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July 30, 2002

Melissa McDonald, Oversight Counsel
House Judiciary Committee/Courts Subcommittee
B-351A Rayburn House Office Building
Washington, D.C. 20515

RE: Your wilful non-response to CJA's July 31, 2001 and September 4, 2001 letters and to phone messages based thereon – warranting your discharge, for cause, from the staff of the House Judiciary Committee

Dear Ms. McDonald:

Please advise why I have received NO response to my July 31, 2001 and September 4, 2001 letters to you or to my follow-up October 16, 2001, October 22, 2001, and June 21, 2002 telephone messages based thereon, left on your voice mail.

In my June 21, 2002 voice mail message[1], I identified that I was writing a letter to the Senate Judiciary Committee's Courts Subcommittee and that I needed to know whether the House Judiciary Committee had held any hearing on federal judicial discipline and removal, including on the 1993 Report of the National Commission on Judicial Discipline and Removal. Apparently, you are no more interested this year in facilitating my transmittal of *accurate* information to the Senate Judiciary Committee's Courts Subcommittee than you were interested last year when I sought to transmit *accurate* information

[1] I left a voice mail message because the person who answered the phone – who sounded incredibly like you – stated you were not in upon my identifying who I was. My question as to who she was followed by a pregnant pause, after which she connected me to your voice mail.

Exhibit P-2

to my Congresswoman, Nita Lowey, a member of the House Appropriations Committee. Indeed, my September 4, 2001 letter recounts (pp. 2-4) your refusal to answer my questions, based on my July 31, 2001 letter, as to the House Judiciary Committee's manpower resources for handling matters pertaining to federal judicial discipline and removal and the statistics as to the number of judicial impeachment/misconduct complaints it received during the 103rd –106th Congresses (pp. 1-4).

I have since independently learned that on November 29, 2001, the House Judiciary Committee's Courts Subcommittee purported to hold an oversight "hearing" on 28 USC §§372(c), 144, and 455 – the statutes pertaining to judicial discipline and disqualification. As you know, these are the statutes that CJA's March 10, 1998 and March 23, 1998 memoranda to the House Judiciary Committee[2] demonstrated, by *prima facie* evidence, to have been reduced to "empty shells" by the federal judiciary. This, with the knowledge and approval of the federal judiciary's highest echelons, who were shown, *by the evidence*, to have not only wilfully failed and refused to keep the judiciary's "house in order", but to have knowingly misled the Committee as to the efficacy of 28 USC §§372(c), 144 and 455 to defeat proposed remedial legislation.

So that my upcoming letter to House and Senate leadership may be properly informed as to the Subcommittee's true purpose in holding its November 29, 2001 oversight "hearing", please identify whether you deny or dispute the recitation in my September 4, 2001 letter (at p. 9) detailing, *based on the evidence substantiating CJA's March 10, 1998 and March 23, 1998 memoranda*, that I am an "INDISPENSIBLE WITNESS" at any hearing on 28 USC §§372(c), 144, and 455. Please also explain why you did not see fit to even notify me of the November 29, 2001 hearing date so that, at very least, I and CJA members could attend as spectators and submit written statements for inclusion in the hearing record.

I would point out that you have not denied or disputed the assertion in my September 4, 2001 letter (at p. 10) that it was *my* advocacy and, specifically, my July 3, 2001 letter to Senator Schumer, Chairman of the Senate Judiciary Committee's Courts Subcommittee (at pp. 16-18) and my July 9, 2001 letters

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[2] These memoranda, rightfully described by my September 4, 2001 letter (at p. 4) as "ALL IMPORTANT", are annexed thereto as Exhibits "H-1" and "H-2".

based thereon to counsel at the House Judiciary Committee's Courts Subcommittee that were the "catalyst" for the decision to hold a hearing on §§372(c), 144, and 455. Nor have you denied or disputed the assertion in my September 4, 2001 letter (at p. 6) that you yourself recognized my expertise as to these statutes by telephoning me on July 19, 2001 to request that I come down to Washington, as soon as possible, *to assist you in preparing for the hearing*. As you know, I made the trip, at my own expense. Indeed, days before our July 26, 2001 meeting, I "dropped everything" so as to photocopy and organize for you a duplicate set of the primary source materials substantiating CJA's March 10, 1998 and March 23, 1998 memoranda. This, because you told me you were unable to locate the original sets of these materials that CJA had provided to the Committee.

