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May 29, 1998

William Burchill, Jr., General Counsel
Jeffrey N. Barr, Assistant General Counsel
Administrative Office of the U.S. Courts
One Columbus Circle
Washington, D.C. 20544

RE: The House Judiciary Committee's June 11, 1998 "oversight" hearing and Congress' promised "vigorous oversight" of the federal judiciary's implementation of 28 U.S.C. §372(c)

Dear Messrs. Burchill and Barr:

The House Judiciary Committee has scheduled an "oversight" hearing on the Judicial Conference, the Administrative Office, and the Federal Judicial Center for June 11th, at which CJA has requested to testify based on its March 10th and March 23rd Memoranda to the House Judiciary Committee.

As reflected by those Memoranda, "oversight" is imperatively needed. Those Memoranda detailed how the Judicial Conference, in its opposition to §§4 and 6 of H.R. 1252, misled the House Judiciary Committee by fraudulent and deceitful claims as to the efficacy of 28 U.S.C. §§372(c), 144, and 455. Substantiating the Memoranda was CJA's 2-1/2 year correspondence with the Administrative Office, from July 20, 1995 to March 10, 1998, transmitting evidentiary proof of the Second Circuit's corruption of §§372(c), 144, and 455 for presentment to the appropriate committees of the Judicial Conference for remedial action. The final paragraph of CJA's March 10th Memorandum highlighted that this correspondence and evidentiary proof would compel Congress not only to "substantially revise [§§372(c), 144, and 455], but to substantially revise [its] relationship with the costly superstructure of the federal judiciary."

Indeed, CJA's Memoranda demonstrated that the Judicial Conference -- which operates as a huge "taxpayer-supported lobby for the federal judiciary" -- is wholly unworthy of the trust of Congress and of the American People. Behind its claims that the federal judiciary could and would "police itself" -- the basis upon which, in 1980, Congress had entrusted the federal judicial disciplinary mechanism to the federal judiciary under §372(c) -- the federal judiciary has been flagrantly doing the opposite. Our Memoranda showed -- and particularized by CJA's annexed published article, "*Without Merit: The*

Ex A

Empty Promise of Judicial Discipline"[1]-- that the federal judiciary has concealed its subversion of §372(c) by making complaints filed under §372(c) confidential and that it sabotaged what was supposed to be, but was not, the first independent review of §372(c) by the National Commission on Judicial Discipline and Removal.

Although our March 10th Memorandum (at pp. 2-3) expressly asked the House Judiciary Committee to request the Judicial Conference "to respond to the serious allegations set forth in that article, specifically as to the National Commission's methodologically-flawed and dishonest review of §372(c)", the Judicial Conference could reasonably have been expected to have independently recognized its duty to respond to both the article and Memorandum, without prompting from the House Judiciary Committee. Response was even more compelled in light of the facts set forth in our March 23rd Memorandum (at pp. 1-2), to wit, the failure of Professor Stephen Burbank, a member of the National Commission and author of Chapter V of its 1993 Report on the "Judicial Branch", to respond appropriately. What he did was to reject CJA's proffer to him of evidentiary proof of the federal judiciary's subversion of §§372(c), 144, and 455 and of the Judicial Conference's duplicity. The March 23rd Memorandum (at p. 5) also highlighted the significance of: (a) the Judicial Conference's failure to upgrade its committee structure for discipline and ethics issues, the need for which was reflected in the National Commission's Report; and (b) the Circuits' flouting of two Judicial Conference recommendations from 1986 and 1994 that they build case law precedent for §372(c) -- whose consequence has been to keep the "merits-related" ground for dismissal undefined and enable the Circuits to dump virtually every §372(c) complaint as "merits-related". Each of these demonstrated the Judicial Conference's disinterest in meaningful, on-going oversight of the federal judiciary's implementation of §372(c). The fact that CJA was unable to ascertain "how much money, if any, of the federal judiciary's $3,000,000,000 budget is earmarked for oversight of §372(c)" -- as noted in that Memorandum (fn. 6) -- plainly gives rise to an inference that the federal judiciary has made no appropriations -- or none of significant size. Indeed, as pointed out in the Memorandum (p. 6), the only one in the Administrative Office with responsibilities over judicial discipline matters -- according to Mr. Barr -- is Mr. Barr himself -- who has given such matters rock-bottom priority in comparison to his other duties.

