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STATEMENT OF THE CENTER FOR JUDICIAL ACCOUNTABILITY, INC. FOR INCLUSION IN THE RECORD OF THE HOUSE JUDICIARY COMMITTEE'S JUNE 11, 1998 "OVERSIGHT HEARING OF THE ADMINISTRATION AND OPERATION OF THE FEDERAL JUDICIARY"

This statement is presented for inclusion in the record of the June 11th "oversight" hearing so that members of Congress and the interested public are not otherwise misled into believing that the House Judiciary Committee or its Court Subcommittee is meaningfully discharging its duty to oversee the federal judiciary. It is not.

The *only* witnesses permitted to testify at the Subcommittee's "oversight" hearing were those representing the bodies overseen -- the Judicial Conference, the Administrative Office, and the Federal Judicial Center. Deliberately excluded, without reasons, was the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization, which has been monitoring the federal judiciary for many years. Our track record of advocacy before the Subcommittee has included two fully-documented Memoranda exposing a pattern of official misconduct and corruption within and by the federal judiciary, covered-up by the Judicial Conference and Administrative Office.

Copies of CJA's two Memoranda are annexed to this statement, as is our correspondence pertaining to the June 11th "oversight" hearing. Without these appended documents[1], incorporated herein and made part of this statement, Congress and the interested public cannot begin to fathom the travesty of the Subcommittee's so-called "oversight" and its reprehensible response to CJA's unparalleled contribution

[1] For ease of reference, the pages of the appended documents included in this record are numbered sequentially, prefaced by R- (standing for "Record").

Exhibit H

to advancing *genuine* oversight. Nor can they be convinced -- except by seeing these documents themselves -- that such misconduct is deliberate and with the knowledge and complicity of those "at the top": the leadership of the Courts Subcommittee and the full Committee.

CJA's two Memoranda, dated March 10, 1998 [R-1] and March 23, 1998 [R-15], were addressed to House Judiciary Committee Chairman Hyde and the Committee members. They describe how the Judicial Conference, in its lobbying to block legislation being considered by the Committee, made false and deceitful claims to the Committee as to the adequacy and efficacy of 28 U.S.C. §372(c) -- the statute governing judicial discipline -- and 28 U.S.C. §§144 and 455 -- the statutes governing judicial disqualification. The Memoranda highlight that these essential statutes, intended by Congress to protect the public from biased, abusive, and dishonest judges, have been gutted by the federal judiciary. The federal judiciary has successfully concealed its subversion of §372(c) by making §372(c) judicial misconduct complaints confidential and inaccessible -- even to Congress. It also 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. This is particularized by CJA's published article [R-10-11], "*Without Merit: The Empty Promise of Judicial Discipline*"[2], annexed to the March 10th Memorandum, which exposed the National Commission's 1993 Report as "methodologically flawed and dishonest" [R-3]. Even still, the federal judiciary has failed to follow through with key recommendations the Commission made for enhancing the functioning of §372(c). This includes the Circuits' failure to provide reasoned, non-conclusory explanations in their orders dismissing §372(c) complaints and to build a body of interpretive caselaw, as well as the Judicial Conference's failure to modify and expand its committee structure to monitor and develop policy on judicial discipline and ethics issues [R-19]. Noting that we had been "unable to ascertain how much money, if any, of the federal judiciary's $3,000,000,000 budget is earmarked for [its] oversight of §372(c)" [R-19], our March 23rd Memorandum highlighted that there is no one employed by the Administrative Office to handle §372(c) on a full-time basis, but only a single person, who gives it rock-bottom priority in comparison to his other duties [R-20]. As to this person, our Memoranda [R-20-23] provided the Committee with evidentiary proof of his wilful complicity in the federal judiciary's subversion of §372(c).