As set forth in my September 4, 2001 letter (at pp. 5-10), after going to the time, effort, and expense of travelling to Washington and providing you with these duplicate documents substantiating CJA's memoranda, you failed to ask me a single question about either the memoranda or the documents, when I telephoned you a month after our July 26, 2001 meeting. Nor were you able to intelligently respond to my inquiry as to the hearing's purpose. This, during the very period in which you purported to be preparing for the hearing, including drafting a memo to House Judiciary Committee Chairman Sensenbrenner.

My September 4, 2001 letter anticipated (at 11) that the "hearing" would be nothing more than a "show" at which "those having *on-the-ground experience* are *not* permitted to testify". The November 29, 2001 "hearing" met that description. Indeed, NONE of the four invited witnesses attested to *any* direct, first-hand experience with §372(c) judicial misconduct complaints or motions for judicial disqualification under §144 or 455 – a fact which did not prevent three of the witnesses from stating their view that the statutes worked "reasonably well" [Tr. 84, 78[3]], with the fourth limiting his reservations to the lack of any penalty for violations "that do not rise anywhere near to the standards that would require impeachment" [Tr. 83]. As to the two witnesses who offered testimony, *only favorable*, concerning the 1993 Report of the National Commission on Judicial Discipline and Removal, the Subcommittee

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[3] Judge William Osteen confined himself to §§144 and 455, without specifically addressing §372(c).

received it without challenge. No mention was made of CJA's long-standing and public criticism of the Commission's Report as "methodologically-flawed and dishonest", born of our direct, first-hand experience with both the Commission and Report, as summarized by my published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View, Massachusetts School of Law, Summer 1997, Vol 4. No. 1)[4] and amplified and demonstrated by CJA's document-supported memoranda. Indeed, NONE of the evidence substantiating CJA's memoranda, whose significance I discussed with you at our July 26, 2001 meeting and reinforced by my July 31, 2001 and September 4, 2001 letters, was reflected by either the remarks or questions of the few Subcommittee members present at the November 29, 2001 "hearing"[5]. The sole exception was perhaps the final question of Subcommittee Chairman Coble, asking -- "hypothetically" -- "how often" the recusal "petition" of "a grieved litigant" is "summarily dismissed" [Tr. 95]. That Chairman Coble's question was a confused amalgam, mixing together a disqualification motion and judicial misconduct complaint may be seen from Professor Hellman's response – one reflecting the Professor's own admitted lack of knowledge as to recusal motions. This, in addition to his unfamiliarity with the critical "merits-related" issues involving §372(c) [Tr. 95-6][6].

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[4] Annexed as Exhibit "G" to my September 4, 2001 letter.

[5] In contrast to the transcript of the Subcommittee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary", the transcript of the Subcommittee's November 29, 2001 "hearing" does not begin by reciting the names of the Subcommittee members and staff present. It would appear that when the "hearing" began the only members present of the 23-member Subcommittee were Chairman Coble and Ranking Member Berman and possibly Congressman Delahunt. They were joined, during the course of the hearing, by Congresswoman Hart, Congressman Jenkins, and Congressman Goodlatte.

