

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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*Elena Ruth Sassower, Director*

BY FAX: 202-228-4260 (5 pages)  
BY E-MAIL: [ruchi\\_bhowmik@obama.senate.gov](mailto:ruchi_bhowmik@obama.senate.gov)

June 26, 2008

Rachana Bhowmik, Legislative Counsel  
Office of U.S. Senator Barack Obama  
713 Hart Senate Office Building  
Washington, D.C. 20510

RE: Your promised follow-up with Senate Majority Leader Reid & Senate Judiciary Committee Chairman Leahy: CJA's May 13, 2008 memo for hearings on federal judicial discipline & judicial pay

Dear Ms. Bhowmik:

Thank you for your June 20<sup>th</sup> phone call, responding to my June 19<sup>th</sup> letter to you.

I understood you to say that you have not reviewed CJA's May 13, 2008 memo and its underlying Critique of the Breyer Committee Report pertaining to federal judicial discipline and judicial pay because, as a practical matter, other issues have commanded your attention. You stated that it was for the Congressional Leadership and Judiciary Committees to confront the issues presented by the memo – and implied that Senator Obama's vote and voice would depend on their review.

In response to your question as to what I had heard from the Congressional Leadership and the Judiciary Committees, I stated I had heard nothing and asked for your help in ascertaining the status of their review. You agreed to contact Senate Majority Leader Reid and Senate Judiciary Committee Chairman Leahy, in other words, the Democratic Senate leadership only.

To assist you in doing so, I have written a June 25, 2008 memo to our four Leaders of Congress and to the Leadership of the Judiciary Committees, inquiring as to the status of their review. You are an indicated recipient, as is Senator McCain's General Counsel, Lee Dunn, who responded by e-mail to a comparable June 19<sup>th</sup> letter I had sent Senator McCain's office<sup>1</sup>. A copy of the June 25, 2008 memo is enclosed

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<sup>1</sup> The two June 19<sup>th</sup> letters are posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), accessible via the sidebar panel "Judicial Discipline-Federal", which links to CJA's advocacy pertaining to the Critique. See "Correspondence with our Three Governmental Branches".

By copy of this letter to Ms. Dunn, I ask that she inquire of the corresponding Republican Senate Leadership – Senate Minority Leader McConnell and Senate Judiciary Committee Ranking Member Specter – as to the status of their review of CJA’s May 13, 2008 memo and underlying Critique.

There should be no partisanship with respect to CJA’s May 13, 2008 memo. Rather, there must be appropriate review of CJA’s Critique of the Breyer Committee Report: beginning with findings of fact. This is what the American People – and voters – have a right to expect from Senators Obama and McCain, both as Senators and presidential candidates.

I look forward to hearing from you and Ms. Dunn as to the findings that have been made as to each of the Critique’s 20 sections – whether by your offices, the Congressional Leadership, the Judiciary Committees – or by this nation’s scholars and organizations expert in the federal judiciary and judicial independence and discipline issues, to whom you can readily turn for assistance.

Thank you.

Yours for a quality judiciary,



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

Enclosure: CJA’s June 25, 2008 memo to our four Leaders of Congress  
& to the Leadership of the Judiciary Committees

cc: Lee Duncan, General Counsel to Senator John McCain  
The Public, *via* CJA’s website

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BY FAX & E-MAIL (19 pages)

June 25, 2008

TO: Senate Majority Leader Harry Reid  
ATT: Gavin Parke, Counsel  
Senate Minority Leader Mitch McConnell  
ATT: Fred G. Karem, Jr., Counsel  
Speaker of the House Nancy Pelosi  
ATT: Michael Tecklenburg, Policy Advisor  
House Minority Leader John Boehner  
ATT: George Rogers, Policy Advisor & Counsel  
Senate Judiciary Committee  
ATT: Senator Patrick J. Leahy, Chairman  
Senator Arlen Specter, Ranking Member  
Senator Charles E. Schumer, Courts Subcommittee Chairman  
Senator Jeff Sessions, Courts Subcommittee Ranking Member  
House Judiciary Committee  
ATT: Congressman John Conyers, Chairman  
Congressman Lamar Smith, Ranking Member  
Congressman Howard L. Berman, Courts Subcommittee Chairman  
Congressman Howard Coble, Courts Subcommittee Ranking Member

FROM: Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)

RE: **STATUS OF YOUR REVIEW:** CJA's May 13, 2008 MEMO entitled "Request for Congressional Hearings on the Breyer Committee's Report on the Implementation of the Judicial Conduct and Disability Act of 1980; & Pending Same, Deferment of Congressional Action on Senate and House Bills, S. 1638 and H.R. 3753, to Raise Judicial Salaries 29%"

Please advise as to the status of your review of CJA's May 13, 2008 memo addressed to our four Leaders of Congress, with copies to the Senate and House Judiciary Committees, among others. For your convenience, a copy of the memo and its accompanying Executive Summary of our Critique of the Breyer Committee Report is enclosed.<sup>1</sup>

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<sup>1</sup> These make minor, non-substantive corrections to the memo and Executive Summary delivered to you on May 13-May 16.