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

Congress promised "vigorous oversight" when it passed §372(c), reposing federal judicial discipline in the federal judiciary based on the federal judiciary's claims that it could and would "police itself". It was to facilitate that oversight that Congress required the Administrative Office to publish yearly statistics on §372(c) in its annual reports [28 U.S.C. §604(2)]. And what are these statistics? According to the Administrative Office's 1997 Annual Report, the federal judiciary disposed of 482 complaints over a twelve-month period, *without* a single federal judge having been disciplined, either publicly or privately, and *without* a single investigative committee having been appointed. Likewise, in the 1996 Annual Report, out of 588 complaints, not a single federal judge was either publicly or privately disciplined by the federal judiciary, which also appointed *no* investigative committees. This **100%** dismissal rate should have elicited skepticism, even without CJA's Memoranda. With CJA's Memoranda, the Subcommittee should have been roused to action. For the first time, the Subcommittee had an analysis of how the federal judiciary has been dumping legitimate complaints and "hard evidence" to back it up: copies of actual §372(c) complaints and of the federal judiciary's orders dismissing them. From these the Subcommittee could verify for itself that the federal judiciary -- with the knowledge of the Administrative Office and Judicial Conference -- has been tossing out substantive complaints by dismissal orders which deliberately misrepresent the complaints' factual allegations and deliberately misrepresent and conceal the proper standard for review.

Since the Subcommittee does *not* itself investigate judicial misconduct complaints it receives from individual complainants and, at most, directs complainants to file §372(c) complaints with the federal judiciary -- a fact highlighted by our published article [R-11, R-13] -- the significance of §372(c) being sham is that individual litigants and the affected public have nowhere to turn for protection against misbehaving judges.

Consequently, if the Subcommittee had passing respect for its oversight obligations -- not to mention the self-respect to object to being lied to -- it had to call upon the Judicial Conference to respond to CJA's evidentiarily-substantiated Memoranda. For its part, if the Judicial Conference believed that the Subcommittee takes oversight seriously, it would have come forth, on its own, to deny, dispute, or rebut them -- if it could. Yet the Judicial Conference provided *no* response and the Subcommittee did not request one -- not even *after* Professor Stephen Burbank, a member of the defunct National Commission, *failed* to defend against our Memoranda, including our critique of the chapter on §372(c) of the Commission's Report, which he

authored. Professor Burbank's shocking response was highlighted at the outset of our March 23rd Memorandum [R-15], which annexed the exchange of correspondence [R-26-30].

CJA's Memoranda, substantiated by a boxload of meticulously organized evidentiary proof, were completely ignored by the House Judiciary Committee, whose counsel failed to return any of our follow-up phone messages. This includes our phone messages requesting a meeting with counsel to discuss the profound and far-reaching issues presented by the Memoranda and to update them on subsequent developments. Such request should have been welcomed, coming as it did in the weeks preceding the June 11th "oversight" hearing. Indeed, our May 22nd letter [R-40], formalizing our meeting request, *also* requested to be permitted to testify [R-41][3].

Based on our Memoranda, it should not have been necessary for CJA to request to testify -- we should have been invited. Moreover, if the Subcommittee was not going to grant CJA's request to testify, it was even more important for its counsel to meet with us or, at least, to speak with us. How else was counsel going to be able to properly brief Subcommittee members on the serious issues presented by our Memoranda? -- all of which were germane to questioning of the federal judiciary's witnesses at the "oversight" hearing.

To ensure that such questioning was not frustrated by federal judiciary witnesses claiming "surprise" and unfamiliarity with the Memoranda, CJA gave notice to the Administrative Office, by letter dated May 29th [R-61], that they should come to the hearing prepared to testify about them and respond to members' questioning. Lest the Administrative Office not transmit such notice to the Judicial Conference, we took the extra precaution of delivering a duplicate letter, in hand, to the Clerk of the U.S. Supreme Court, who accepted service for Chief Justice Rehnquist as head of the Judicial Conference. We also gave him duplicates of CJA's two Memoranda. Needless to say, we provided a copy of our May 29th letter to the Subcommittee.