[6] As to "the process of recusal in an individual case", Professor Hellman stated he was "not sure of what the usual practice is", but "sure that many of them are not – are not explained". As to a §372(c) misconduct complaint relating to disqualification "focused on a particular case", he asserted, "it would not, I think, come within the Judicial Discipline Act, because one of the exceptions of the act is for challenges involving rulings in particular cases. And so, in that situation the only redress would be to take an appeal". He provided no information as to whether, in fact, a litigant can count on appeal to provide redress. That the appellate process has been corrupted by the federal judiciary, including as to threshold issues of judicial disqualification, which are either not adjudicated or denied, without reasons, is documented by the primary source materials substantiating CJA's memoranda. Likewise, the worthlessness of "informal processes", the efficacy of which Professor Hellman endorsed [Tr. 91, 48].

As to Michael Remington's "status" update of the National Commission's 1993 recommendations, it is materially false and misleading both as to this Subcommittee and the federal judiciary (Tr. 61-2, 64, 66-70), as comparison to my July 31, 2001 and September 4, 2001 letters reveals. Tellingly, Mr. Remington did not identify the basis for the information presented by his "status" update – and the Subcommittee did not ask him.

That the November 29, 2001 "hearing" was not only superficial, but a wilful deceit to mislead Congress and the American People into falsely believing that the Subcommittee is discharging its "oversight" responsibilities over the federal judiciary – and that the federal judiciary is doing its part – is *readily-verifiable*. All that is required is comparison of the "hearing" transcript with my unresponded-to document-supported July 31, 2001 and September 4, 2001 letters. I, therefore, call upon you to respond to the serious and substantial issues presented by those letters – ALL ignored and covered-up at the November 29, 2001 "hearing", amidst attestations by Subcommittee Chairman Coble as to the importance of "oversight"[7], joined by praise for the Subcommittee's "oversight" from witnesses[8]. This would include providing

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[7] Chairman Coble: "I firmly believe that the Subcommittee is charged by the Constitution and the House rules to conduct vigorous oversight on a regular basis" [Tr. 1]; "...I think this is an issue that needs to be thoroughly examined." [Tr. 83];

[8] Douglas Kendell, witness: "...thank you for conducting this important oversight hearing... [Tr. 5, 6]; "I again want to commend the Committee for conducting this important oversight hearing" [Tr. 11];

Arthur D. Hellman, witness: "Today's oversight hearing is a valuable step in making the section 372(c) process more effective" [Tr. 49];

Michael Remington, witness: "I routinely follow the operations and activities of the Subcommittee, and I am impressed beyond measure by your stewardship, Mr. Chairman, and by that of the Ranking Minority Member, Mr. Berman, and by the leadership of the full committee under Chairman Sensenbrenner and the Ranking Minority Member, Mr. Conyers. The Subcommittee and the full Committee are in good hands." [Tr. 55]; "Historically, this Subcommittee has been very diligent in exercising its oversight responsibilities, including over the federal judicial branch of government...On behalf of the Subcommittee, Chairman Kastenmeier promised 'vigorous' oversight [of §372(c)]. He kept his promise...This oversight hearing is part of that continuum" [Tr. 57]; "*Status:...the Committee has exercised its oversight authority...*" [Tr. 61]; "*Committee Oversight: Continue your vigorous oversight of judicial independence and accountability.*" [Tr. 64].

Noteworthy is Mr. Remington's justification of the Committee's failure to hold any hearing on the National Commission's final Report, including as to compliance with its recommendations by the three government branches: "Mr. Chairman, it took almost two centuries of American history to create a judicial discipline mechanism; eight years after the

me with the information I sought to furnish Congresswoman Lowey nearly a year ago as to the Subcommittee's manpower resources for handling matters of judicial discipline and removal, the statistics as to the numbers of judicial impeachment/misconduct complaints received by the Subcommittee since the 103rd Congress, as well as an explanation as to why the Subcommittee has STILL not even acknowledged, let alone investigated, CJA's fully-documented June 9, 1993, March 23, 1998, and November 6, 1998 judicial impeachment complaints – duplicate copies of which I gave you at our July 26, 2001 meeting.

