

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY PRIORITY MAIL

September 15, 1998

Elliot M. Minberg, Legal Director/General Counsel
People for the American Way
2000 M Street, N.W., Suite 400
Washington, D.C. 20036

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

Dear Mr. Minberg:

Thank you for taking the time to speak with me, at fairly great length, about People for American Way's participation as a signator to the April 16, 1998 letter to members of Congress in which more than 80 organizations opposed H.R. 1252 *in its entirety* (Exhibit "A"). You stated that such all-encompassing opposition was "for tactical reasons".

Although the letter did not specifically address section 4 of H.R. 1252, 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 "B"). 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.

As discussed, the efficacy of §§144, 455, 372(c) -- statutes designed to safeguard against biased, abusive, and unfit judges -- is now before the U.S. Supreme Court in a petition for a writ of certiorari in the §1983 federal civil rights action, *Sassower v. Mangano, et al.* (S.Ct. #98-106). The petition contains in its appendix [A-295; A-391] the March 10th and March 23rd Memoranda that our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), submitted to the House Judiciary Committee in connection with its consideration of sections 4 and 6 of H.R. 1252. Included in the Memoranda and in the appendix is CJA's published article [A-207],

“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 (Exhibit “C”). It describes the federal judicial disqualification and disciplinary statutes as having been “gutted” by the federal judiciary and the National Commission’s Report as methodologically flawed and dishonest. This is borne out by the cert petition and supplemental brief: Indeed, the petition not only demonstrates how the federal judiciary has subverted §§144, 455, and 372(c)¹, but highlights the breakdown of the other checks on federal judicial misconduct identified by the National Commission as existing within the Judicial Branch. As for the supplemental brief, it demonstrates the breakdown of checks on federal judicial misconduct identified by the National Commission as existing within the Legislative and Executive Branches. 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.” 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 the Committee’s 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].

Such documents will enable PFAW to recognize the danger in its blanket opposition to H.R. 1252 and to undertake legislative advocacy to fortify the gutted federal judicial disqualification and disciplinary statutes, beginning with pressing for a congressional hearing on the National Commission’s Report. As pointed out by CJA’s March 23rd Memorandum [A-302-304], the final Report was never the subject of a hearing.

More immediately, they will enable PFAW to recognize the extraordinary opportunity for advancing needed reform presented by the cert petition and supplemental brief and to come forward with *amicus* support for Supreme Court review. To do so in the context of a §1983 civil rights action involving heinous constitutional violations and retaliation against a judicial whistle-blowing attorney for

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.

legitimate exercise of First Amendment rights, should make PFAW all the more eager to champion this case. CJA respectfully requests PFAW's *amicus* assistance -- including its help in garnering support of other organizations -- maybe even the 80 or so organizations who were signators of the April 16th letter (Exhibit "A"). 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 improve the likelihood of the Court meeting its difficult "supervisory" and ethical duties in this case, we also ask PFAW's help in obtaining press coverage. Unfortunately, CJA has been so shut out by the media that we have had to rely on extremely expensive public interest ads to "get the message out". Two of these ads are part of the record in *Sassower v. Mangano, et al.* 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").

I appreciate your suggestion that you believed it useful for us to contact "Citizens for Independent Courts". I believed the same thing -- and it was with the enthusiastic expectation of mutual goals that I contacted Independent Courts back in July, immediately upon learning of its existence. In speaking with its Executive Director, Virginia Sloan, I described CJA's portfolio of accomplishments over our nine years of existence. On July 31st, I hand-delivered to Independent Courts extensive primary-source materials substantiating CJA's hard-won success in documenting the dysfunction of judicial selection and discipline on the federal level. These materials included the *Sassower v. Mangano* cert petition (bound in booklet form), as well as CJA's statement to the House Judiciary Committee and supporting evidentiary compendium -- materials that should have been of transcending interest to Ms. Sloan, in view of her 11-tenure at the House Judiciary Committee.

In fact, the opposite was the case and when, after several weeks, Ms. Sloan finally returned my follow-up calls, she would not discuss *any* of the particulars documented by our documentary materials, baldly stating that she was "unpersuaded" by them. She further told me that "Citizens for Independent Courts" would not get involved in the front-burner judicial selection/discipline issues I had identified as requiring immediate advocacy -- including our cert petition. She also rejected including CJA in Independent Court's activities, whether as a "member" or otherwise, refused to identify the criteria for "membership", and refused to facilitate CJA's independent research projects by interceding with a local law school dean, who is an Independent Courts "member", to afford us access to the periodical collection of its library.

September 15, 1998

As I mentioned, when Ms. Sloan thereafter returned our materials -- which I requested she do -- they were in completely uncreased, "untouched by human hands" condition. This includes the bound cert petition, our House Judiciary Committee statement with its corroborative evidentiary compendium, and our subsequently-transmitted July 27, 1998 letter to the Justice Department's Public Integrity Section -- copies of which are all transmitted herewith.

Following our yesterday's phone conversation, I placed yet another call for Dr. Morton Halperin, Senior Vice President of the Century Foundation to discuss Ms. Sloan's unprofessional and dishonest behavior toward us. This makes four long-distance calls *in toto* in the last ten days -- none of which have been returned, despite my messages of their urgency.

Perhaps after you have reviewed the enclosed materials, you will gain a truer perspective of the organization to which you have given the stature and credibility of your good name.

With regards and thanks.

Yours for a quality judiciary,



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

Enclosures

cc: Dr. Morton Halperin, Senior Vice-President, The Century Foundation
Virginia Sloan, Executive Director, "Citizens for Independent Courts"