Considering that Congress promised "vigorous oversight" of §372(c) when it passed "the 1980 Act"-- a fact repeated in the National Commission's Report (at pp. 4, 85) and identified in CJA's published article (at p. 93) -- the Judicial Conference's failure to respond to the Memoranda over these past two months can only mean one of three things: (1) that you have withheld such Memoranda from it; (2) that the Judicial Conference is unable to address the issues presented by the Memoranda without incriminating itself -- and you; or (3) that the Judicial Conference has so little respect for the aptitude and integrity of Congress and for its capacity to meaningfully "oversee" the federal judiciary that it

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[1] The Long Term View (Massachusetts School of Law), Vol. 4, No. 1, summer 1997, pp. 90-97.

believes it does not have to account to Congress -- including for defrauding Congress -- and, through it, the American People, who finance the federal judiciary's superstructure.

We have also received no response to our subsequent April 8th letter, addressed to each of you. That letter called for your immediate response as to the status of your examination of the case file of *Sassower v. Mangano* and of our request that the Judicial Conference take steps to facilitate review of the case by the U.S. Supreme Court, as particularized in our November 24, 1997 letter to Mr. Barr. The transcending significance of that case was highlighted in CJA's March 23rd Memorandum in a paragraph singling out the importance of the November 24, 1997 letter and stating to the House Judiciary Committee in bold-faced type:

> **"The importance of your review of *Sassower v. Mangano* cannot be overemphasized: both for purposes of examining the federal recusal statutes, §144 and §455, and the disciplinary statute, §372(c). The case involves no less than six recusal applications[2] and generated two §372(c) complaints, each with recusal applications."** (at p. 7)

A footnote in the March 23rd Memorandum stated that a further recusal/transfer application would be part of our petition for review to the Second Circuit Judicial Council of the order of its Chief Judge dismissing the §372(c) complaints. Indeed, our April 8th letter to you transmitted a copy of that petition for review, the first eight pages of which consisted of that fact-specific application showing the Chief Judge's complete disrespect for statutory and ethical disqualification rules and the following eight pages showing that the Chief Judge's dismissal order was based on misrepresentations and concealment of the allegations of the complaints and that it was non-conforming with the recommendations of the Judicial Conference and National Commission on Judicial Discipline and Removal, calling for non-conclusory determinations so as to build interpretive precedent.

We do not know who will be testifying at the June 11th "oversight" hearing on behalf of the Judicial Conference, the Administrative Office, and the Federal Judicial Center. However, we wish to put the federal judicial branch on notice that those testifying should come prepared to address the issues presented by CJA's March 10th and March 23rd Memoranda and to respond to questioning by members of the House Judiciary Committee. To ensure that this happens, we request that you *immediately* provide those individuals with copies of those Memoranda -- and with the substantiating correspondence and case files to which they refer. So as to complete the evidentiary record we provided you substantiating the Second Circuit's corruption of §372(c) and of the ethical rules and statutes regarding disqualification, transmitted herewith is a copy of the Second Circuit Judicial Council's May 4th order

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[2] As reflected by pp. 10-11 of our petition for review to the Second Circuit Judicial Council, *infra*, our March 23rd Memorandum understated the number of recusal applications which had by then been made in the *Sassower v. Mangano* case. The correct number was then 8, rather than 6.

denying the petition for review -- "for the reasons stated" in the Chief Judge's dismissal order! Such boiler-plate verbiage repeats that used by the Second Circuit Judicial Council in 1996 when it upheld the dismissal of our prior §372(c) complaint, arising from the case of *Sassower v. Field.* As then, the coverletter informs us "there is no further review of this decision" [*Cf.*, Second Circuit Judicial Council's 6/26/96 order and coverletter, transmitted by CJA's 9/20/96 letter to Mr. Barr].

