Sassower v. Mangano is stark evidence to shatter the confidence of Committee members, such as Congressman Delahunt, who opined at the May 15, 1997 hearing on judicial misconduct and discipline:

> "Fortunately, there are institutional safeguards that help the system correct itself. That is what appeals and appellate courts are for... For cases of genuine judicial misconduct, there are ample remedies available..." (at 21)

That is what the Judicial Conference would like the Committee to believe based on vague and non-verifiable claims, for which it finds a chorus in those like Professor Burbank and the American Bar Association, who seek to share in its power and prestige. Fortunately, CJA believes in the power of empirical evidence.

As reflected by CJA's transmitted correspondence, the case of *Sassower v. Field* also empirically proves the corruption of judicial, appellate, and disciplinary processes. Indeed, *Sassower v. Field* is especially noteworthy because it was presented to the National Commission on Judicial Discipline and Removal under a July 14, 1993 letter[13], as documentarily establishing not only the failure of the appellate process and "peer disapproval", heralded by the National Commission's draft Report, but the legitimacy of fears of judicial retaliation by those who would seek to complain about judges. Thereafter, in a July 22, 1993 letter (Exhibit "D"), the National Commission was *expressly* requested to designate the case as "the convincing demonstration" of the inadequacy of the 1980 Act *if* the judicial misconduct arising in that case was not cognizable under §372(c). As set forth in our article (p. 95), "the Commission refused to answer" that question.

The House Judiciary Committee already has a plethora of correspondence from us about *Sassower v.* Field, beginning with our initial June 9, 1993 letter to it (Exhibit "E"). That letter transmitted the appellate Briefs and appendices in the Second Circuit and the U.S. Supreme Court[14] so as to enable this Committee to verify how a district judge's retaliatory decision -- shown on appeal to be factually-fabricated and legally baseless -- was affirmed by a fraudulent Second Circuit decision, which, *without* citing the record once or identifying a single one of the Appellants' arguments, upheld, by a *sua sponte* invocation of "inherent power", a wholly arbitrary and factually unsupported $100,000 sanctions award against civil rights plaintiffs, in favor of fully-insured defendants, to whom it was a windfall double recovery, and who had engaged in a strategem of discovery misconduct and fraud -- as particularized by Appellants' Rule 60(b)(3) motion to vacate for fraud -- a motion which was fully-documented and uncontroverted.

As highlighted by CJA's article (p. 96), our §372(c) complaint deriving from that case was filed following a February 1996 meeting with House Judiciary counsel[15], who understood that if the Second Circuit dismissed it as "merits-related", the onus would fall to the House Judiciary Committee to undertake an impeachment investigation[16]. **Judges who, for ulterior purposes, render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in**

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[13] *See* CJA's 7/20/95 ltr to Mr. Barr, Exhibit "B".

[14] *See especially*, Appellant's Supplemental Petition for Rehearing in the U.S. Supreme Court, which was based on the Court's granting of certiorari to *Liteky* [copy enclosed with CJA's 9/20/96 ltr to Barr]

[15] CJA's March 28, 1996 letter to Tom Mooney -- then and now this Committee's Chief Counsel -- is annexed (Exhibit "F").

[16] The §372(c) complaint is contained in the red file folder marked "CJA's 6/7/96 ltr to Barr". The substantiating Supreme Court documents and Petition for Rehearing with Suggestion for Rehearing *En Banc* in the Second Circuit, which were part of that §372(c) complaint, are contained in the red file folder marked "CJA's 9/20/96 ltr to Barr."

impeachable conduct. If the Judicial Conference -- or Professor Burbank -- or the ABA disagree with this straightforward statement, they should provide the House Judiciary Committee with a rebuttal.

Based on the *readily-verifiable* evidentiary record in the House Judiciary Committee's possession of outright fraud by the district and circuit judges in *Sassower v. Mangano* and *Sassower v. Field* -- a record that is meticulously-documented, uncontroverted, and incontrovertible -- those judges should be among the first to be so-investigated. Again, if the Judicial Conference, Professor Burbank, or the ABA disagree, let them provide a rebuttal, addressed to the evidence.

The words of Congressman Bob Barr at the May 15, 1997 hearing on judicial misconduct and discipline are a fitting close. He hoped for what every American has a right to expect of this Committee:

> "...the possibility of looking at some of the terminology that is used in our constitutions, such as 'good behavior' and looking at perhaps defining that, trying to come to grips with, What does that mean? We know it doesn't mean 'bad behavior,' but beyond that, what does it mean? And I don't think we should be at all afraid to start thinking about these things." (at p. 7)

The evidentiary materials transmitted to this Committee -- and the analysis and discussion they must engender -- will lead to a clearer definition of what is -- and is not -- "good behavior": an essential prerequisite to revamping §372(c) and revitalizing this Committee's capacity to impeach misbehaving judges.

Elena Ruth Sassower

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

cc: Judicial Conference of the United States
c/o Administrative Office of the United States Courts
ATT: William Burchill, General Counsel
Jeffrey Barr, Assistant General Counsel
ATT: Art White, Deputy Assistant Director
Office of Legislative Affairs
Professor Stephen B. Burbank
Jerome Shestack, President, American Bar Association