It is CJA's position – which I expressed to Mr. Parke when we met together for nearly an hour on May 13<sup>th</sup> in the Senate Majority Leader's Office – that in evaluating CJA's May 13, 2008 memo and its underlying Critique of the Breyer Committee Report, Congress should have the assistance of scholars and organizations with an expertise in the federal judiciary and judicial independence and discipline issues.

To help make that happen, we have written to academia and organizations, inviting them to serve Congress – and the American People – by their scholarship. The correspondence, to which you are indicated recipients, is posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), accessible *via* the sidebar panel "Judicial Discipline-Federal". It includes letters to 130 law school deans (c/o the dean of Columbia University School of Law) and a memo to the 400,000-plus-member American Bar Association, both of whom have lobbied Congress to raise federal judicial pay.

Among the questions we have asked them to answer, based on CJA's Critique and related correspondence with Chief Justice Roberts:

“(1) Do you agree that the federal judiciary's new rules for federal judicial discipline ‘violate and affirmatively misrepresent the congressional statute they purport to implement<sup>[fn]</sup>, 28 U.S.C. §§351-364, and do not comply with its requirement of ‘appropriate public notice and an opportunity for comment’ (§358), at least not in a meaningful, good-faith way’?”

If so,

(a) What is your view of the Judicial Conference's adoption of the rules on March 11, 2008?;

(b) Do you agree that this is a matter properly brought to Congress' attention?

(2) Do you agree that the Breyer Committee Report is superficial, ‘methodologically-flawed and dishonest’, and ‘a knowing and deliberate fraud on the public’?

If so,

(a) Do you agree that such warrants ‘congressional hearings, disciplinary and criminal investigations, and radical overhaul of the façade of federal judicial discipline that currently exists’?;

(b) Isn't action by our other government branches, Congress and the President, even more compelled in light of the Chief Justice's failure to respond to CJA's March 6, 2008 letter – including by taking such action

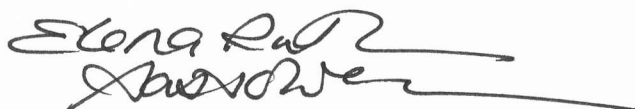
as Congress empowered the Judicial Conference to take, pursuant to 28 U.S.C. §331, to ‘hold hearings, take sworn testimony, issue subpoenas and subpoenas duces tecum, and make necessary and appropriate orders in the exercise of its authority’?”

We have received no response from academia and the organizations to these questions – and no explanation from them as to why. Nor have we received an answer to our additional question as to whether they would be more receptive to a request for their scholarship coming directly from Congress. We, therefore, request that you directly solicit such academics and organizations for their scholarly evaluations of CJA’s May 13, 2008 memo and underlying Critique.

We also request that you solicit the federal judiciary’s response, in advance of hearings. To that end, on May 16<sup>th</sup>, we delivered four copies of the memo to the Supreme Court for transmittal to Chief Justice John Roberts and Associate Justices Stephen Breyer, Samuel Alito, and Anthony Kennedy. A fifth copy was delivered to the Administrative Office of the United States Courts for transmittal to Judicial Conference Secretary and Administrative Office Director James Duff. All copies included the Executive Summary of our Critique of the Breyer Committee Report

We look forward to hearing from you soon – and offer you our full assistance in discharging your constitutional responsibilities to ensure the federal judiciary’s compliance with the “good Behaviour” predicate for “Continuance in Office”, such as does not presently exist.

Thank you.



Enclosure: CJA’s May 13, 2008 memo with Executive Summary of Critique

cc: House Judiciary Committee Courts Subcommittee Counsel:  
Julia A. Massimino, Majority Counsel  
Blaine S. Merritt, Chief Minority Counsel  
House Committee on Oversight and Governmental Reform:  
ATT: Congressman Henry Waxman, Chairman  
Congressman Tom Davis, Ranking Member  
Senator Charles E. Grassley: ATT: Nicholas J. Podsiadly, Counsel  
Congresswoman Nita Lowey: ATT: Chris Bigelow, Senior Legislative Assistant  
James C. Duff, Judicial Conference Secretary & Director of Administrative Office  
(for himself & for Chief Justice John G. Roberts, Jr. &  
Associate Justices Stephen Breyer, Samuel Alito, & Anthony Kennedy)  
President George W. Bush  
Senator & Presidential Candidate Barack Obama: ATT: Rachana Bhowmik, Counsel  
Senator & Presidential Candidate John McCain: ATT: Lee Dunn, General Counsel