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BY FEDERAL EXPRESS

February 12, 2004 (Lincoln's Birthday)

Chief Justice William H. Rehnquist
U.S. Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: The Supreme Court's impeachable repudiation of congressionally-imposed obligations of disqualification & disclosure under 28 U.S.C. §455 and disregard for the single recommendation addressed to it by the 1993 Report of the National Commission on Judicial Discipline and Removal that it consider establishing an internal mechanism to review judicial misconduct complaints against its Justices

Dear Chief Justice Rehnquist:

This letter addresses your terse January 26, 2004 identical letters to Senators Patrick Leahy and Joseph Lieberman, responding to their joint letter of four days earlier. It also relates to the January 30, 2004 letter of Congressmen John Conyers and Henry Waxman, to which you have not yet responded. Additionally, it relates to the February 6, 2004 letter of Congressmen Conyers and Howard Berman, not addressed to you, but to Congressmen F. James Sensenbrenner and Lamar Smith, for House Judiciary Committee hearings.

Directly relevant to all these letters is the November 6, 1998 impeachment complaint which our non-partisan, non-profit citizens' organization filed with the House Judiciary Committee against the Supreme Court's Justices, individually and collectively. As of this date, more than five years later, it remains pending at the House Judiciary Committee, *uninvestigated.*

Nine copies of that impeachment complaint were sent to the Court under a November 6, 1998 coverletter for distribution to you and the eight other Justices. As for the petition for rehearing in the §1983 civil rights action *Doris L. Sassower v. Hon. Guy Mangano, et al.* (S.Ct. #98-106) on which the impeachment complaint rests, the Court received the required 40 copies.

Exhibit J-1

Nonetheless, for your convenience, copies of these documents, as well as of the underlying petition for a writ of certiorari and supplemental brief[1], are enclosed.

As is immediately obvious, the petition for rehearing evidentiarily establishes the untruth of the claim made in your January 26th letter that each of the Supreme Court Justices

> "strives to abide by the provisions of 28 U.S.C. 455, the law enacted by Congress dealing with that subject",

as well as the misleading nature of your assertion,

> "A Justice must examine the question of recusal on his own even without a motion and any party to a case may file a motion to recuse".

Indeed, with its substantiating appendix of primary source documents [RA-], the rehearing petition provides an unprecedented "inside view" into the Court's operations, exposing the unabashed lawlessness with which you and the eight Associate Justices exempted yourselves from 28 U.S.C. §455:

(1) wilfully failing to adjudicate petitioner Doris Sassower's written application to each of the nine Justices requesting their disqualification and/or disclosure pursuant to 28 U.S.C. §455 -- while summarily denying her cert petition;

(2) wilfully ignoring the petitioner's request for "legal authority or argument" to justify their failure to adjudicate her disqualification/disclosure application – and authorizing the creation of a false record by the Clerk's office to omit the application's very existence from the case docket so as to conceal that it was not adjudicated;

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[1] These documents, as likewise a substantial portion of the record in the *Sassower v. Mangano* federal action, are posted on CJA's website, www.judgewatch.org [*See* sidebar panel "*Test Cases-Federal (Mangano)*", so-called because *Sassower v. Mangano* "*TEST[S] IN A SINGLE PERFECT CASE THE CHECKS ON FEDERAL JUDICIAL MISCONDUCT TOUTED BY THE 1993 REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE & REMOVAL – and document[s] their complete worthlessness.*"]

(3) wilfully ignoring the petitioner's request for information as to the Court's procedures for judicial misconduct complaints against the Justices – including information as to the Court's response, if any, to the single recommendation addressed to it by the 1993 Report of the National Commission on Judicial Discipline and Removal that it:

> "consider the adoption of policies and procedures for the filing and disposition of complaints alleging misconduct against Justices of the Supreme Court";

(4) wilfully ignoring the petitioner's improvised judicial misconduct complaint against the Justices, individually and collectively,

> "based on their wilful failure to adjudicate [her] application for disqualification and disclosure, pursuant to 28 U.S.C. §455, while proceeding to summarily deny [her] cert petition."[2]

This *sub silentio* repudiation of 28 U.S.C. §455 and disrespect for the most rudimentary accountability, thereafter exacerbated by the Court's summary denial of the rehearing petition, was in the context of the petitioner's unopposed cert petition and supplemental brief detailing a record of corruption by the lower federal judiciary, unrestrained by any safeguards. These include the statutory safeguards of 28 U.S.C. §§455 and 144, pertaining to judicial disqualification and disclosure, and 28 U.S.C. §372(c), pertaining to the judicial misconduct complaint mechanism for lower federal judges reposed within the lower federal judiciary – as to whose efficacy the Judicial Conference was shown to have made knowingly false and misleading claims in its advocacy to Congress. Indeed, because the record in *Sassower v. Mangano* so decisively established that the lower federal judiciary had reduced these and other safeguards to absolute worthlessness, the cert petition did NOT seek the Court's discretionary review. Rather, it explicitly sought mandatory review under the Court's "power of supervision" or, at minimum, discharge of the Court's mandatory duty under ethical codes to refer the lower federal judges to appropriate disciplinary and criminal authorities. Such mandatory obligations were the first of the cert petition's two "Question Presented". As for the cert petition's second "Question Presented", its focus was the evisceration of 28 U.S.C. §§455, 144, and 372(c) by the lower federal judiciary, eerily foreshadowing issues that would become germane to the Court's own subsequent actions, *to wit*:

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[2] Petitioner's October 14, 1998 letter to the Court's Clerk, p. 4 [RA-56].

> "Is it misconduct *per se* for federal judges to fail to adjudicate or to deny, without reasons, fact-specific, fully-documented recusal motions?" (underlining added for emphasis)

and,

> "If so, where is the remedy within the federal branch...?"

These transcendently important "Questions Presented" were explicated in the cert petition's "Reasons for Granting the Writ" (at pp. 21-30), with the second "Question Presented" being Point II entitled,

> "It is a Denial of Constitutional Due Process and Judicial Misconduct *Per Se* for a Court to Fail to Adjudicate, or to Deny Without Reasons, Fact-Specific, Documented Recusal Motions" (at p. 26, underlining added for emphasis).

The primary source documents contained in the rehearing appendix[3], in particular,

(1) petitioner's *unadjudicated and undocketed* September 23, 1998 disqualification/disclosure application to the Court's Justices pursuant to 28 U.S.C. §455 [RA-6];

(2) petitioner's September 29, 1998 letter to the Court's Chief Deputy Clerk [RA-49];

(3) petitioner's October 14, 1998 letter to the Court's Clerk, *constituting her improvised judicial misconduct complaint against the justices, there being no complaint form or procedures* [RA-52]; and

(4) petitioner's October 26, 1998 letters to the Court's Chief Deputy Clerk and to its Clerk [RA-59; RA-62],

constitute a truer, more edifying response to the questions posed by the January 22nd letter of Senators Leahy and Lieberman as to:

> "what canons, procedures and rules are in place for Supreme Court justices to determine whether they must or should recuse themselves under 28 U.S.C 455(a) or any other relevant ethical

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[3] Most are posted under "*Test Cases-Federal (Mangano)*" on CJA's website, *www.judgewatch.org*.

> rule or interpretation...[and] whether mechanisms exist for the Supreme Court to disqualify a Justice from participating in a matter or for review of a Justice's unilateral decision to decline to recuse himself."

than your own response:

> "While a member of the Court will often consult with colleagues as to whether to recuse in a case, there is no formal procedure for Court review of the decision of a Justice in an individual case",

which masks the Court's complete trashing of 28 U.S.C. §455, ethical codes of conduct, and any notion of accountability in the "individual case" of *Sassower v. Mangano*. It is for Congress to investigate the extent to which this brazen official misconduct, "rising to a level warranting [the Justices'] impeachment under the most stringent definition of impeachable offenses"[4], is replicated in other "individual case[s]"[5] reaching the Court without benefit of media attention.

As for the assertion in your January 26th letter that the reason "there is no formal procedure for Court review of the decision of a Justice in an individual case" is "because it has long been settled that each Justice must decide such a question for himself" -- which prompted both the January 30th letter of Congressmen Conyers and Waxman and the February 6th letter of Congressman Conyers and Berman – you do not cite a single case establishing this supposedly "long settled" practice. Where are the decisions and memoranda "settling" the practice <u>as to the Justices</u>, which, if they relate to 28 U.S.C. §455(a), would not be earlier than 1974?

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[4] CJA's November 6, 1998 impeachment complaint, p. 2.

[5] The existence of other cases was suggested by the Court's Chief Deputy Clerk, who asserted that:

> "the general policy of the Clerk's office is *not* to docket recusal applications unless the Justices act upon them." (Petitioner's October 14, 1998 letter to the Court's Clerk, pp. 1-2 [RA-52-3]; emphasis in the original); *See* also, Petitioner's October 26, 1998 letter to the Court's Chief Deputy Clerk, p. 1 [RA-60].

Such general policy was today confirmed by the Clerk's office in response to a telephone inquiry on the subject.