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[3] Enclosed with our May 22nd letter was a copy of our April 24, 1998 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals [R-42-60]. As reflected by that testimony [R-47], we expressly drew the Commission's attention to our March 10th and 23rd Memoranda, copies of which we provided it, together with the substantiating evidentiary proof.

It is against this background -- and after leaving numerous phone messages for Subcommittee counsel about our meeting request and about our request to testify, all unreturned -- that, on June 3rd, a Subcommittee staff assistant told us, in answer to our phone inquiry, that CJA would not be permitted to testify at the "oversight" hearing. According to her, this was because Subcommittee Chairman Howard Coble had "closed" the witness list. The staff assistant gave us no information as to why or when the list was "closed". As to who was on the witness list, we were told that this information was "confidential". As in the past, no Subcommittee counsel was available to speak with us. Our messages for them were unreturned.

We turned to Chairman Coble. Our June 5th letter to him [R-66], reiterating our request to testify, followed phone conversations with his chief of staff and legislative assistant. Our letter, which annexed the pertinent documents -- CJA's two Memoranda and May 22nd and May 29th letters -- chronicled Subcommittee counsel's unprofessional conduct. This included facts showing that they had sabotaged the very Subcommittee legislation to which our Memoranda were addressed by withholding the Memoranda from the Committee and Congress [R-66-68]. Additionally, correspondence annexed to the letter[4] [R-90-111] demonstrated that the unprofessional conduct of Subcommittee counsel had a history going back many years as CJA discovered -- then tried to rectify -- that even after the National Commission's 1993 Report recommended (at pp. 37, 148) that "the House ensure that its Committee on the Judiciary has the resources to deal with judicial discipline matters", the Subcommittee had taken *no* steps to obtain necessary resources. Instead, the Subcommittee was continuing to ignore the judicial misconduct complaints it received, based on its alleged lack of resources. Simultaneously, it was withholding from Congress -- and the public -- statistics as to the number of complaints being filed with it, information the National Commission's Report identified as included in the House Judiciary Committee's "Summary of Activities" for each Congress[5] -- and denying the public access to those

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[4] The correspondence annexed to our June 5th letter was from February 2, 1996 through January 20, 1998 [R-90-111], a period in which the Republican majority had taken over the Subcommittee from the Democrats. Such materials refer to and describe our prior correspondence with the Democrats, whose unprofessional conduct likewise evinced their repudiation of "oversight" over the federal judiciary. In the interest of completeness, that earlier correspondence is included at R-74-89]. *See* also R-35 for our first letter to the Subcommittee, dated June 9, 1993.

[5] CJA's July 10, 1995 letter to Subcommittee counsel pointed out [R-96] that the Judiciary Committee's "Summary of Activities" for the 103rd Congress failed to include statistical

complaints, notwithstanding the National Commission's Report stated they were "available upon request".

Our June 5th letter thus presented a picture of profound dysfunction by the Subcommittee in its own handling of judicial misconduct complaints -- beyond its disinterest in overseeing the federal judiciary's handling of judicial misconduct complaints under §372(c). This should have been a jolting wake-up call for Chairman Coble, as well as for the high-ranking House Judiciary Committee members to whom we sent the letter: full Committee Chairman Hyde and Congressman John Conyers, ranking member of the full Committee, as well as to Congressman Barney Frank, ranking member of the Courts Subcommittee. Indeed, as to the ranking members, our June 5th letter stated our belief that surely "the Democratic minority has some 'say' in the witness list for the June 11th hearing" [R-72].

We received no response from anyone. Consequently, on June 10th, the eve of the "oversight" hearing, we sent a fax to each of the indicated recipients of our June 5th letter -- with a copy to Chairman Coble. In pertinent part, it read:

> "The Courts Subcommittee staff has provided us with the witness list for tomorrow's "oversight" hearing. Only representatives of the bodies being "overseen" -- the Judicial Conference, Administrative Office, and Federal Judiciary -- will be testifying.
>
> As you know, CJA's request to testify at that hearing, based on our March 10th and March 23rd Memoranda to the House Judiciary Committee, was the subject of our faxed June 5th letter addressed to Courts Subcommittee Chairman Howard Coble, with copies faxed to each of you as indicated recipients.
>
> ... no response has been forthcoming as of this date and time: June 10th, 4:30 p.m.
>
> Needless to say, the Subcommittee's refusal to include CJA as a witness

