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MEMORANDUM

TO: HOUSE JUDICIARY COMMITTEE CHAIRMAN HENRY J. HYDE
AND HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: ELENA RUTH SASSOWER, COORDINATOR
CENTER FOR JUDICIAL ACCOUNTABILITY, INC.

RE: H.R. 1252 (JUDICIAL REFORM ACT OF 1997)

DATE: MARCH 10, 1998

This Memorandum responds to the letter of the Judicial Conference of the United States, dated March 3, 1998, addressed to Chairman Hyde, with copies to each of the members of the House Judiciary Committee. By that letter, the Judicial Conference expresses its opposition to the first eight sections of H.R. 1252 (except Section 1, its title, "Judicial Reform Act of 1997") and, specifically, Sections 4 and 6, which it characterizes as "particularly significant and highly objectionable". Section 4 would amend 28 U.S.C. §372(c) so that all judicial misconduct complaints, which are not dismissed on statutory grounds, would be referred to another Circuit for investigation. Section 6 provides civil litigants with the opportunity to peremptorily disqualify the federal judge assigned to the case.

The Center for Judicial Accountability, Inc. (CJA) is a national, non-partisan, non-profit citizens organization whose purpose is to safeguard the public interest in meaningful and effective processes of judicial selection and discipline. CJA does this by gathering and analyzing empirical evidence about how these processes -- which are generally shrouded in secrecy -- *actually* work, or don't work. Where the evidence shows dysfunction and corruption, we provide that evidence to those in leadership positions so that they can *independently* verify it and take appropriate remedial steps.

The Judicial Conference's opposition to Section 4 rests on its claim as to the adequacy of the current 28 U.S.C. §372(c) -- which it represents as an "effective disciplinary process" that is operating "as the [House Judiciary] Committee intended". Its opposition to Section 6 rests on its claim as to adequacy of 28 U.S.C. §144 and §455 -- the statutes relating to the disqualification of federal judges. Such claims are not only resoundingly refuted by evidentiary proof that the federal judiciary has converted §372(c), §144, and §455 to empty shells, but by proof which CJA long ago transmitted to the Administrative Office of the United States Courts for presentment to the appropriate committees of the Judicial Conference so that they could take action to "keep the judiciary's house in order", thereby obviating the need for congressional action. This proof included copies of detailed and

fully-documented §372(c) complaints, dumped by demonstrably *dishonest* dismissal orders of Chief and Acting Chief Judges, as well as a rubber-stamp Judicial Council affirmance, and copies of fact-specific, documented motions for recusal, pursuant to §144 and §455, denied for demonstrably *dishonest* reasons by a District judge or denied, without *any* reasons by Circuit judges, making a travesty and charade of any appellate process.

It would appear that the House Judiciary Committee has already succumbed to the Judicial Conference's false claims regarding §372(c) by substantially modifying Section 4 from the way it appeared in the bill which was the subject of the May 14, 1997 hearing, at which the Judicial Conference made similar false claims. The original Section 4 required the transfer of *every* complaint at the outset so that the Chief Judge undertaking the initial review was from a different Circuit than that in which the complained-of judge served. The revised Section 4 allows the Chief Judge of the Circuit in which the complained-of judge serves to undertake the initial review, requiring transfer to another Circuit only for the subsequent investigative proceedings. The catch, of course, is that complaints which are dismissed by Chief Judges are not transferred -- which is virtually ALL complaints. Using the statistics from the 1993 Report of the National Commission on Judicial Discipline and Removal, out of 2,405 complaints filed under §372(c), only 40 special committees were appointed. Indeed, this revised Section 4 would not even affect the disposition of the complaints from the Sixth Circuit which, according to the Judicial Conference's March 3rd letter, were the impetus for (the original) Section 4, since they were dismissed by that Circuit's Chief Judge -- a dismissal thereafter affirmed by its Judicial Council. The Judicial Conference's letter fails to point this out.

Consequently, it is unclear what the purpose of revised Section 4 is -- except that it may be to alleviate discomfort that the outcome of the aforesaid 40 special committees was so meager. As reported by the key underlying consultants' study to the National Commission's Report, "[t]wenty-seven of these special committee proceedings resulted in eventual judicial council dismissal of the complaint." (Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, p. 575).

From such statistics may be gleaned the fact that serious misconduct is *not* the subject of special committee investigations. Indeed, it might be inferred that a not insubstantial percentage of these committee investigations are diversionary attempts by Chief Judges to make it appear that §372(c) is a functioning mechanism so as to provide a "cover" for their improper and dishonest dismissals of complaints of hard-core misconduct and corruption -- with the rubber-stamp affirmance of Judicial Councils.

