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July 11, 2001

Senate Majority Leader Thomas Daschle
509 Hart Senate Office Building
Washington, D.C. 20510

Senate Minority Leader Trent Lott
487 Russell Senate Office Building
Washington, D.C. 20510

- RE:
- (1) CJA's invitation of your response to its July 3, 2001 letter to Senator Schumer, including at the upcoming hearings on "important issues relating to the judicial nominating process" by his Subcommittee on Administrative Oversight and the Courts; and
 - (2) CJA's request for your public endorsement of Senator Schumer's holding of hearings on federal judicial discipline and removal, including threshold hearings on the 1993 Report of the National Commission on Judicial Discipline and Removal or, if for some reason such is not forthcoming, your prompt arrangements for hearings on the National Commission's 1993 Report by some other appropriate congressional body

Dear Senate Majority/Minority Leaders Daschle and Lott:

Enclosed is a copy of the Center for Judicial Accountability's July 3, 2001 letter to Senator Charles Schumer, Chairman of the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts – to which you are each indicated recipients.

The letter, submitted for the record of the Subcommittee's June 26, 2001 hearing, "*Should Ideology Matter?: Judicial Nominations 2001*", responds to Senator Schumer's public acknowledgment that Senators privately consider a nominee's ideology, but because of the taboo surrounding its consideration, conceal their ideological objections to nominees by finding "non-ideological factors, like small financial improprieties from long ago. He

Exhibit C-4

characterized this as “‘got-cha’ politics”, which has “warped the confirmation process and harmed the Senate’s reputation.”

It is CJA’s view, and so stated in our July 3, 2001 letter, that

“that there is a more fundamental reason why the confirmation process is ‘warped’. It is ‘warped’ because -- *except when the Senate Judiciary Committee is searching for some non-ideological ‘hook’ on which to hang an ideologically-objectionable nominee* – the Committee cares little, if at all, about scrutinizing the qualifications of the judicial nominees it is confirming. Indeed, the Committee wilfully disregards incontrovertible proof of a nominee’s unfitness, as likewise, of the gross deficiencies of the pre-nomination federal judicial screening process that produced him.” (at pp. 2-3, emphases in the original).

The same appears to be true of Senate leadership, which, additionally, wilfully disregards the Senate Judiciary Committee’s malfeasance in discharging its critical *post-nomination* federal judicial screening function. This is the conclusion rightfully drawn from CJA’s *direct, first-hand* experience with each of your offices in 1996, as summarized at pages 13-15 of our letter – and further detailed in Exhibits “I-2”, “J”, and “L” thereto.

CJA invites, and looks forward to, your response to the July 3, 2001 letter, including at the upcoming Subcommittee hearings on the Senate’s role in federal judicial confirmation, which Senator Schumer has announced his intention to hold – and at which CJA expects to testify.

Further, CJA calls upon you to publicly endorse our request to Senator Schumer, set forth in our letter (at pp. 16-18), that his Subcommittee on Administrative Oversight and the Courts hold hearings on federal judicial discipline to examine the overwhelming and incontrovertible evidence that

“the mechanisms for disciplining and removing incompetent, dishonest, and abusive federal judges from the bench are *verifiably* sham and dysfunctional.”
(at p. 16, emphasis in the original).

In this regard, please give special attention to our letter’s Exhibit “N-1”, CJA’s published article, “*Without Merit: The Empty Promise of Judicial Discipline*” (The Long Term View, (Massachusetts School of Law), Vol. 4, No. 1, summer 1997), and Exhibit “O-1”, 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". These not only summarize key respects in which the 1993 Report of the National Commission on Judicial Discipline and Removal is methodologically-flawed and dishonest, but identify that the federal judiciary and House Judiciary Committee have failed to implement essential recommendations of the Report relating to 28 USC §372(c) -- the statute reposing the judicial disciplinary complaint mechanism in the federal judiciary -- and relating to sufficient staffing and resources to handle federal judicial misconduct and impeachment complaints.

As you know, in 1990, Congress created the National Commission on Judicial Discipline and Removal -- at a cost to taxpayers of more than three quarters of a million dollars. The Commission's purpose was to investigate the nature and extent of judicial misconduct in the federal system, to assess the adequacy of existing mechanisms for discipline and removal, and, before going out of existence on September 1, 1993, to submit a report to "each House of Congress, the Chief Justice of the United States, and the President". The report was to contain "a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate." [December 1, 1990, Public Law 101-650; 104 Stat. 5122]

In 1997, the American Bar Association's Commission on Separation of Powers and Judicial Independence -- whose members included Robert Kastenmeier¹, Chairman of the then defunct National Commission on Judicial Discipline and Removal -- stated its view that

"Congress has not given serious attention to the National Commission's Report, including the recommendations addressed to the legislative branch"

and urged, in an *explicit* recommendation,

"Congress should hold hearings on and consider appropriate responses to the 1993 Report of the National Commission on Judicial Discipline and Removal.

