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Elena Ruth Sassower, Coordinator

BY EXPRESS MAIL
EM025604957US

November 15, 1998

Mr. Anthony Lewis
The New York Times
2 Faneuil Hall Market Place
Boston, Massachusetts 02109

RE: Testing the Rhetoric about Judicial Independence and Accountability

Dear Mr. Lewis:

I have just learned that you, Justice Kennedy, and Justice Breyer are among the featured speakers at the ABA's December 4-5 "by invitation only" symposium on "Bulwarks of the Republic: Judicial Independence and Accountability in the American Justice System. This, in addition to you and Justice Kennedy being featured speakers at the November 20-21 "Judicial Independence and Accountability Symposium" at the University of Southern California (USC) School of Law -- at which the \$130/\$195 registration fees are "underwritten for all members of the judiciary".

You should be advised that Justices Kennedy and Breyer -- as well as the other Justices of the Supreme Court -- are, individually and collectively, now the subject of an impeachment complaint, filed with the House Judiciary Committee, based upon their official misconduct in *Sassower v. Mangano, et al.*

Back in September, when I was aware only that you and Justice Kennedy would be speakers at the USC symposium, I sent you a copy of the *Sassower v. Mangano* cert petition and supplemental brief under a September 14th coverletter, detailing its far-reaching significance (Exhibit "A"). Now, two months later, I enclose CJA's November 6th impeachment complaint against the Justices, which includes the *Sassower v. Mangano* petition for rehearing. Also enclosed is our November 6th coverletter to the Supreme Court's Chief Deputy Clerk, Francis Lorson, transmitting copies of the impeachment complaint for distribution to the Justices. Mr. Lorson has since advised that the copies were distributed to the Justices.

As set forth in the impeachment complaint (at p. 2), the official misconduct of the Justices in *Sassower v. Mangano* meets "the most stringent definition of impeachable offenses".

You will note that among the grounds for the Justices' impeachment identified by our impeachment complaint (at p. 2) is the Justices' abuse of power by "lying to the American People" -- an example of which is Justice Kennedy's speech at a 1996 conference at St. Louis University School of Law wherein he professed the federal judiciary's adherence to ethical standards and the adequacy of enforcing mechanisms, including the judicial disqualification and disciplinary statutes. My September 14th letter to you highlighted the importance of that speech, a copy of which it annexed as an exhibit¹. As Justice Kennedy's speech reflects, Justice Breyer also gave a speech at that same 1996 conference. That speech, likewise, would support a charge of "lying to the American People". Annexed is a copy so that you can see Justice Breyer's false assertion therein that Congress has used impeachment "*solely to remove federal judges for various forms of personal misconduct.*" (Exhibit "B", at p. 990, emphases added). Justice Breyer approvingly views this as preserving judicial independence, citing the 1805 failed attempt by the Senate to convict Supreme Court Justice Samuel Chase on charges that "his substantive decisions were politically biased" as establishing the precedent that "Congress does not use its impeachment power to check the substantive exercise of judicial power"(at p. 990). In so doing, Justice Breyer follows a stratagem of misrepresentation by members of the federal judiciary, including by Chief Justice Rehnquist himself², whose purpose is to mislead Congress and the American People about impeachment so as to prevent its legitimate use against federal judges whose decisions are flagrantly biased and corrupt.

As noted by our impeachment complaint against the Justices (at p. 4), Congress' on-going impeachment inquiry against the President has highlighted impeachment standards. Indeed, at the November 9th House Judiciary Committee hearing, expert witnesses agreed that the same constitutional standards for impeachment apply to presidents and federal judges and that, first and foremost, the purpose of impeachment is to reach serious abuses of official power that injure our system of government. Among these experts was Professor Lawrence Tribe, who observed that out of 15 impeachments in U.S. history, including 12 against federal judges, Judge Harry Claiborne was the "odd man out" in that his 1986 impeachment was for private conduct, i.e., tax evasion, unrelated to his office. Professor Tribe further asserted, in the context of distinguishing between impeachable conduct by judges and presidents, that "letting partisan considerations affect one's decision ...is *always* an impeachable abuse of power in a judge" (emphasis added).