That §372(c) is *not* a properly functioning mechanism -- and that this was covered-up by the National Commission on Judicial Discipline and Removal in its methodologically-flawed and dishonest 1993 Report -- are detailed in CJA's published article, "*Without Merit: The Empty Promise of Judicial Discipline*", which appeared last year in the Massachusetts School of Law journal, Long Term View. A copy is annexed so that you can understand the hoax practiced on this Committee and the American people by the Judicial Conference. We, respectfully, ask that the House Judiciary

Committee 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), and to also invite a response from Stephen Burbank, a member of the National Commission, who gave testimony at the May 14, 1997 hearing, which was varyingly false, misleading, and uninformed.

As reflected by that published article, based upon the empirical evidence CJA has been amassing about the federal judiciary's wilful corruption of §372(c), the federal recusal statutes, and its non-enforcement of fundamental ethical codes, including its own, CJA is preparing a formal presentation to the House Judiciary Committee to remove judicial disciplinary jurisdiction from the federal judiciary. Such preparation has been delayed only because we are presently working on a petition for review to a Judicial Council of a Chief Judge's fraudulent dismissal of four §372(c) complaints as "merits-related" -- where the issue presented was the refusal of District and Circuit judges to respect their obligations under the recusal statutes and ethical rules -- as well as working on a petition for a writ of certiorari to the U.S. Supreme Court -- where the issue presented is the federal judiciary's subversion of appellate and disciplinary remedies to address flagrant bias and fraudulent conduct by federal judges, who wrongfully refused to recuse themselves on formal motion. It is a cert petition which demonstrates that Professor Burbank was far too sanguine in his assessment of *Liteky*[1] -- a case simply ignored by federal judges intent on actualizing their bias by the most heinous corruption imaginable.

In the meantime, we respectfully suggest that if this Committee's aim in proposing its original Section 4 was to increase public confidence in the fairness and impartiality of the §372(c) mechanism, public confidence would better be restored by amending §372(c) so as to make EXPLICIT that complaints filed thereunder are accessible to scrutiny by Congress and the public. As pointed out by our published article, the §372(c) statute does NOT require that complaints be confidential. However, following enactment of §372(c), the federal judiciary used its rule-making authority to envelope them in confidentiality and to make them completely inaccessible. This has enabled the federal judiciary to make all sorts of self-serving claims, such as those advanced in its March 3rd letter and at the May 14, 1997 hearing.

Finally, as to the Judicial Conference's opposition to Section 6 of H.R. 1252, based on §144 and §455, there is a wealth of scholarly material documenting that those recusal statutes have been gutted by the federal judiciary. This includes the consultant's study of Professor Charles Gardiner Geyh for the National Commission on Judicial Discipline and Removal -- which states:

> "While the text of sections 144 and 455 appear to create a relaxed standard for disqualification that would be relatively easy to satisfy, judicial construction has limited the statutes' application, so that recusal is rare, and reversal of a district court refusal to recuse, is rarer still." (Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, p. 771)

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[1] *See* May 14, 1997 hearing transcript, p. 65; [*Liteky v. U.S.*, 114 S.Ct. 1147 (1994)].

Yet, such important information -- which would have alerted Congress to the need to reinforce and clarify the recusal statutes -- appears *nowhere* in the National Commission's Report itself. Indeed, we brought this to the attention of the Administrative Office, together with our empirical demonstration of the federal judiciary's flagrant disregard of any semblance of respect for these statutes.

In view of the fact that the Judicial Conference's March 3rd letter has singled out Sections 4 and 6 as "highly objectionable" -- and the likelihood that these sections will face substantial opposition in the House and Senate as a result -- CJA believes it would be prudent that before H.R. 1252 is voted out of the House Judiciary Committee that the Committee receive information that would be more conclusive and dispositive of what the federal judiciary is *actually* doing with §372(c), §144, and §455. Congress needs to know the extent to which the Judicial Conference -- a taxpayer-supported lobby for the federal judiciary -- has, by fraud and deceit, "pulled the wool over its eyes". Moreover, it is quite obvious from the transcript of the May 14, 1997 hearing on the "Judicial Reform Act of 1997" and the transcript of the following day's hearing on "Judicial Misconduct and Discipline", that the Committee was groping for specific information, hard answers, and clear evidence -- most of which the panelists dodged or were unable to provide.

CJA will promptly forward to the House Judiciary Committee the same evidentiary proof of the federal judiciary's subversion of §372(c), §144, and §455 that we long ago transmitted to the Administrative Office under coverletters that called for action and response by the Judicial Conference. Such evidentiary materials will not only compel you to substantially revise those sections, but to substantially revise your relationship with the costly-superstructure of the federal judiciary.

Elena Ruth Sassower

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

cc: Judicial Conference of the United States
c/o Administrative Office of the United States Courts
Professor Stephen B. Burbank