

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8220  
White Plains, New York 10602

Tel. (914) 421-1200  
Fax (914) 428-4994

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

Elena Ruth Sassower, Director

BY FAX: (703) 993-8124 (letter only: 4 pages)

BY E-MAIL: [rrotunda@gmu.edu](mailto:rrotunda@gmu.edu)

BY CERTIFIED MAIL/RRR: 7003-1680-0001-8617-1139

April 23, 2008

Professor Ronald D. Rotunda  
George Mason University School of Law  
Room 433j, Arlington Campus  
3301 Fairfax Drive  
Arlington, Virginia 22201

RE: Building Evidence-Based Scholarship on Federal Judicial Discipline  
(& Selection) – CJA’s March 6, 2008 Letter to the Chief Justice &  
Accompanying Critique

Dear Professor Rotunda:

The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens’ organization, documenting, by independently-verifiable empirical evidence, the dysfunction, politicization, and corruption of the processes of judicial selection and discipline on federal, state, and local levels.

This letter is occasioned by your testimony before the House Judiciary Committee at its June 29, 2006 hearing on H.R. 5219 to establish an inspector general for the judicial branch. In pertinent part, you stated:

“I agree with Professor Geyh. In his written testimony, he says that this proposed bill will address ‘a *bona fide* problem.’ And he adds, ‘If the judiciary is unwilling to reform itself in the teeth of evidence that further reform is necessary,’ he says then Congress should take stronger measures.

I disagree. I think Congress can take stronger measures now, though, of course, it should have a dialogue with Justice Breyer and the Committee he is on.” (Tr. 10).

Yet, Congress did not “take stronger measures” at that time – nor in the 22 months since. Indeed, notwithstanding Chief Justice Roberts released the Breyer Committee Report on

September 19, 2006, Congress has held no hearings on its findings and recommendations.

What is your assessment of the Breyer Committee Report? Have you done any critique of it? These are the identical questions that we have asked Professor Geyh, based on his testimony at the June 29, 2006 hearing. A copy of our April 21, 2008 letter to him is enclosed, as is a copy of our March 17, 2008 letter to Professor Hellman, who also testified at the June 29, 2006 hearing.

As reflected by those letters, CJA has done a 73-page Critique of the Breyer Committee Report, expressly “in support of congressional hearings & disciplinary and criminal investigations”. The Critique demonstrates that the Report is “a knowing and deliberate fraud on the public”, “methodologically-flawed and dishonest”, and that the federal judiciary’s new rules for federal judicial discipline, based thereon, “violate and affirmatively misrepresent the congressional statute they purport to implement”.

We presented this Critique to Chief Justice John Roberts under a March 6, 2008 letter, calling upon him, as head of the Judicial Conference, to take corrective action to keep the federal judiciary’s “house in order” without intervention of the other two governmental branches. We received no response from the Chief Justice, either before or after the Judicial Conference’s adoption of the rules on March 11, 2008. Rather, the only response we received was a non-responsive March 7, 2008 letter from Judicial Conference Secretary James Duff, to which we replied on March 10, 2008. A copy of this exchange of correspondence is enclosed.

As a scholar – giving public comment in testimony before Congress, in books, law review articles, and to the press – the public depends upon you for accurate, unbiased information. You cogently stated at the June 29, 2006 hearing:

“It is time for a change. When we use a system and it does not work, our response should not be to invoke a shibboleth or catch-phrase. Our response should be to create a system that will work.” (Tr. 22, also 11).

Consistent therewith, would you be willing to evaluate CJA’s Critique and letter to the Chief Justice so as to give Congress, the President, the presidential candidates, and the public the benefit of your expertise as to whether they evidentially establish not just the need for “modest reform” – which is how you described H.R. 5219 to create an inspector general (Tr. 10, 13) – but the necessity for “radical overhaul of the façade of federal judicial discipline that currently exists”, as so-stated by our Critique (p. 1) and letter to the Chief Justice (p. 4)?

The Critique is posted on CJA’s website, [www.judgewidth.org](http://www.judgewidth.org), accessible *via* the sidebar panel “Judicial Discipline-Federal”. Upon your confirmation that you will confront its detailed factual and legal showing, I will forward you hard copies, including of its Compendium of Exhibits and its three folders of further primary-source documents so that you can more

conveniently answer the following questions, dispositive of the necessity for “radical overhaul” of federal judicial discipline:

(1) Do you agree that the federal judiciary’s new rules for federal judicial discipline “violate and affirmatively misrepresent the congressional statute they purport to implement<sup>[fn]</sup>, 28 U.S.C §§351-364, and do not comply with its requirement of ‘appropriate public notice and an opportunity for comment’ (§358), at least not in a meaningful, good-faith way”?

If so,

(a) What is your view of the Judicial Conference’s adoption of the rules on March 11, 2008?;

(b) Do you agree that this is a matter properly brought to Congress’ attention?

(2) Do you agree that the Breyer Committee Report is superficial, “methodologically-flawed and dishonest”, and “a knowing and deliberate fraud on the public”?

If so,

(a) Do you agree that such warrants “congressional hearings, disciplinary and criminal investigations, and radical overhaul of the façade of federal judicial discipline that currently exists”?;

(b) Isn’t action by our other government branches, Congress and the President, even more compelled if the Chief Justice does not respond to CJA’s March 6, 2008 letter – including by taking such action as Congress empowered the Judicial Conference to take, pursuant to 28 U.S.C. §331, to “hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority”?

In the event you are unwilling to answer these evidence-based questions, determinative of the necessity for major reform of federal judicial discipline, would you kindly furnish the names of other scholars who you believe would do so? Do you know of any scholars who have done their own critiques of the Breyer Committee Report? How about any of the organizations which routinely advocate on issues of judicial independence and ethics, including the American Bar Association? Certainly, Congress, the President, and the presidential candidates, to whom we will be turning to protect the public’s rights, will want that

information, as well.

Finally, I enclose a copy of CJA's April 18, 2008 comments to the Judicial Conference Committee on Codes of Conduct as to its material repudiation of the 2007 ABA Model Code of Judicial Conduct by its proposed revisions to the Code of Conduct for United States Judges. Do you share this assessment and would you be willing to otherwise respond to our submitted comments? Have you submitted comments of your own – and do you know of other scholars who have?

I would appreciate your response as soon as possible so that I may know if you are willing to work collaboratively to achieve the essential goal of ensuring the integrity of federal judicial discipline and, related to it, federal judicial selection.<sup>1</sup> No further time should be lost in creating "a system that will work".

Thank you.

Yours for a quality judiciary,



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

cc: Professor Charles Gardner Geyh  
Professor Arthur D. Hellman

Enclosures: (1) CJA's April 21, 2008 letter to Professor Geyh  
(2) CJA's March 17, 2008 letter to Professor Hellman  
(3) CJA's March 6, 2008 letter to Chief Justice Roberts.  
(4) Judicial Conference Secretary James Duff's March 7, 2008 letter  
(5) CJA's March 10, 2008 letter to James Duff  
(6) CJA's April 18, 2008 comments to the Judicial Conference  
Committee on Codes of Conduct

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<sup>1</sup> See, final footnote of CJA's March 6, 2008 letter to the Chief Justice and pp. 3-4 of CJA's March 17, 2008 letter to Professor Hellman.