¹ Robert Kastenmeier was, for over 30 years, a member of the House of Representative, becoming the House Judiciary Committee's ranking majority member and Chairman of its Courts Subcommittee. He was, additionally, "the author of the Judicial Conduct and Disability Act of 1980" -- which is 28 U.S.C. §372(c). [See his biography in the National Commission's 1993 Report].

Another notable member of the ABA Commission on Separation of Powers and Judicial Independence was Abner Mikva, who, before serving in the executive and judicial branches, was, for ten years, a member of the House of Representatives, where he served on the House Judiciary Committee.

That process should be completed before Congress considers any proposals for additional legislation or constitutional amendments in the area of judicial discipline and removal.” (An Independent Judiciary, at p. 59)

Nonetheless, to this date, Congress has never held any hearings on the National Commission’s Report. Indeed, it was in the wake of such *explicit* ABA recommendation that the House Judiciary Committee, in 1998, allowed itself to be wrongfully swayed to eviscerate valuable legislation involving 28 USC §372(c) and 28 USC §§144 and 455 – the latter two statutes relating to federal judicial disqualification². This, based on insupportable claims in the National Commission’s Report, proffered to the House Judiciary Committee by the federal judiciary and by the “principal author” of the chapter on the “Judicial Branch” in the National Commission’s Report.

Congress has an absolute duty to hold hearings on the National Commission’s 1993 Report where documentary proof, long in the House Judiciary Committee’s possession, establishes that the public has been subjected to on-going, irreparable injury by the Report’s cover-up in the worthlessness of mechanisms for disciplining and removing unfit federal judges. Indeed, the public has a right to demand that you, as the Senate Majority and Minority Leaders, will now take immediate steps to ensure that Congress finally holds such hearings – including as to the extent to which the Report’s long litany of recommendations, now eight-years old, have gone *unimplemented* by the three government branches to which they were addressed.

CJA submits that Chairman Schumer’s Subcommittee on Administrative Oversight and the Courts is the proper sponsor for hearings on the National Commission’s Report – and that these are threshold hearings for that Subcommittee *if it is to understand the dire state of federal judicial discipline and removal*. However, should you, as the Senate’s leadership, deem another forum more appropriate, as, for example, joint hearings of the Senate and House Judiciary Committees, CJA requests that you promptly initiate and undertake the necessary arrangements.

In that regard, enclosed is CJA’s July 9, 2001 letter to House Judiciary Committee Minority Counsel – a copy of which was sent to that Committee’s General Counsel and Chief of Staff

² It was to counter these wrongful influences that CJA submitted its March 10 and March 23, 1998 memoranda to the House Judiciary Committee – referred to at pages of CJA’s July 3, 2001 letter to Senator Schumer and annexed thereto as Exhibits “N-2” and “N-3”.

-- requesting that the Democratic and Republican sides of the House Judiciary Committee's Courts Subcommittee confirm that they have, in their possession,


“[the] voluminous documentation – which CJA *supplied to each side through November 1998*. This includes the big box containing copies of CJA's correspondence with the Administrative Office of the United States Courts, sent to both Democratic and Republican sides of the Courts Subcommittee/certified mail/return receipt, in mid-March 1998 to support CJA's March 10, and March 23, 1998 memoranda to the House Judiciary Committee's Chairman and members.” (at pp. 3-4, emphasis in the original)

Should you have any doubt as to the dispositive nature of this documentation, CJA urges that you examine it for yourselves. Needless to say, we would be pleased to meet with you and assist in your review.

Finally, if, in face of such documentary proof, you are unwilling to publicly endorse hearings on judicial discipline and removal and the National Commission's 1993 Report, please state your reasons.

In view of the countless Americans and public-at-large irreparably injured by ineffectual safeguards against misconduct by federal judges, your prompt attention is anticipated.

Yours for a quality judiciary,



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

Enclosures

cc: Senator Charles Schumer, Chairman,
Senate Judiciary Committee's Subcommittee on
Administrative Oversight and the Courts
Recipients of CJA's July 3, 2001 letter to Senator Schumer