We note that at the House Judiciary Committee's April 21, 1993 "oversight" hearing of the federal judicial branch, there were no witnesses other than those representing the federal judiciary. Likewise, at the May 20, 1987 and March 15, 1983 "oversight" hearings. We are in the process of obtaining transcripts of the House Judiciary Committee's other "oversight" hearings of the federal judicial branch so as to ascertain whether the House Judiciary Committee ever had the benefit of witnesses testifying in opposition to the federal judiciary's self-serving claims. It may be that CJA's testimony at the upcoming June 11th "oversight" hearing will be the first time opposition has been so presented.

In the event you are unaware, on April 24th, CJA testified before the Commission on Structural Alternatives for the Federal Courts of Appeals about those two Memoranda -- copies of which we provided to the Commission, together with our relevant correspondence with the Administrative Office transmitting the *Sassower v. Mangano* case file, including its incorporated §372(c) complaints, and the *Sassower v. Field* §372(c) misconduct complaint. Our testimony demonstrated that each of those cases empirically explodes the federal judiciary's self-serving claims about judicial administration. Although the testimony is accessible on the Commission's website: www.app.comm.uscourts.gov/, a copy is enclosed for your convenience.

I will be coming to Washington for the June 1st annual meeting and dinner of the U.S. Supreme Court Historical Society -- of which I am a member. Since Chief Justice William Rehnquist presides over the Judicial Conference, I intend to give him, in hand, a copy of this letter, CJA's March 10th and March 23rd Memoranda, and our November 24, 1997 letter -- in the event he is at the dinner, as he was last year. On Tuesday, June 2nd or Wednesday, June 3rd, I expect to be meeting with House Judiciary Committee counsel. The exact time and date have not been set. I would have no objection to your joining the meeting. In addition to reviewing with counsel the issues presented by CJA's March 10th and March 23rd Memoranda, I will be providing them with copies of the petition for a writ of certiorari in *Sassower v. Mangano*, filed with the U.S. Supreme Court last week. As set forth therein:

> "Based on the record [in *Sassower v. Mangano*], which is already before the House Judiciary Committee [A-301], there can be no argument for reposing federal judicial discipline within the federal judicial branch, absent [the Supreme] Court's decisive action. All available formal and informal checks on judicial misconduct, identified by the National Commission on Judicial Discipline and Removal as existing within the federal judicial branch, were utilized by Petitioner and shown to be sham. Nor is there any check provided by the Judicial Conference, the very zenith of the federal judiciary. Its

> Administrative Office, to whom Petitioner supplied the record of this case for presentment to the appropriate committees of the Judicial Conference for oversight intervention, has not only refused to make such presentment, but fails to respond to letters or return phone calls [A-308-310]. So much for 'self policing' by the federal judiciary." (at pp. 23-24)

On both June 2nd and 3rd, I plan to spend considerable time doing research in the Federal Judicial Center -- which is housed in the same building as the Administrative Office. In the event you wish to meet with me, in addition to or separate and apart from my meeting with House Judiciary Committee counsel, I will call you in the morning of June 2nd. Needless to say, it would be appropriate for you to finally provide us with the information repeatedly requested by CJA's letters to you -- including, most recently, by our April 8th letter.

Yours for a quality judiciary,

Elena Ruth Sassower

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

Enclosures

cc: Chief Justice William H. Rehnquist, Judicial Conference of the United States
Counsel, House Judiciary Committee
Republican Majority Side: Tom Mooney, Mitch Glazier, Blaine Merritt
Democratic Minority Side: Perry Apelbaum, Robert Raben
Chairman Byron R. White, Commission on Structural Alternatives
for the Federal Courts of Appeals
President Jerome J. Shestack, American Bar Association
Professor Stephen B. Burbank