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information on "the number and nature of judicial discipline complaints it receives". No corrective action was taken -- as reflected by the fact that the Committee's "Summary of Activities" for the 104th Congress also OMITS such information.

at its "oversight" hearing -- and your failure, as indicated recipients, to take discernible corrective steps -- does not eliminate the Subcommittee's obligation to make tomorrow's "oversight" hearing more than the ceremonial exercise than its past "oversight" hearings have been. Based on the documentary proof CJA provided the Subcommittee as to the federal judiciary's deceitful claims to Congress as to the adequacy and efficacy of 28 U.S.C. §§372(c), 144, and 455 -- statutes essential to protecting the public from judicial bias and corruption -- the public has a right to expect that the Subcommittee will closely question the federal judiciary's witnesses at tomorrow's hearing. Indeed, as pointed out in our May 29th letter, Congress promised "vigorous oversight" over §372(c) when, in 1980, it reposed federal judicial discipline in the federal judicial branch based on the judiciary's claims that it could police itself.

For the Subcommittee to fail to explore the serious issues presented by CJA's March 10th and March 23rd Memoranda would make the Subcommittee even more of a laughing-stock in the federal judiciary's eyes than it already is. Indeed, the contempt with which the federal judiciary holds Congress is evident not only from its false, fraudulent and deceitful representations to Congress, as highlighted by our Memoranda, but by its failure to recognize its duty to respond to the serious charges as to its misconduct, therein particularized

Finally, since the Subcommittee seems to operate without any awareness that the Judicial Conference and Administrative Office constitute a taxpayer-supported special interest group, lobbying for the federal judiciary, we strongly recommend -- as required reading -- the excellent book of Professor Christopher E. Smith entitled Judicial Self-Interest: Federal Judges and Court Administration (Praeger Publishers, 1995, 145 pp.)."

Again, no response.

Although the transcript of the Subcommittee's June 11th "oversight" hearing has not been posted on the House Judiciary's website, we have been advised that none of the Subcommittee members at the hearing questioned the federal judiciary's witnesses about CJA's two Memoranda or the issues raised therein. These members include

Chairman Coble and Congressman Frank, who, nonetheless apparently engaged the witnesses in questioning on media-publicized judicial disqualification issues: judges having stock in a litigant or attending seminars funded by a foundation that funds litigation. Such questioning was, of course, a "stone's throw" away from the larger -- and more profound -- issues presents by our Memoranda: that the disqualification and disciplinary statutes are "empty shells" and that the Judicial Conference and Administrative Office cover up for federal judges, whose "actual" bias is manifested by their obliteration of the judicial/appellate/disciplinary processes.

We have read the lengthy statements of Judge William Terrell Hodges, Chairman of the Executive Committee of the Judicial Conference, and of Leonidas Ralph Mechem, Director of the Administrative Office. Neither contain any reference to CJA's Memoranda or the critical issues they present. These omissions can only be seen as deliberate -- in view of CJA's hand-delivered May 29th letter [R-61]. The fact that both Judge Hodges and Mr. Mechem, who are at the heights of the federal judiciary's costly taxpayer-supported superstructure, should come before the Subcommittee and not address those issues, yet include in their statements requests for increased salaries and employment benefits for federal judges[6] and administrative personnel, demonstrates their contempt for the public's rights and the Subcommittee's "oversight".

