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June 5, 1998

Congressman Howard Coble
Chairman, Subcommittee on Courts and Intellectual Property
House Judiciary Committee
Room 2239, Rayburn House Office Building
Washington, D.C. 20515

RE: The Need for Oversight over House Judiciary Subcommittee Counsel and CJA's Request to Testify at the 6/11/98 "Oversight" Hearing of the Judicial Conference, Administrative Office, and Federal Judicial Center

Dear Chairman Coble:

This complaint-letter follows up my telephone conversation today with your Legislative Assistant, Michael Bradshaw, in which I related to him my June 3rd telephone conversation with your Chief of Staff, Edward McDonald. In each of those conversations, I described the unprofessional conduct of counsel at the Subcommittee on Courts and Intellectual Property, which you chair. I also sought confirmation of information conveyed to me on June 3rd by Veronica Eligan, the Subcommittee's Staff Assistant, that it was *your* decision to close the witness list for the June 11th "oversight" hearing of the Judicial Conference, Administrative Office, and Federal Judicial Center, without affording the Center for Judicial Accountability, Inc. (CJA) the opportunity to testify before the Subcommittee at that hearing, as we requested in our May 22nd letter to Subcommittee counsel.

Both Mr. Bradshaw and Mr. McDonald told me that issues pertaining to the House Judiciary Subcommittee are handled in the Subcommittee office. From this and other statements, as well as my telephone conversation today with Mark Johnson, Legislative Director for Congressman Ed Bryant, who handles the Congressman's Judiciary Committee work, but who knew nothing about CJA's March 10th and March 23rd Memoranda on sections 4 and 6 of H.R. 1252, notwithstanding section 4 was proposed by Congressman Bryant, I have come to conclude that you -- as well as the other members of the Committee -- may be completely unaware of what is being done by Subcommittee counsel, including in your name. Consequently, the purpose of this letter is not only to secure for CJA an opportunity to testify at the June 11th hearing, but to summarize the evidence showing that Subcommittee counsel sabotaged the success of sections 4 and 6 of H.R. 1252 by withholding from the Committee -- and from

R-66

Congress -- information that would have served to forge a powerful bi-partisan coalition on the important issues those sections addressed: 28 U.S.C. §§372(c), 144, and 455. The purpose of those statutes, before they were judicially-gutted, was to ensure the integrity of the judicial process by providing remedies against biased and unfit judges. Such purpose transcends party lines.

If Subcommittee counsel have done their job, then you should already be familiar with -- and favorably impressed by -- CJA's substantive contributions to the House Judiciary Committee in the context of its consideration of sections 4 and 6 of H.R. 1252. Our March 10th and March 23rd Memoranda (Exhibits "B" and "C"), addressed to Chairman Hyde and the House Judiciary Committee members, exposed the fact that the Judicial Conference's vigorous opposition to those sections, as reflected by its March 3, 1998 letter to the House Judiciary Committee, rested on false and fraudulent representations as to the adequacy and efficacy of 28 U.S.C. §§372(c), 144 and 455 -- which sections 4 and 6 were intended to reinforce. Substantiating our Memoranda was CJA's 2-1/2 year correspondence with the Administrative Office, spanning the period from July 20, 1995 to March 10, 1998, copies of which we transmitted to the House Judiciary Committee.

These two evidentiarily-supported Memoranda powerfully bolstered Republican claims as to the need for such sections, which faced stiff Democratic opposition and accusations that they were politically-motivated. We, therefore, would have expected an enthusiastic response from the Republican side. Yet, incomprehensibly, your Subcommittee counsel and, in particular, Blaine Merritt, not only failed to acknowledge CJA's contribution, but ignored our own repeated telephone messages. Simultaneously, such counsel were preparing the Committee Report on H.R. 1252, dubbed the "Judicial Reform Act of 1998". Their April 1, 1998 Report, which bears your name on its cover, reprints the Judicial Conference's March 3rd letter, in full (at pp. 38-42)¹, without the slightest mention, let alone inclusion, of CJA's Memoranda exposing such document as false and deceitful. The Report also reprints Justice Department letters. The Justice Department's March 10, 1998 and June 10, 1997 letters defer to the views of the Judicial Conference regarding section 4 (See pp. 26, 31). As to section 6, the Justice Department's June 10, 1997 letter baldly asserts "[t]here are existing procedures for dealing with cases of judicial bias" (See p. 34) -- meaning §§144, 455, and 372(c). The majority Report does not address these letters. Nor does it counter *any* of the arguments advanced in the "Dissenting Views", signed by 15 Democratic members of the Committee, as to the adequacy and efficacy of §§372(c), 144, and 455, for which the dissenters cite the Judicial Conference and the American Bar Association -- notwithstanding our Memoranda provided irrefutable evidentiary rebuttal, including as to the lack of integrity of the 1993 Report of the National Commission on Judicial Discipline and Removal, on which

¹ The Judicial Conference's letter, reprinted by the April 1st Report, is addressed to you. The copy of the letter we obtained from the Administrative Office was addressed to Congressman Hyde as Chairman of the full House Judiciary Committee.