Finally, my document-supported July 31, 2001 and September 4, 2001 letters also expose the superficiality and deceit of the Subcommittee's request to the Federal Judicial Center that it "undertake some limited follow-up research" to answer two questions – as to which the Federal Judicial Center has presented the Subcommittee with an equally superficial, though perhaps even more deceitful, May 2002 report, "Statement of Allegations and Reasons in Chief Judge Dismissal Orders Under the Judicial Conduct and Disability Act of 1980"[9]. Indeed, my July 31, 2001 letter (at pp. 6-7) lists affirmative statements that, had you doubted their truth from the evidence substantiating CJA's memoranda, could have readily been turned into questions decisive of the federal judiciary's subversion of §372(c). Thus, the Subcommittee might have asked the Federal Judicial Center to "undertake some limited follow-up research" to confirm whether the federal judiciary:

National Commission's Report is a blink of a historical eye." [Tr. 60].

[9] Such request may have been prompted by Professor Hellman's suggestion: "The Federal Judicial Center should be encouraged to conduct a follow-up study to the one completed in 1993. This study need not be as elaborate or comprehensive: what we need above all is an analysis of the dispositions already on file at the Center" [Tr. 46]. This followed his description of the earlier study as "a thorough, objective, and thoughtful piece of research that is enormously useful in showing how the Act has been implemented at the operational level..." [Tr. 41]. Mr. Remington also noted it as being "of particular usefulness" [Tr. 59, fn. 9]. That the study is methodologically-flawed and dishonest, reflecting as well as contributing to the methodologically-flawed and dishonest Report of the National Commission is specifically highlighted by my published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (at pp. 93-7).

(1) has promulgated rules rewriting the §372(c) statute so as to convert the statutory *discretion* to dismiss complaints that are "directly related to the merits of a decision or procedural ruling" into a mandatory requirement;

(2) has failed to develop precedential caselaw as to the standards for exercising discretion to investigate "merits-related" complaints – thereby facilitating the dumping of "merits related" complaints;

(3) has promulgated rules making §372(c) complaints confidential – although such confidentiality is NOT required by the §372(c) statute; and

(4) has been falsifying and concealing documented allegations of serious judicial misconduct presented by §372(c) complaints by fraudulent dismissal orders.

Since CJA's document-supported memoranda establish that dismissal orders have been falsifying and concealing the allegations of §372(c) complaints, it is a gross deceit for the Federal Judicial Center to have undertaken "follow-up research" based ONLY on dismissal orders, *without comparison to underlying §372(c) complaints*. Yet, this is precisely what the Federal Judicial Center's May 2002 report has done in responding to what it purports to be the Subcommittee's first question, "Did the orders of chief judges set forth factual allegations raised in the complaints and the reasons for the subsequent disposition?". Moreover, because the May 2002 report is a "follow-up" to the National Commission's pivotal study which examined §372(c) complaints and because it was undertaken by the very same two court-connected researchers from that study, an illusion is created that the report has also examined complaints[10].

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[10] Footnote 3 of the May 2002 report identifies that certain areas "are outside the scope of this study" – but does not include any information about review of dismissal orders being "outside [its] scope". Since complaints are NOT confidential under the §372(c) statute, the Subcommittee would have had no reason to exclude their review.

As to what the Federal Judicial Center purports is the Subcommittee's second question, "What percentage of dismissals were based on the grounds that the complaint is directly related to the merits of a decision or procedural ruling?", the explosive issue is NOT the fact that "80%" are so dismissed. Rather, it is the federal judiciary's unlawful rules mandating dismissal of "merits-related" complaints AND its wilful failure and refusal to develop interpretive caselaw on the "merits-related" issue. For the May 2002 report to assert that "apparently" the National Commission did not find this kind of overwhelming percentage of "merits-related" dismissals as "problematic" and, consequently, "did not make any recommendation in that regard" (at p. 2) is utterly disingenuous – coming, as it does, from the very court-connected researchers who failed to develop such critical issues for the National Commission when they were engaged in their prior study.

