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BY PRIORITY MAIL

November 17, 1998

Mr. John P. MacKenzie
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Long Island City, New York 11109-5602

RE: The Actuality of *In*justice -- a Quarter Century Later

Dear Jack:

As discussed last week, your important book, The Appearance of Justice, is now part of an unprecedented case study of the federal judiciary's destruction of the rule of law to cover up New York state judicial corruption. The case is *Doris L. Sassower v. Hon. Guy Mangano, et al.*, whose background on the state level was reflected by CJA's public interest ads, "*Where Do You Go When Judges Break the Law?*" (NYT, 10/26/94, Op-Ed page; NYLJ, 11/1/94, p. 9) and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4) (Exhibits "A-1" and "A-2"). At your invitation, I am pleased to enclose the Supreme Court papers. They consist of the petition for rehearing, which, in the context of its discussion of "the principal disqualification statute in the federal system, 28 U.S.C. §455"[1], quotes (at p. 7) from your book, together with the *unopposed* cert petition and supplemental brief to which the rehearing petition refers.

Whereas your book offers insight into the historical genesis of §455 -- and, for that reason, is cited in Wright, Miller & Cooper (Exhibit "B") -- *Sassower v. Mangano* chronicles the destruction of that essential statute, not just by the lower federal courts, but by the Supreme Court. As to the Second Circuit's destruction of §455, the factual recitation in the cert petition sets forth the appalling particulars, with Point II of the "Reasons for Granting the Writ" (pp. 26-30) giving the dismal assessment of scholars as to how §455 and 28 U.S.C. §144, another judicial disqualification statute, have fared:

> "While the text of sections 144 and 455 appear to create a relaxed standard of 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

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[1] *See* fn. 2 of the enclosed November 6, 1998 impeachment complaint against the Justices.

> refusal to recuse is rarer still.", Charles Gardner Geyh, Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, at 771 (1993)" (cert petition, at p. 30).

Of course, your book, in its Introduction, recognized how courts, through interpretation, could "gut" statutes: "...only the courts have final say whether the law will be generously or grudgingly construed and enforced." (at x). And, presciently, in its final chapter, you included a recommendation that "JUDGES AND JUSTICES SHOULD GIVE REASONS WHEN THEY DISQUALIFY OR REFUSE TO DISQUALIFY THEMSELVES" -- a recommendation which, you pointed out, would "provide a check on whether judges are minimizing their disqualifications." (at p. 235). You further stated that "Congress, which should develop some oversight on the ethical issue after passing a fresh disqualification law, should have a basis for knowing how the law is working." (at p. 236).

The failure to give reasons for denying disqualification applications is among the pivotal issues in Point II (pp. 26-30), which contends that it is misconduct *per se* for judges to fail to adjudicate fact-specific, documented recusal applications or to deny them, without reasons -- both of which had been done by the Second Circuit. As to congressional oversight, included in the appendix of the cert petition are CJA's two Memoranda, dated March 10 and March 23, 1998 to the House Judiciary Committee [A-295; A-301][2], calling for congressional action to address the federal judiciary's false and deceitful representations to the Committee as to the efficacy of the federal judicial disqualification and disciplinary statutes -- 28 U.S.C. §§455, 144, and 372(c) -- all three of which it had, in fact, "gutted". The supplemental brief -- which includes in its appendix CJA's written 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" [SA-17-28] -- details the House Judiciary Committee's appalling response to those extraordinary, fully-documented Memoranda.

As detailed in the rehearing petition, the Justices' response was to themselves subvert §455 by wilfully failing to adjudicate petitioner's application thereunder for their disqualification and for

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[2] The Memoranda are also contained in the enclosed evidentiary compendium to CJA's statement to the House Judiciary Committee for inclusion in the record of its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [R-1; R-15], *infra* -- a copy of which was "lodged with the Supreme Court [*See* Supplemental Brief, p. 9, fn. 2]. I would point out that *a propos* of your mention of Stephen Burbank's name in connection with my suggestion that you might be interested in attending the ABA's December 4-5 symposium in Philadelphia on "Bulwarks of the Republic: Judicial Independence and Accountability in the American Justice System", Professor Burbank was an indicated recipient of both CJA's March 10th and March 23rd Memoranda [R-4; R-25], which critically refer to him [R-3; R-15-16; R-19-20; R-23]. The exchange of correspondence between us, as recounted at the outset of the March 23rd Memorandum, appears at R-26-30 of the evidentiary compendium. [NOTE: *See* CJA's August 11, 1998 letter to ABA President Philip Anderson [SA-102-118], which references [at SA-104] the ABA's symposium on judicial independence and accountability. We have received no response to that letter and, as yet, have been unable to obtain an invitation to the symposium, admittance to which is "by invitation only"].

disclosure, *inter alia*, of their long-standing personal and professional relationships with the lower federal judges, whose corruption was the subject of the *unopposed* cert petition. The full text of that unadjudicated §455 application is in the appendix to the rehearing petition [RA-6-16], as is petitioner's judicial misconduct complaint, based thereon, filed against the Justices [RA-52-58]. The Justices' wilful failure to address that misconduct complaint, including their failure to come forth with argument or legal authority showing that they were not duty-bound to adjudicate the §455 application and to recall/vacate their order denying the cert petition, with no disciplinary or criminal referral of the lower federal judges, led to our rehearing petition -- and an impeachment complaint against the Justices, individually and collectively, filed with the House Judiciary Committee.

The impeachment complaint is based on the Justices' official misconduct in *Sassower v. Mangano*, rising to a level warranting their impeachment under "the most stringent definition of impeachable offenses" (at p. 2). A copy is enclosed, as is our coverletter to Supreme Court 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 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

Unfortunately, thus far, we have heard nothing from The New York Times, to whose counsel, Adam Liptak, we provided a copy under a November 11th coverletter. That coverletter concluded as follows:

> "The question here presented is whether the nation's pre-eminent newspaper, *The New York Times*, will give the serious misconduct of the Justices ANY scrutiny at all -- where, in addition, the very readership it purports to serve is the most directly affected by the Justices' misconduct in covering up judicial corruption in the Second Circuit, itself covering up judicial corruption in New York State." (emphasis in the original)

As discussed, because the coverletter specifically identifies the important contribution made by your book, you are an indicated recipient thereof. A copy is, therefore, enclosed, together with the relevant prior correspondence, so that that letter will be more explicable to you: (1) CJA's October 19th letter to Roland Miller, editor of the Times' Westchester Section -- to which are annexed both Elsa Brenner's October 18th news "Brief" article, "*Lawyer's Challenge*", and CJA's October 9th letter to her; (2) CJA's October 20th letter to Arthur Sulzberger, Jr.; and (3) Mr. Liptak's November 4th letter, enclosing the Times' "Correction".

I, respectfully, implore your assistance in obtaining press scrutiny for this profound and far-reaching story by The New York Times and by that other leading newspaper to which you were so long associated, The Washington Post. As the enclosed materials reflect, what is here involved is not just the appearance of *in*justice, but its actuality on a grand scale.

With regards.

Yours for a quality judiciary,

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

Enclosures: CJA's informational brochure
Folder A: *Sassower v. Mangano* cert petition and supplemental brief
Folder B: CJA's written statement to the House Judiciary Committee with evidentiary compendium
Folder C: CJA's impeachment complant with *Sassower v. Mangano* rehearing petition
Folder D: CJA's correspondence with NYT