R-67

both the Judicial Conference and ABA expressly rely (*See* p. 69)².

It must be noted that long before H.R. 1252 was drafted, indeed, long before the Republicans took over the House Judiciary Committee after years of Democratic control, CJA was corresponding with the Courts Subcommittee, apprising it of the serious discrepancies in the National Commission's Report. CJA's correspondence commenced in the summer of 1993, even before the Commission's Report was finalized and publicly available. Copies of that correspondence from the period after the Republicans became the majority party are annexed hereto as Exhibits "A-1" - "A-9". This includes letters addressed to Tom Mooney [Exhibits "A-2", "A-8"], now General Counsel of the House Judiciary Committee and Chairman Hyde's Chief of Staff, with whom I and CJA's Director, Doris L. Sassower, had a meeting in February 1996. It also includes letters addressed to Mitch Glazier [Exhibits "A-3", "A-5", "A-6"], now Chief Counsel of the Courts Subcommittee, with whom I met in July 1995, thereafter expressly apprising him, by letter dated December 1, 1995 [Exhibit "A-6"], that "the judicial branch has gutted the statutory mechanisms for addressing bias by federal judges. Those mechanisms include not only 28 USC §372(c), but the statutory provisions for recusal under 28 USC §144 and §455." CJA's correspondence also includes a fax to Blaine Merritt [Exhibit "A-9"], Subcommittee counsel with primary charge over H.R. 1252, with whom I spoke by phone on January 20, 1998. In that conversation, I reiterated that the federal judiciary had gutted §§372(c), 144, and 455 and discussed 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), pp. 90-97, critically analyzing the National Commission's Report -- a copy of which I faxed him³.

Consequently, by March 1998, when CJA transmitted to the Courts Subcommittee its Memoranda and substantiating proof of the Judicial Conference's misconduct, your various counsel already *knew* from direct, first-hand experience, that CJA was an impeccable and credible source of relevant information -- and that had we been invited to testify at the Subcommittee's May 14, 1997 hearing on H.R. 1252 -- or at its hearing the following day on "Judicial Misconduct and Discipline" -- we would have been able to provide the Committee members with the kind of empirically-supported responses to key questions, which they were unable to get from some witnesses⁴ and to correct the misinformation they got from

² Likewise, the "Dissenting Views" was prepared by Democratic counsel in the face of the same Memoranda and substantiating proof. We are extremely doubtful that the Democratic Committee members, who signed on as dissenters to the Report, were informed of such Memoranda and proof, which we had separately provided to the minority.

³ A copy of the article is annexed to CJA's March 10, 1998 Memorandum -- Exhibit "B" herein

⁴ *See, inter alia*, California State Attorney General Lungren's inability to respond to questions about §372(c) complaint -- because he had not filed any §372(c) complaints against the federal

other witnesses⁵.

We do not know when the Subcommittee's June 11th "oversight" hearing of the Judicial Conference, Administrative Office, and Federal Judicial Center was first calendared, but Subcommittee counsel made no attempt to notify us -- or to invite us to testify. This, notwithstanding our March Memoranda made plain that CJA was able to offer devastating testimony about the Judicial Conference and Administrative Office. We found out about the June 11th hearing only because, on May 22nd, I telephoned the Democratic side and spoke to its counsel, Robert Raben. Immediately prior thereto, I had telephoned the full Committee and the Subcommittee to arrange a meeting with counsel for June 2nd or 3rd, to review the issues presented by CJA's Memoranda. At the Subcommittee, Ms. Eligan took the message, stating that counsel was unavailable. By contrast, Mr. Raben took my call. Without hesitation, he agreed to meet with me during my Washington visit, including a joint meeting with counsel for the Republican side. It was during my conversation with Mr. Raben that he informed me of the Subcommittee's June 11th "oversight" hearing. I then called back Ms. Eligan and requested to testify at the hearing. I formalized both the meeting and hearing requests in a May 22nd letter, which I both faxed and mailed to the Subcommittee and Democratic minority (Exhibit "D").

