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July 9, 2001

Sam Garg, Minority Counsel  
House Judiciary Committee  
B-351C Rayburn House Office Building  
Washington, D.C. 20515

- RE:
- (1) Whereabouts of the documentary materials supplied to the Courts Subcommittee by CJA in substantiation of its Statement for inclusion in the record of the Subcommittee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary";
  - (2) CJA's request for hearings on federal judicial discipline and removal, including on the 1993 Report of the National Commission on Judicial Discipline and Removal;
  - (3) CJA's on-going request for access to judicial misconduct/impeachment complaints, received by the House Judiciary Committee – and *publicly-accessible* according to the National Commission's 1993 Report (at p. 35)

Dear Mr. Garg:

Thank you for your return call, responding to my July 5<sup>th</sup> phone message (202-225-6906). I have since received a return call from Blaine Merritt, Majority Counsel to the House Judiciary Committee's Courts Subcommittee, for whom I also left a phone message on July 5<sup>th</sup> and again earlier today (202-225-5741).

As discussed, last week, in connection with a letter I was preparing for Senator Charles Schumer, Chairman of the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts, I telephoned Joe McDonald (202-225-0408), the House Judiciary Committee's Publications Clerk. This, to verify that a written Statement that the Center for Judicial Accountability, Inc. (CJA) had submitted to the House Judiciary Committee for inclusion in the record of its June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary" – *at which CJA had NOT been permitted to testify* – had

*Exhibit C-1*

been printed in the volume of that hearing. After checking that volume, Mr. McDonald stated that CJA's Statement was NOT included.

Enclosed is a copy of CJA's aforesaid written Statement, as well as the coversheet to the Compendium of documents substantiating the Statement.

Also enclosed is CJA's June 19, 1998 fax to the Republican and Democratic sides of the Courts Subcommittee, as well as to then Chief of Staff/General Counsel Tom Mooney, requesting that if there was any problem in including CJA's document-supported Statement in the record that CJA be immediately informed. We never received any such notification.

Copies of these three documents have now been provided to Senator Schumer, as Exhibits "O-1", O-2", and "O-3" to CJA's July 3, 2001 letter to him. They substantiate the text that appears at pages 16-18 of that letter – a copy of which will be mailed to you. For your convenience, the pertinent text reads as follow:

"In the event you harbor the unwarranted belief that the House Judiciary Committee is any different from the Senate Judiciary Committee in its flagrant disrespect for fully-documented written presentations, enclosed is CJA's Statement for the record of the House Judiciary Committee's June 11, 1998 'Oversight Hearing of the Administration and Operation of the Federal Judiciary', held by the Courts Subcommittee (Exhibit "O-1"). Its opening sentence *expressly* identifies that it is presented

'so that members of Congress and the interested public are not otherwise misled into believing that the House Judiciary Committee or its Subcommittee is meaningfully discharging its duty to oversee the federal judiciary. It is not.'

Described therein is the failure and refusal of the House Judiciary Committee to respond to CJA's March 10, 1998 memorandum (Exhibit "N-2/N-1") and to a further March 23, 1998 memorandum (Exhibit "N-3"), substantiated by CJA's transmittal of *readily-verifiable* documentary proof that the mechanisms for ensuring the impartiality of federal judges -- and for disciplining and removing those who are unfit -- have been reduced to 'empty shells'. Detailed, as well, is the refusal of the House Judiciary Committee's Courts Subcommittee to permit CJA to testify on the subject at its June 11, 1998 'oversight hearing' – where the *only* witnesses allowed to testify were representatives of the

judiciary. The Subcommittee responded to this Statement (Exhibit "O-1") by excluding it from the printed record of its June 11, 1998 'oversight hearing' – which it did wholly without notice to CJA (Exhibit "O-3").

**Since your Subcommittee on Administrative Oversight and the Courts, assumedly, has concurrent jurisdiction with the House Courts Subcommittee, CJA respectfully requests that...you also clarify with the Courts Subcommittee of the House Judiciary Committee the whereabouts of the voluminous documentation CJA provided to that Committee, substantiating, *incontrovertibly*, that the federal judiciary has gutted the federal statutes relating to judicial discipline and recusal and that the House Judiciary Committee has abandoned its oversight over federal judicial discipline, including its impeachment responsibilities...**

We look forward to testifying at upcoming hearings of your Subcommittee – which should be on issues of *both* federal judicial selection and federal judicial discipline. **As the situation currently exists, with the Senate Judiciary Committee *demonstrably* disregarding its duty to scrutinize qualifications of judicial nominees and the House Judiciary Committee *demonstrably* disregarding evidence of serious judicial misconduct, the lives and liberties of this nation's citizens are at the mercy of judges who should *not* be on the bench in the first place and who grossly abuse their judicial powers after they get there, *without* the slightest fear of discipline, let alone removal.**

