

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY HAND

September 8, 1998

E. Joshua Rosenkranz, Executive Director
Brennan Center for Justice
161 Avenue of the Americas
5th Floor
New York, New York 10013

RE: Re-evaluation of the Brennan Center's legislative advocacy; request for
amicus support for the cert petition in *Sassower v. Mangano, et al.*, S.Ct.
#98-106

Dear Mr. Rosenkranz:

Perhaps you will recall that we met last March 14th at the dinner capping the conference "Remembering and Advancing the Constitutional Vision of Justice William J. Brennan", at Harvard Law School. You described to me the work of the Brennan Center, specifically mentioning projects exploring issues of judicial independence and judicial selection. I expressed great interest because -- as I stated -- our non-partisan, citizens' organization, the Center for Judicial Accountability, Inc. (CJA), has a great deal of "in the trenches" experience in these areas and an archive of primary source materials. I gave you a copy of CJA's informational brochure reflecting that. As I recollect, I also gave you a copy of my published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (Exhibit "A"), which described 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 false and dishonest.

CJA had just then incorporated that article in a March 10th Memorandum to the House Judiciary Committee, relative to its consideration of two sections of H.R. 1252 ("The Judicial Reform Act of 1997") -- Section 4, relating to judicial discipline, and Section 6, relating to judicial disqualification. That Memorandum, as well as our March 23rd Memorandum, transmitted evidence to the Committee establishing the need for legislation more sweeping than what was being proposed.

Ironically, the Brennan Center also weighed in on H.R. 1252. By letter dated April 16th, it joined with more than 80 other organizations in opposing H.R. 1252 *in its entirety* (Exhibit "B"). Although the letter did not specifically address section 4, relating to federal judicial discipline, it did address

section 6, relating to federal judicial disqualification by asserting "judges are already removable for bias or prejudice". It also provided a phone number and contact person at the Alliance for Justice, also a signator of the letter. The Alliance's own position paper particularized opposition to both those sections (Exhibit "C"). As to section 6, the Alliance was more specific "Judges are already removable for bias or prejudice for or against a party pursuant to 28 U.S.C. §§144 and 455." As to section 4, the Alliance asserted that judicial discipline under 28 U.S.C. §372(c) "is working well" and relied upon the 1993 Report of the National Commission on Judicial Discipline and Removal.

The efficacy of §§144, 455, 372(c) is now before the U.S. Supreme Court in a petition for a writ of certiorari in the case *Sassower v. Mangano, et al.* (S.Ct. #98-106) -- which contains, in its appendix [A-295; A-391], CJA's March 10th and March 23rd Memoranda, including my aforesaid published article [A-207]. The petition demonstrates how the federal judiciary has subverted these essential congressional statutes¹, designed to ensure judicial integrity and, thereby judicial independence. Indeed, the petition highlights the breakdown of checks on federal judicial misconduct identified by the National Commission on Judicial Discipline and Removal as existing within the Judicial Branch.

Even more frightening is what the supplemental brief demonstrates: the breakdown of checks on federal judicial misconduct within the Legislative and Executive Branches -- checks which the National Commission's Report also identified.

The result of the breakdown of checks in all three governmental 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." supplemental petition, p. 2

Enclosed is a copy of the cert petition and supplemental brief, as well as the further supporting materials "lodged" with the Supreme Court Clerk: (1) the evidentiary compendium supporting CJA's written statement 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" [SA-17]; and (2) the exhibits to our July 27, 1998 letter to the Chief of the Justice Department's Public Integrity Section, Criminal Division [SA-47].

¹ For citation to the treatises and scholarly assessments of §§144 and 455, see p. 30 of the cert petition. As for the Administrative Office's own statistics on §372(c), see SA-19 of the supplemental brief.

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Such documents should enable the Brennan Center to recognize the error of its blanket opposition relative to H.R. 1252 and undertake legislative advocacy to fortify the federal judicial disqualification and disciplinary statutes and secure a congressional hearing on the National Commission's Report, which -- as pointed out by our March 23rd Memorandum [A-302-304] -- has never been the subject of a hearing.

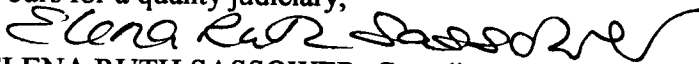
More immediately, it will enable the Brennan Center to recognize the extraordinary opportunity for needed reform presented by the cert petition and supplemental brief and to come forward with *amicus* support for Supreme Court review. We respectfully request such *amicus* assistance -- including help in garnering support of other organizations -- maybe even the 80 or so organizations who were signators of the April 16th letter (Exhibit "B"). This organizational backing will be particularly important in the event the Court does not accept review at its September 28th conference, in which event we will be filing a petition for rehearing. As part of such rehearing petition, we hope to append a list of organizations urging review and expressing their grave concern for the profoundly dangerous state of affairs detailed by the cert petition and supplement, as to which the public is completely unprotected.

To enhance the likelihood of the Court meeting its difficult "supervisory" and ethical duties herein, we also hope that the Brennan Center would assist in bringing this case to the media's attention. It is obvious from the Brennan Center's "Selected Clippings" booklet that it has media connections that we don't. Indeed, it is our inability to obtain media coverage for the important issues herein presented that we have been obliged to take out high-priced ads to "get the message to the public". Two of those ads are part of the record and included in the appendix to the cert petition: "*Where Do You Go When Judges Break the Law?*" [A-269], which cost CJA nearly \$20,000 (NYT, 10/26/94, Op-Ed page; NYLJ, 11/1/94, p. 9) and "*Retraining 'Liars in the Courtroom' and on the Public Payroll*" [A-261], which cost us over \$3,000 (NYLJ, 8/27/97, pp. 3-4) (Exhibits "D-1" and "D-2"). The latter ad was an insert to CJA's informational brochure, which I gave you -- and Professor Neuborne, the Brennan Center's Legal Director -- in March.

Should the Brennan Center wish to see the case files substantiating the ads -- and the cert petition -- we will promptly provide them to you. Needless to say, time is of the essence.

Thank you for your consideration.

Yours for a quality judiciary,


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

Enclosures

cc: Burt Neuborne, Legal Director