During the following week, I telephoned the Subcommittee several times. No information was available about either of my requests. By week's end, I faxed the Subcommittee yet another letter, dated May 29th (Exhibit "E") -- this one addressed to General Counsel William Burchill, Jr. and Assistant General Counsel Jeffrey Barr of the Administrative Office about the June 11th "oversight" hearing and about my prospective meeting with Subcommittee counsel on June 2nd or 3rd, which I invited them to attend. My fax coversheet to Subcommittee counsel stated: "Please advise as to my request for a meeting with counsel either on 6/2 or 6/3 -- as set forth in my May 22nd letter. My several calls following up that request have not been returned." Still, no notification was forthcoming.

On Tuesday morning, June 2nd, I was already in Washington and telephoned the Subcommittee. Ms. Eligan stated that counsel were unavailable and had left no message for me. I gave Ms. Eligan a telephone number at the Federal Judicial Center, where I stated I was doing research on §372(c), and

judges against whom he testified [5/14/97 Tr. 100-101]-- and his inability to knowledgeably comment on the National Commission's Report [5/14/97/97 Tr. 108].

⁵ See, *inter alia*, Professor Burbank's response to your *own* question "Tell me whether it's your belief, whether the current recusal statutes of title 28 work efficiently." [5/14/97 Tr. 65] and the negative response of Fifth Circuit Chief Judge Politz to Congressman Frank's question "Is anyone on the panel aware of a problem -- that is, of judges who have gone undisciplined despite behavior that clearly should have led to discipline" [5/14/97 Tr. 66] -- to which the other witnesses on that panel (Professor Burbank, among them) offered no disagreement.

R-69

asked that counsel call me back about a meeting. No one from the Subcommittee called. Late in the day, I dropped by the Subcommittee to ascertain where matters stood. Ms. Eligan told me that I should telephone the following morning and speak with Debra Leman, a counsel with whom I had no prior contact, unlike Subcommittee counsel Mitch Glazier and Blaine Merritt. I left copies of both CJA's May 22nd and May 29th letters for Ms. Leman⁶. I thereupon went to the adjoining Democratic side and had a lengthy -- and I believe productive -- meeting with Mr. Raben as to the serious issues presented by CJA's Memoranda. I also provided him with copies of the four documents *essential* for the Subcommittee to properly discharge its oversight duty at the June 11th "oversight" hearing:

⁶ I also left for Ms. Leman our petition for a writ of certiorari in *Sassower v. Mangano* -- a case whose significance was highlighted in our March 23rd Memorandum (Exhibit "C", p. 7) and reiterated in our May 29th letter (Exhibit "E", p. 3), as follows:

"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 [eight] recusal applications and generated two §372(c) complaints, each with recusal applications"

Indeed, the May 29th letter (at pp. 4-5) quoted from the cert petition, pending before the U.S. Supreme Court:

"Based on the record [in *Sassower v. Mangano*], which is already before the House Judiciary Committee [A-301], there can be no argument for reposing federal judicial discipline within the federal judicial branch, absent [the Supreme] Court's decisive action. All available formal and informal checks on judicial misconduct, identified by the National Commission on Judicial Discipline and Removal as existing within the federal judicial branch, were utilized by Petitioner and shown to be sham. Nor is there any check provided by the Judicial Conference, the very zenith of the federal judiciary. Its Administrative Office, to whom Petitioner supplied the record of this case for presentment to the appropriate committees of the Judicial Conference for oversight intervention, has not only refused to make such presentment, but fails to respond to letters or return phone calls [A-308-310]. So much for 'self policing' by the federal judiciary." (cert petition, at pp. 23-24)

It may be noted that CJA's March 10th and March 23rd Memoranda (Exhibits "B" and "C") are reprinted in the Appendix to the cert petition in *Sassower v. Mangano* [A-295; A-301] because they were part of the record of the §372(c) complaints filed against the district judge and appellate panel in that case. The Appendix contains the full record of those §372(c) complaints: the two complaints [A-242; A-251], the Chief Judge's dismissal order [A-28], the petition for review [A-272], and Circuit Judicial Council's order affirming the dismissal [A-31].

R-70

(1) CJA's March 10th Memorandum; (2) CJA's March 23rd Memorandum; (3) CJA's November 24, 1997 letter to Mr. Barr; and (4) CJA's petition for a writ of certiorari in *Sassower v. Mangano* [a copy of which I had hand-delivered to the office of Messrs. Burchill and Barr earlier that day]. These, in addition to CJA's May 29th letter to Messrs. Burchill and Barr, putting the federal judiciary on notice that its representatives should come to the June 11th "oversight" hearing prepared to testify about the issues particularized by our March 10th and March 23rd Memoranda and substantiating documentary materials (Exhibit "C", at p. 3)⁷.

