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March 13, 1998

Professor Stephen B. Burbank
University of Pennsylvania School of Law
3400 Chestnut Street
Philadelphia, Pennsylvania 19104

RE: The efficacy of 28 U.S.C. §372(c), §144, and §455, and the integrity of the Report of the National Commission on Judicial Discipline and Removal

Dear Professor Burbank:

You may recall that exactly two years ago I introduced myself to you at the American Judicature Society's mid-year meeting in Washington. I believe our brief conversation was interrupted as I was trying to explore with you your view as to whether §372(c) complaints alleging biased, bad-faith conduct were "merits-related". This was a question that our citizens organization had raised with the National Commission on Judicial Discipline and Removal -- *before* it issued its final Report in August 1993. I know that I left in your hand a copy of CJA's informational brochure which referred to the National Commission's Report as "methodologically flawed".

I bring this up because on May 14, 1997, your written and oral testimony before the House Judiciary Committee on H.R. 1252, gives a reverse mirror image description of the National Commission's Report. You refer to it as "methologically sound" -- a description specifically in the context of its examination of §372(c). (Transcript: pp. 55, 58).

Presently, the House Judiciary Committee is considering H.R. 1252. On March 10th, the day on which the full Committee met on the bill, we supplied it with a Memorandum critically responding to a March 3rd letter of the Judicial Conference which, based on the supposed efficacy of 28 U.S.C. §372(c), §144, and §455, opposed Sections 4 and 6 as "particularly significant and highly objectionable". Included in our Memorandum were references to your own testimony about those provisions, which we characterized as "varyingly false, misleading, and uninformed". Supporting such strong statement was CJA's published article, "*Without Merit: The Empty Promise of Judicial*

Discipline" (Long Term View (Massachusetts School of Law), Vol 4. No. 1, Summer 1997), particularizing key respects in which §372(c) is a facade, §144 and §455 have been gutted, and the National Commission's Report is "methodologically-flawed and dishonest".

Enclosed is a copy of the Memorandum and article, to which we invite your comments. Since H.R. 1252 has now been put over until March 24th, we believe that the House Judiciary Committee would greatly benefit from a response from you about our article before that date. Obviously, the National Commission's evaluation of §372(c) cannot be -- at the same time -- both "methodologically flawed" and "methodologically sound".

You will note that our Memorandum refers to evidentiary materials which we long ago supplied to the Administrative Office for transmittal to the Judicial Conference and which resoundingly refute its claims about the adequacy of §372(c), §144, and §455. As set forth therein, we are providing copies of those materials to the House Judiciary Committee so that it can *independently* verify their dispositive nature.

As a scholar of §372(c) and judicial administration -- which, presumably, was the reason you were appointed by the Speaker of the House to be a member of the National Commission -- you, assumedly, would be greatly interested in seeing for yourself those primary source materials. This includes a copy of the §372(c) complaint we filed with the Second Circuit in March 1996 -- just days before I met you at the American Judicature Society's mid-year meeting. That complaint, dismissed as "merits-related", was based on the very appellate materials we had presented to the National Commission in July 1993 with the direct question to it as to whether a complaint would be cognizable under §372(c) against judges whose bias was manifested in demonstrably fraudulent and retaliatory judicial decisions[1]. As recounted in our published article, it was a question which the National Commission refused to answer -- and which the House Judiciary Commitee was unable to. Since you are an expert on Rule 11, you should be quite appalled by the judicial decisions there at issue: where a district judge's completely arbitrary and violative $50,000 sanctions award under Rule 11 -- shown on appeal to be factually *unsupported* -- was upheld by the Second Circuit by its own, *sua sponte*, invocation of "inherent power", as was a $42,000 sanctions award under 28 U.S.C. §1927, likewise shown on appeal to be devoid of *any* factual support.

Also included among those primary source materials is an appeal to the Second Circuit, where the U.S. Supreme Court case of *Litekey v. U.S.*, 510 U.S. 540, 114 S.Ct. 1147 (1994) -- the *same* case as you brought to the House Judiciary Committee's attention by your testimony (5/14/97 Transcript: pp. 60, 65) -- was cited and discussed in support of the *sole* issue presented for review, the district

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[1] *See, inter alia*, our July 22, 1993 letter to the National Commission, which requested that it be distributed to the Commission's members and made part of the Commission's official record.

judge's "pervasive bias" -- including his wrongful denial of a motion for his recusal pursuant to §144 and §455 and reargument of his denial thereof. The Second Circuit not only refused to adjudicate the bias issues, but its Chief Judge threw out as "merits-related" the §372(c) complaints based thereon.

Since it will take a couple of days for us to assemble and duplicate these evidentiary materials for transmittal to you, please notify us *immediately* by fax or e-mail should you have any objection to receiving them.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures
cc: House Judiciary Committee
Judicial Conference of the United States
c/o Administrative Office of the United States Courts