Despite the explicit reminder in our May 29th letter of Congress' promised "vigorous oversight" when it passed §372(c) [R-62], their written statements conspicuously make no claim as to the efficacy of the disciplinary mechanism set up under that statute, which they nowhere mention. Nor is there any mention of "judicial accountability" or the National Commission's 1993 Report. For other purposes, Judge Hodges' statement cites (p. 19) the Judicial Conference's 1995 Long-Range Plan. CJA is very familiar with that Plan, having testified in 1994 before the Conference's Long-Range Planning Committee, which produced it [R-87]. As we pointed out then -- and as appears in the Plan (pp. 7, 9) -- the federal judiciary purports that "accountability" is one of its "Core Values". On the issue of "accountability", its Plan (p. 88) relies on the National Commission's Report, endorsing what it calls the Commission's central recommendation "that impeachment should remain the sole method for removing life-tenured federal judges from office". As may be seen from CJA's March 23th Memorandum [R-24-25], we expressly called upon the Judicial

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[6] For a reality-check as to the incessant whining of federal judges that they are "underpaid", etc., Chapter 3 of Professor Smith's book, *supra*, is a must-read.

Conference to make its views known to the House Judiciary Committee if it disagreed with what we called a "straightforward statement" that:

> **"Judges who, for ulterior purposes, render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in impeachable conduct."**

That Memorandum also called upon the Judicial Conference to rebut our contention -- if it disagreed -- that the fraudulent judicial decisions of the district and circuit judges in the two cases the Memorandum presented "should be among the first to be so-investigated". The Judicial Conference's no response -- as well as the no response of Professor Burbank and the American Bar Association, whose responses we expressly solicited -- leaves the way clear for the Subcommittee to act, free from claims that such investigation intrudes on "judicial independence".

Ironically, the single instance in Judge Hodges' statement where the word "accountability" appears is in his sentence reading: "Federal judges have protected unpopular movements and individuals, and punished corruption that seemed immune from accountability under local laws." (p. 29). That is not what happened in either of the two cases presented by CJA's March 23rd Memoranda, cases about which CJA testified, in detail, before the Commission on Structural Alternatives for the Federal Courts of Appeals [R-46-60][7]. In each of those cases, federal judges annihilated anything resembling the "rule of law" to retaliate against individuals "unpopular" with the federal judiciary: judicial whistle-blowers. Moreover, the second case is one involving corruption by state officials, sued under 42 U.S.C. §1983. The defendants in that case include high-ranking New York State judges and the New York State Attorney General who escaped all accountability under local laws by virtue of their power and influence. As the record shows -- a record long ago transmitted to the Administrative Office for presentment to the Judicial Conference -- defendants' power and influence extends to the federal court, where federal judges, on the district and circuit levels, obliterated all cognizable legal standards, beginning with honesty, to protect them. That case is now before the U.S. Supreme Court on a Petition for a Writ

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[7] CJA's testimony makes plain that a consequence of judicial misconduct is to clog the federal courts with otherwise unnecessary litigation, including appeals necessitated by that misconduct. The cost is borne by U.S. taxpayers -- a matter also clearly warranting Judiciary Committee oversight.

of Certiorari -- copies of which we provided, on June 2nd, to the Administrative Office, to the Subcommittee, and to the Commission on Structural Alternatives for the Federal Courts of Appeals.

The two meticulously-documented cases presented by CJA's Memoranda explode just about every myth the federal judiciary likes to perpetuate about itself -- particularly those promoted in the National Commission's Report as ensuring judicial accountability. Unless and until the Judicial Conference addresses those Memoranda and cases, there should be no pretense that the federal judiciary's "self-policing" is anything but a hoax on the American people. And unless and until the Courts Subcommittee demands the Judicial Conference to do so, there should be no pretense about its promised "vigorous oversight" over the federal judiciary's implementation of §372(c).

Meantime, this Subcommittee has impeachment investigations to attend to -- necessitated by the demonstrated worthlessness of the federal judicial disqualification and disciplinary statutes.

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COMPENDIUM OF DOCUMENTS ACCOMPANYING CJA'S STATEMENT FOR INCLUSION IN THE RECORD OF THE HOUSE JUDICIARY COMMITTEE'S JUNE 11, 1998 "OVERSIGHT HEARING OF THE ADMINISTRATION AND OPERATION OF THE FEDERAL JUDICIARY