The next morning, June 3rd, I again telephoned the Subcommittee -- only to be told by Ms. Eligan that Ms. Leman was unavailable. Again, I left my number at the Federal Judicial Center, requesting a return call as to arrangements for a meeting with counsel. It was then, in response to my inquiry about our request to testify at the June 11th "oversight" hearing, that Ms. Eligan told me -- after she had put me "on hold" for perhaps half a minute -- that the list of persons wishing to testify was "closed". Upon my inquiry, she stated that it was you who had "closed" the list, denying CJA's May 22nd request (Exhibit "D"). She also told me that the list of those testifying was "confidential".

All that day, I received no call from Subcommittee counsel. Again, late in the day, I dropped by the Subcommittee. Once more, Ms. Eligan told me that counsel was not available to see me. Indeed, Ms. Eligan told me that I should make an appointment if I wanted to meet with counsel. This, although she personally knew I had been trying to do just that throughout the preceding week and a half -- with no response from Subcommittee counsel. I then turned to the Democratic side. Mr. Raben was good enough to meet with me, yet a second time. I beseeched his help -- and that of the Democratic minority -- to ensure that CJA was afforded the opportunity to testify on June 11th.

As may be seen from CJA's Memoranda (Exhibits "B" and "C"), there is nothing the least bit partisan about the issues CJA has raised: that the Judicial Conference blatantly lied to the House Judiciary Committee and through it, to Congress and the American People as to the adequacy and efficacy of the statutes intended by Congress to ensure a fair and impartial judiciary and to protect the public from biased and unfit judges. Such outright deception -- independently verifiable from the materials transmitted in support of CJA's March 10th and March 23rd Memoranda -- is properly a subject for vigorous scrutiny by the Subcommittee at its June 11th "oversight" hearing. At a current cost to taxpayers of \$52,000,000 for the Administrative Office, the American People have a right to expect that Congress will take appropriately forceful steps to hold the Judicial Conference and Administrative Office

⁷ CJA's May 29th letter stated (at p. 4) that a copy of the letter would be given, in hand, to Chief Justice William Rehnquist, who presides over the Judicial Conference, together with copies of CJA's March 10th and March 23rd Memoranda and its November 24, 1997 letter to Mr. Barr. On June 1st, William Suter, the Clerk of the U.S. Supreme Court, expressly accepted such materials on the Chief Justice's behalf. Parenthetically, on that same date, I gave, in hand, a copy of the May 29th letter to Professor Burbank, an indicated recipient thereof.

to account for their misconduct, particularly when its consequence is to cover up judicial bias and misconduct that is recurring and pervasive. CJA's May 29th letter to the Administrative Office (Exhibit "E") reflects that neither of these taxpayer-supported bodies have denied or disputed any of the serious allegations contained in our March Memoranda, including that the National Commission's Report is "methodologically-flawed and dishonest" and, particularly, its evaluation of §372(c). As CJA's March 23rd Memorandum highlights (Exhibit "C", p. 2), Congress has yet to hold a hearing on that 1993 Report.

By copy of this letter to your Subcommittee counsel, we request that they *immediately* transmit to you the box of substantiating documentary materials sent with CJA's March 10th Memoranda, as well as the materials subsequently furnished -- including the cert petition in *Sassower v. Mangano* -- so that you, as Subcommittee Chairman, may personally review this complaint and grant CJA's request to testify at the Subcommittee's June 11th "oversight" hearing.

Because we imagine that the Democratic minority has some "say" in the witness list for the June 11th hearing, a copy of this complaint-letter is being sent to Congressman Conyers, Ranking Member of the House Judiciary Committee, and to Congressman Barney Frank, Ranking Member of the Courts Subcommittee. We likewise request that Mr. Raben *immediately* arrange to transmit to them the separate set of substantiating materials that CJA provided the Democratic minority.

Since the preparation of testimony is extremely time-consuming and travel arrangements will need to be made, your prompt response is imperative.

Yours for a quality judiciary,



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

Enclosures

cc: Congressman Henry Hyde [Fax: 202-225-1166]
Chairman, House Judiciary Committee
ATT: Tom Mooney, Chief of Staff
Congressman John Conyers, Jr. [Fax: 202-225-0072]
Ranking Member, House Judiciary Committee
ATT: Lisa Carr, Legislative Assistant
Congressman Barney Frank [Fax: 202-225-0182]
Ranking Member, House Judiciary Courts Subcommittee
ATT: Peter Kovar, Administrative Assistant

R-72

cc: [cont'd]

House Judiciary Committee Subcommittee

Republican Side: ATT: Mitch Glazier, Blaine Merritt [Fax: 202-225-3673]

Democratic Side: ATT: Perry Apelbaum, Robert Raben [Fax: 202-225-7680]

Congressman Ed Bryant [Fax: 202-225-2989]

ATT: Mark Johnson, Legislative Director

R-73