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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

September 14, 1998

Mr. Anthony Lewis
The New York Times
2 Faneuil Hall Market Place
Boston, Massachusetts 02109

RE: The Test of Judicial Independence: cert petition in *Sassower v. Mangano, et al.*, S.Ct. #98-106, Court Conference Calendar: September 28, 1998

Dear Mr. Lewis:

Following up our brief conversation on Friday, annexed is a copy of the website notice of the "Judicial Independence and Accountability Symposium" (Exhibit "A"). You and Associate Supreme Court Justice Anthony Kennedy are the only speakers identified.

From your eloquent columns, we assume you will be speaking on the importance of judicial independence. Like yourself, our non-partisan, non-profit citizens' organization, the Center for Judicial Accountability, Inc. (CJA), believes that judges must be free from outside pressures and decide cases based on the facts before them -- and the law flowing from those facts. But what happens when judges don't do that? -- when they use their offices for ulterior political and personal purposes, falsifying the factual record and obliterating all adjudicative and ethical standards to "throw" a case?

That is the #1 issue now before the U.S. Supreme Court on a petition for a writ of certiorari, which details how federal judges on both the district and Circuit level of the Second Circuit protected high-ranking New York State judges and the New York State Attorney General, who had NO defense to the allegations of the verified Complaint in a §1983 civil rights action, in which they are sued for corruption.

The politically-explosive nature of those allegations may be readily gleaned from CJA's public interest ad, "*Where Do You Go When Judges Break the Law?*", published on the Op-Ed page of the October 26, 1994 New York Times and on November 1, 1994 in the New York Law Journal -- at a cost to CJA of nearly \$20,000 (Exhibit "B-1"). Among the ad's concluding words, "now all state remedies have been exhausted".

The defense fraud and judicial cover-up that permeated the proceedings on the federal district court level and in the appellate case management phase are described in the closing paragraphs of CJA's follow-up ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", published in the August 27, 1997 New York Law Journal, at a cost to CJA of over \$3,000 (Exhibit "B-2"). The ad invited the public to attend the August 29, 1997 oral argument of the appeal.

The continuing saga -- namely, what transpired at the Second Circuit oral argument, on the appeal, and in the post-appellate proceedings -- is chronicled by the enclosed cert petition. Its lengthy appendix contains substantiating documents, reprinted in full, including: (1) the petition for rehearing with suggestion for rehearing *in banc* [A-192]; (2) the judicial misconduct complaints against the district judge and circuit panel [A-242; A-251], together with the petition for Circuit Judicial Council review [A-272]; and (3) the verified Complaint [A-49], *all* of whose explosive allegations were expurgated by the Second Circuit's cover-up "affirmance" [A-21]. The appendix also includes both of CJA's aforesaid public interest ads [A-269; A-261], as well as our 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 [A-207] (Exhibit "C"), which describes the federal judicial disqualification and disciplinary statutes as having been "gutted" by the federal judiciary and the 1993 Report of the National Commission on Judicial Discipline and Removal as methodologically flawed and dishonest.

The cert petition empirically demonstrates the worthlessness of the federal judicial disqualification and disciplinary statutes -- and the National Commission's Report. Indeed, the petition details the breakdown of the checks on federal judicial misconduct identified by the National Commission as existing within the Judicial Branch. As to the breakdown of checks on federal judicial misconduct, identified by the National Commission as existing within the Legislative and Executive Branches, this is detailed by petitioner's supplemental brief -- a copy of which is also enclosed. As set forth in the supplemental brief (at p. 2), the result of the breakdown of checks in all three government Branches is that:

"the constitutional protection restricting federal judges' tenure in office to 'good behavior' does not exist because all avenues by which their official misconduct and abuse of office might be determined and impeachment initiated (U.S. Constitution, Article II, §4 and Article III, §1 [SA-1] are corrupted by political and personal self-interest. The consequence: federal judges who pervert, with impunity, the constitutional pledge to 'establish Justice', (Constitution, Preamble [SA-1]) and who use their judicial office for ulterior purposes."

Because the present situation is so profoundly and immediately dangerous to the public, we hope you will not just review the enclosed materials in preparation for the "Judicial Independence and

Accountability Symposium", but devote a Times column to the issues of judicial independence and accountability, as dramatized by this important case. Such column would be additionally timely in view of the all-consuming lively debate as to what constitutes grounds for impeachment and removal from public office. How ironic that these are the very issues before the Court on the cert petition and supplemental brief. Moreover, with attention shifting to the House Judiciary Committee by reason of its pivotal role in the impeachment process, it would be beneficial for the public to know that the Committee has abandoned that role in connection with the judicial misconduct complaints it receives from citizens seeking to impeachment investigations of federal judges. This is highlighted by CJA's published article (Exhibit "C", pp. 94, 96) and further particularized by CJA's written statement to the House Judiciary Committee for inclusion in the record of the Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17; See SA-91-20; SA-22]¹.

This case warrants a column for yet another reason: it will rightfully shake up New York State politics -- beginning with the electoral race for New York State Attorney General. Indeed, media exposure would not only result in Attorney General Vacco's electoral defeat, but his criminal prosecution and disbarment². Likewise, former Attorney General G. Oliver Koppell, who has received the Times' endorsement in the Democratic primary for Attorney General, would face electoral defeat, prosecution, and disbarment. The Times' editorial claim that Mr. Koppell's "public service was marked by a principled and intelligent approach to the issues" (Exhibit "D") is belied by the verified Complaint in this §1983 action (¶¶10, 24, 166-178, 182-191, 195-208). As detailed therein, during his tenure as Attorney General, Mr. Koppell knowingly subverted the Article 78 state remedy by engaging in litigation fraud and misconduct to cover up state court corruption. This is identified in CJA's "*Restraining 'Liars'...*" ad and reflected in the "*Where Do You Go?...*" ad (Exhibit "B"). It is this litigation fraud and misconduct that Mr. Vacco has been defending by the litigation fraud and misconduct particularized by the cert petition and supplemental brief.

¹ The compendium to that written statement is one of two documents "lodged" with the Supreme Court Clerk. The other document: the exhibits to our July 27, 1998 criminal complaint to the U.S. Justice Department's Public Integrity Section, Criminal Division [SA-47]. See supplemental brief, p. 9, fn. 2.

² We have already filed a criminal complaint with the U.S. Justice Department so that criminal prosecution may be undertaken and disciplinary referral made, *supra*, SA-47.

September 14, 1998

Thank you for your consideration. Should you wish to see any of the substantiating record documentation, we would be pleased to immediately provide it to you.

Yours for a quality judiciary,



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

Enclosures

P.S. You might be interested in Justice Kennedy's remarks at a program two years ago on "Judicial Ethics and the Rule of Law" (Exhibit "E"). At that time, he made the correct -- but frequently -- overlooked observation,

"Judicial Independence can be destroyed by attacks from without, but just as surely it can be undermined from within. There is no quicker way to undermined the courts than for judges to violate ethical precepts that bind judicial officers in all societies that aspire to the Rule of Law." (at p. 2)

However, Justice Kennedy then went on to praise the judiciary for its high standards of conduct, adherence to promulgated ethical codes and disqualification statutes, and "adequate mechanisms and procedures for the judiciary itself to receive and investigate allegations of misconduct and to take action where warranted". The cert petition and supplemental brief now before Justice Kennedy should radically alter the perspective he brings to the "Judicial Independence and Accountability Symposium".