We welcome your able leadership. Ensuring that the public is protected by properly functioning processes of federal judicial selection and discipline should be a *top priority*." (pages 16-18 of CJA's 7/8/98 ltr to Senator Schumer, emphases in the original)

**By copy of this letter to Mr. Merritt, CJA asks that both you and he respectively confirm that the Democratic and Republican sides of the House Judiciary's Courts Subcommittee still have this voluminous documentation -- which CJA *supplied to each side* through November 1998 . This includes the big box containing copies of CJA's correspondence with the Administrative Office of the United States Courts, sent to both Democratic and Republican sides of the Courts Subcommittee, certified mail/return receipt, in mid-March 1998 to support CJA's March 10 and March 23, 1998 memoranda to the House Judiciary Committee's Chairman and members. Based on this documentation, CJA requests that the House**

**Judiciary Committee endorse our request to Senator Schumer that the Senate Judiciary Committee's Court Subcommittee hold a hearing on federal judicial discipline and removal. In the alternative, CJA requests that the House Judiciary Committee hold its *own* hearing or that it arrange for a joint hearing with the Senate Judiciary Committee's Court Subcommittee.**

In that regard, it must be noted that despite CJA's demonstrated expertise, reflected by our document-supported advocacy before the House Judiciary Committee, going back to 1993, neither the Democratic nor Republican side of the House Judiciary Committee ever saw fit to notify CJA of "oversight hearings" over the federal judiciary. If "oversight hearings" after June 11, 1998 were held – and, in particular, any hearing devoted to the federal judiciary's "self-policing" under 28 USC §372(c) ["the 1980 Act"] -- for which Congress, in 1980, promised "vigorous oversight"<sup>1</sup>—or any hearing involving the adequacy of federal recusal statutes, 28 U.S.C. §§144 and 455 -- please advise as to the dates so that Mr. McDonald may more easily supply us with the printed record of same.

Needless to say, we also wish to know whether – as *explicitly* recommended by the 1997 Report of the American Bar Association Commission on Separation of Powers and Judicial Independence<sup>2</sup> – Congress ever held hearings on the 1993 Report of the National Commission on Judicial Discipline and Removal. As pointed out at page 2 of CJA's March 23, 1998 Memorandum [Compendium, R-16], "sitting as a member of th[at] ABA Commission was none other than Robert Kastenmeier, former chairman of the [House Judiciary Committee's] courts subcommittee and the National Commission's Chairman".

Finally, CJA reiterates the request we first made in 1995<sup>3</sup>, and repeatedly thereafter, for access to judicial misconduct/impeachment complaints received by the House Judiciary Committee. According to the National Commission's 1993 Report, "Every Congress these complaints are archived and may be made *available upon request.*" (at p. 35,

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<sup>1</sup> See CJA's Statement, p. 3.

<sup>2</sup> The explicit recommendation, set forth at page 2 of CJA's March 23, 1998 Memorandum to the House Judiciary Committee [R-16], is:

"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)]

<sup>3</sup> See R-95 to the Compendium.

emphasis added)<sup>4</sup>.

**CJA looks forward to working with both the Democratic and Republican sides of the House Judiciary Committee – as likewise with both sides of the Senate Judiciary Committee – so that the public may be protected from the irreparable consequences of *demonstrably* unfit federal judges and the worthlessness of ALL oversight mechanisms. Please advise as to when a meeting may be arranged for such essential purpose.**

Thank you.

Yours for a quality judiciary,



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

Enclosures

cc: Blaine Merritt, Majority Counsel/Court Subcommittee  
[By Fax: 202-225-3673]  
Philip Kiko, General Counsel-Chief of Staff /House Judiciary Committee  
[By Certified Mail/RRR: 7000-1670-0007-0498-0683]  
Senator Charles Schumer, Chairman,  
Senate Judiciary Committee's Subcommittee on Administrative Oversight  
and the Courts  
Recipients of CJA's July 3, 2001 letter to Senator Schumer

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<sup>4</sup> These facts are highlighted by 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), referred to in CJA's Statement (at p. 2) and included in the Compendium at R-5 - R-14. That article, constituting a critique of the National Commission's "methodologically-flawed and dishonest" Report, is referenced at page 16 of CJA's July 3, 1998 letter to Senator Schumer and annexed as Exhibit "N-1" thereto. Copies of CJA's March 10 and 23, 1998 memoranda to the House Judiciary Committee follow *immediately* thereafter as Exhibits "N-2" and "N-3", respectively.