The **ONLY** way to ensure that judicial decisions are untainted by partisanship and bias -- which is what "judicial independence" is supposed to be about -- is to ensure the adequacy and efficacy of the

¹ Justice Kennedy's speech is also reprinted in the appendix to the rehearing petition at RA-35-48.

² See Chief Justice Rehnquist's April 9, 1996 speech at American University: "...their judicial acts -- their rulings from the bench -- would not be the basis for removal from office by impeachment and conviction. And that has been the guiding principle of the House of Representatives and the Senate from that day to this; federal judges have been impeached and convicted -- happily, only a very few -- but it has been for criminal conduct such as tax evasion, perjury, and the like."

statutes designed to ensure judicial integrity, chief among which is 28 U.S.C. §455 relating to judicial disqualification and 28 U.S.C. §372(c) relating to judicial discipline. As detailed by the rehearing petition, *Sassower v. Mangano* proves that notwithstanding the Justices' rhetorical championing of "judicial independence", they have not only permitted §§455 and 372(c) to be subverted by the lower federal judiciary, but have themselves subverted § 455 by wilfully failing to adjudicate petitioner's application thereunder for their disqualification and, likewise, by wilfully failing to address her judicial misconduct complaint based thereon. This, in order to cover-up *unrestrained* criminal and impeachable conduct by judges of the lower federal judiciary, covering up *unrestrained* criminal and corrupt conduct by New York state judges. The result: the annihilation of the Constitution and anything resembling the rule of law.

The full text of petitioner's unadjudicated §455 application for the Justices' disqualification [RA-6-16] and her judicial misconduct complaint against the Justices [RA-52-58] are included in the rehearing petition. As set forth in the concluding paragraph to the §455 application:

"the fully-documented case of *Sassower v. Mangano, et al.*, #98-106, will transform the customary dialogue on judicial independence and accountability and serve as a benchmark of the Court's true commitment to these fundamental constitutional principles." [RA-16]

For this reason, I am planning to bring copies of the cert petition, supplemental brief, rehearing petition, and impeachment complaint to the USC symposium, to which I am a paid-registrant (Exhibits "C-1" and "C-2") and, if I am able to secure an invitation (Exhibit "C-3"), to the ABA symposium³, as well.

As highlighted by the impeachment complaint (at p. 4), the National Commission on Judicial Discipline and Removal believed:

"that any publicly-made (non-frivolous) allegation of serious misconduct...against a Supreme Court Justice would receive intense scrutiny in the press..." 1993 Report, at p. 122

Since the enclosed impeachment complaint is, in every respect, profoundly serious -- as the materials provided to you plainly attest -- your response will demonstrate whether the National Commission

³ The ABA's hypocrisy on judicial independence and accountability issues is reflected by the *Sassower v. Mangano* supplemental brief (pp. 1-3; 10), which includes, in its appendix, CJA's August 11, 1998 letter to its President, Philip Anderson [SA-102-117]. See, in particular SA-104, for reference to President Anderson's published column in the August 4th National Law Journal on the ABA's invitational symposium, "Bulwarks of the Republic Judicial Independence and Accountability" -- excerpted in Exhibit "C-3" hereto.

Mr. Anthony Lewis

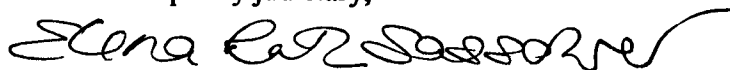
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had any better *empirical* basis for its belief as to the "intense scrutiny of the press" than it did for so many of its other claims -- the most critical of which *Sassower v. Mangano* has *empirically* blown to smithereens

I look forward to meeting with you, personally, at the USC symposium to discuss how best to assist you in scrutinizing this *unprecedented* impeachment complaint against the Justices, rooted in an *unprecedented* case study of systemic judicial corruption.

Yours for a quality judiciary,



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

Enclosures

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