The pertinent background to Congress' enactment of 28 U.S.C. §455, codifying what is now Canon 3E of the American Bar Association's Code of Judicial Conduct and making it applicable to the Court's Justices, was set forth in the rehearing petition (at p. 7) as follows:

> "...[I]n 1974, when Congress enacted the current §455, it was over the vote of the Judicial Conference, disapproving it as 'unnecessary' because '..the ABA Code, relating to disqualification, is already in full force and effect in the Federal Judiciary by virtue of the adoption of the Code of Conduct for United States Judges by the Judicial Conference' H.R. 93-1453, pp. 9-10. Among the precipitating events leading to the enactment was then Associate Justice Rehnquist's failure to disqualify himself in *Laird v. Tatum*, 409 U.S. 824 (1972), reference to which appears in the legislative history. That failure has been characterized as 'one of the most serious ethical lapses in the Court's history', in a book published before the current §455 was enacted, MacKenzie, John P., The Appearance of Justice, at 209, (1974)[fn.5]."

As Senators Leahy and Lieberman pointed out, the standard set by 28 U.S.C. §455(a) is "not a subjective one". Your January 26th letter fails to acknowledge this pivotal fact[6]. Yet, such is recognized not only by the Court's majority opinion in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1987):

> "The general language of subsection (a) was designed to promote confidence in the integrity of the judicial process by replacing the subjective 'in his opinion' standard with an objective test. See S. Rep. No. 93-419, at 5; H.R. Rep. No. 93-1453, at 5." (at 858),

but by the dissenting opinion you yourself authored -- in which Justice Scalia joined:

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fn.5 "'That the new [ABA] code could not induce proper conduct by Justice Rehnquist at the ethical watershed of his first term on the Supreme Court is simply another indication that action by Congress is essential and overdue', *id.*, at 228. [MacKenzie's Appearance of Justice is cited in Wright, Miller & Cooper, Vol. 13A, Federal Practice and Procedure, 1995 supplement, at 551]."

6 *Cf.* Appearance of Justice, pp. 218-219, as to your failure to acknowledge the proper ABA standards for disqualification in your October 10, 1972 memorandum explaining your reasons for denying the motion made for your disqualification in *Laird v. Tatum*.

> "Subsection (a) was drafted to replace the subjective standard of the old disqualification statute with an objective test. Congress hoped that this objective standard would promote public confidence in the impartiality of the judicial process by instructing a judge, when confronted with circumstances in which his impartiality could reasonably be doubted, to disqualify himself and allow another judge to preside over the case." (at 870-71);
>
> "...in drafting 455(a) Congress was concerned with the 'appearance' of impropriety, and to that end changed the previous subjective standard for disqualification to an objective one; no longer was disqualification to be decided on the basis of the opinion of the judge in question, but by the standard of what a reasonable person would think." (at 872).

Since an "objective" standard governs, other Justices should be equally able, if not more so, to evaluate the "objective" reasonableness of questions raised as to another Justice's impartiality. Consequently, the Court could --if it chose to -- "develop a formal procedure for reviewing the recusal decisions of Supreme Court justices", as Congressmen Conyers and Waxman requested be considered.

Had the Justices discharged their constitutional, statutory, and ethical duty five years ago with respect to the *Sassower v. Mangano* cert petition and petition for rehearing, many of the issues now rightfully disturbing members of Congress – and the public at large – would have been appropriately addressed and adjudicated.

As to the foregoing, the Center for Judicial Accountability, Inc. (CJA) invites your response and, by eight copies of this letter to your eight Associate Justices, also invites theirs.

Copies are also being furnished to Senators Leahy and Lieberman, to Congressman Conyers, Waxman, and Berman, as well as to House Judiciary Committee Chairman Sensenbrenner and Congressman Smith, Chairman of its Courts Subcommittee and Co-Chair of the House Working Group on Judicial Accountability. This, with a request that they not simply invite your responses, but secure them, by subpoena if necessary, as part of the House Judiciary Committee's long-overdue investigation of CJA's November 6, 1998 impeachment complaint against the Justices. Such investigation must proceed forthwith.

Yours for a quality judiciary,

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

Read and Approved by:

DORIS L. SASSOWER
Director, Center for Judicial Accountability, Inc.
Petitioner *pro se*, *Sassower v. Mangano, et al.* (S.Ct. #98-106)

Enclosures: (1) CJA's November 6, 1998 coverletter and impeachment complaint
(2) petition for rehearing, cert petition and supplemental brief:
Doris L. Sassower v. Hon. Guy Mangano, et al. (S.Ct. #98-106)

cc: Each of the Associate Justices of the U.S. Supreme Court
Senator Leahy, Ranking Member, Senate Judiciary Committee
Senator Lieberman, Ranking Member, Senate Governmental Affairs Committee
Congressman Conyers, Ranking Member, House Judiciary Committee
Congressman Waxman, Ranking Member, Committee on Government Reform
Congressman Berman, Ranking Member, Courts Subcommittee/House Judiciary Cmtte
Congressman Sensenbrenner, Chairman, House Judiciary Committee
Congressman Smith, Chairman, Courts Subcommittee/House Judiciary Cmttee
House Judiciary Committee & Co-Chair of the House Working Group on Judicial Accountability
The Press & The Public