That Jeffrey Barr, Assistant General Counsel of the Administrative Office of the United States Courts, is one of these two court-connected researchers only underscores the superficial and deceitful nature of the Federal Judicial Center's report, as he is completely familiar with CJA's evidence-supported contentions as to his methodologically-flawed and dishonest study for the National Commission. Based on my extensive correspondence with Mr. Barr – copies of which I gave you at our July 26, 2001 meeting[11] -- you know that he has long had copies of the primary source evidence substantiating CJA's March 10, 1998 and March 23, 1998 memoranda and that he is the most continuously involved of the federal judiciary's upper echelon in subverting §§372(c), 144, and 455. For this reason, Mr. Barr should have been REQUIRED to testify at the November 29, 2001 oversight "hearing" -- *by subpoena, if necessary.*

As my upcoming letter to House and Senate leadership will further comment on the November 29, 2001 "hearing" transcript and the Federal Judicial

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[11] An inventory of this correspondence is annexed as Exhibit "B" to my July 31, 2001 letter, with its significance reiterated at page 8 of my September 4, 2001 letter. *See also* CJA's March 23, 1999 memorandum (at pp. 6-9), particularizing Mr. Barr's wilful misconduct, as demonstrated by that correspondence, and the summary 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" (at p. 2) [Exhibits "H-2" and "I-2" to my September 4, 2001 letter].

Center's May 2002 report[12], please:

(1) identify who chose the four witnesses invited to testify at the November 29, 2001 "hearing" and who decided that no invitations would be extended to myself and others having direct, first-hand experience filing §372(c) complaints and disqualification motions[13];

(2) furnish a copy of the "joint request", presumably in writing, of Subcommittee Chairman Coble and Ranking Member Berman to which the Federal Judicial Center's May 2002 report purports to respond; and

(3) confirm that Subcommittee members and, particularly, Chairman Coble and Ranking Member Berman, were advised of the issues presented by my July 31, 2001 and September 4, 2001 letters, *if not provided with copies*, in advance of the November 29, 2001 "hearing" and their "joint request" to the Federal Judicial Center.

By copy of this letter to Philip Kiko, General Counsel and Chief of Staff to Chairman Sensenbrenner and to Sam Garg, Minority Counsel – each indicated recipients of my July 31, 2001 and September 4, 2001 letters -- I request that they identify what they did with those letters upon receipt. I further request that they now take appropriate corrective measures. This would include requiring your prompt response to this letter, encompassing my July 31, 2001 and September 4, 2001 letters, followed by your removal, for cause, from the House Judiciary Committee staff.

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[12] I will also be commenting on the Federal Judicial Center's monograph on disqualification under 28 USC §§144 and 455, to which Mr. Remington referred the Subcommittee during the November 29, 2001 "hearing" [Tr. 55, 64]. Suffice to say, it is hard to imagine federal judges preferring such monograph to available treatises, which are more practically useful in addition to being more comprehensive and better organized. Nor does the monograph have any particular value, other than confusion, for this Subcommittee. This includes as to the Supreme Court's decision in *Liteky*, 114 S.Ct. 1147 (1994), highlighted by my September 4, 2001 letter (at pp. 7-8).

[13] Upon information and belief, David Louis Whitehead and his counsel, Beth Ann Walker, Esq., were also denied the opportunity to testify. Their written statements, attesting to their direct, first-hand experience, are printed in the record of the November 29, 2001 "hearing" [Tr 183-226]. Unknown to them, but known to you, is that their document-supported contentions reinforced CJA's, including as to the federal judiciary's dumping of supposedly "merits-related" complaints by orders that misrepresent the complaints' allegations [Tr. 223-4].

Yours for a quality judiciary,

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