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August 11, 1998

Philip S. Anderson, President
American Bar Association
c/o Williams & Anderson
111 Center Street, Suite 2200
Little Rock, Arkansas 72201

RE: The ABA's Immediate Responsibilities under its Model Rules of Professional Conduct

Dear President Anderson:

I congratulate you as you don the mantle of the ABA presidency. As a longtime ABA member who, in 1976, was the first woman to run for Assembly Delegate to the House of Delegates, with the endorsement of more than a dozen bar presidents, including Whitney North Seymour, Francis Plimpton, and Leon Jaworski, as well as of Associate Justice of the U.S. Supreme Court, Tom Clark, and your immediate presidential predecessor, Jerome Shestack (Exhibits "A-1", "A-2"[1]), I can attest from direct, first-hand experience, most recently with Mr. Shestack, that the ABA is sorely in need of leadership.

It was because of Mr. Shestack's lack of leadership that I and my daughter were precluded from attending the ABA Annual Meeting, at which you were installed. Indeed, although Mr. Shestack made professional responsibility and ethical standards the cornerstone of his presidency (Exhibit "B-2"), if he is to be judged by his performance rather than his preaching, this did not include fidelity to ABA rules requiring attorneys to report judicial misconduct and to ensure the accuracy of its ratings of judicial candidates and integrity of judicial screening procedures. As ABA president, Mr. Shestack permitted ABA committees and associated entities -- and, indeed, the ABA's General Counsel -- to shirk these responsibilities and to engage in grossly unprofessional and unethical conduct toward myself and my daughter as we sought to get the ABA to uphold these responsibilities. This did not, however, keep

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[1] For your further information, a copy of my biographic listing, as it appeared in the Martindale-Hubbell Law Directory (1989 ed.), is annexed as Exhibit "A-3".

Mr. Shestack from proclaiming, as he ended his presidency, that the ABA had "fulfilled th[e] commitment" of professionalism he had urged, one embracing "integrity and ethics", "civility to enlarge human dignity and worth", "obligations to the rule of law and the justice system", and "pro bono service" (Exhibit "B-2") and from rhetorically trumpeting "judicial independence" as an ABA *cause celebre* (Exhibit "B-1") -- but without reference to profoundly serious issues of judicial discipline and selection squarely before him.

Now that you are ABA President, you inherit Mr. Shestack's "unfinished business". This includes addressing issues of judicial discipline, judicial selection, and retaliation against judicial whistleblowers, presented in reams of correspondence from the Center for Judicial Accountability, Inc. (CJA) -- the national nonpartisan, nonprofit citizens' organization which I and my daughter co-founded. Mr. Shestack wholly failed to respond to those letters, much as his predecessors, N. Lee Cooper and Roberta Cooper Ramo, wholly failed to respond to our similar letters when they were incumbent ABA Presidents.

By copy of this letter to Mr. Shestack, Mr. Cooper, and Ms. Ramo, I request that they promptly arrange for our voluminous correspondence with them to be transmitted for your review. Their inaction and dereliction, as well as that of their predecessors, Talbot D'Alemberte and Michael McWilliams, during their tenure as ABA Presidents, have caused irreparable injury, not just to me personally, but to our system of justice and the public welfare. According to your column in the August 4, 1998 National Law Journal (Exhibit "B-3"), appearing beside Mr. Shestack's own (Exhibit "B-2"), the ABA will be sponsoring a symposium on "trust and confidence in the U.S. system of justice", as well as an invitational symposium on the "origins and reasons for our three-branch government in 'Bulwarks of the Republic: Judicial Independence and Accountability'". As hereinbelow summarized, the correspondence your predecessors callously ignored and "sat on" all these years is directly relevant to both these areas of ABA exploration and should ultimately be referred to the ABA committees involved in the planning and development of these symposia, with notice given to symposia participants that such empirical evidence sheds a great deal of light on the subjects about which they will be speaking. Indeed, based on those materials and CJA's demonstrated expertise and "in-the-trenches" experience, we should be invited speakers at the symposia.

More immediately, such correspondence must be personally reviewed by you because, due to the aforesaid inaction and dereliction of your presidential predecessors, there are two critical situations, requiring your *priority* attention[2] relating to judicial discipline and judicial selection -- both on the federal level.

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[2] So as not to lose valuable time, copies of CJA's correspondence with Mr. Shestack are annexed to this letter -- but *without* their substantiating exhibits. Except where otherwise indicated, none of the documentation the correspondence enclosed is transmitted herewith.

The ABA's wilful failure to protect the public interest in judicial selection and discipline was focally presented in CJA's April 24, 1998 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals, to which Mr. Cooper is vice chair. Mr. Shestack was sent a copy of that testimony under our May 5th letter to him (Exhibit "F")[3], with no response.

(1) *FEDERAL JUDICIAL DISCIPLINE: AMICUS SUPPORT, DISCIPLINARY AND CRIMINAL REFERRALS, LEGISLATIVE ACTION:*

Now before the U.S. Supreme Court on a petition for a writ of certiorari is the §1983 federal action, *Sassower v. Mangano, et al.*, docket #98-106. The issue underlying such petition is the unconstitutionality of New York's attorney disciplinary law, as written and as applied. It involves the immediate, indefinite, and unconditional "interim" suspension of my law license under a statutorily-unauthorized court rule -- *without* written charges, *without reasons*, *without* findings, *without* a hearing by New York judges who, thereafter, denied me *any* post-suspension hearing, *any* appellate review, and who also subverted independent review by refusing to recuse themselves from the special proceeding I brought against them for their unconstitutional and illegal conduct. At the time of my suspension, I was doing public interest work, as espoused by the ABA generally and by Mr. Shestack, in particular (Exhibit "B-2"): I was working *pro bono* to improve the administration of justice -- an area of the law to which I had been introduced by the groundbreaking work of another ABA president, a leading reformer of his day, Arthur T. Vanderbilt, who, as Chief Justice of the New Jersey Supreme Court, was my first employer after my graduation from New York University Law School more than 40 years ago. Indeed, I was defending the independence of the New York state judiciary from the manipulations of leaders of the two major political parties. These leaders had entered into a written Deal in 1989, trading seven judgeships over a three-year period by cross-endorsement. The Deal, which bound judicial nominees to early resignations and a split of party patronage, was implemented at judicial nominating conventions violating New York's Election Law. This was the subject of the Election Law case of *Castracan v. Colavita*, which I had brought *pro bono* on behalf of Democratic and Republican petitioners, who were also acting *pro bono publico*. Such litigation challenge was "thrown" by New York state judges who wilfully disregarded elementary legal standards and falsified the factual record, while other state judges retaliated against me by unlawfully suspending my law license so as to silence and stigmatize me.

There is, however, a more transcendant threshold issue presented by the cert petition: the Second Circuit's annihilation of *all* cognizable adjudicatory standards, including fraudulent decisions, fabricating and falsifying the factual record. By such conduct, the Second Circuit protected the defendant state

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[3] A copy of that testimony is included in the enclosed compendium [R-42-60], supporting our written statement to the House Judiciary Committee in connection with its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary", *infra*.

judges and public officials, who had no legitimate defense to the material allegations of my Verified Complaint. The Second Circuit's judges corrupted the judicial/appellate processes, including the very statutes designed to ensure judicial impartiality, 28 U.S.C. §§144 and 455, as well as the federal judicial disciplinary statute, 28 U.S.C. §372(c).

It was precisely because of Mr. Shestack's much-vaunted championship of professionalism and the ABA's duty to safeguard the rule of law and the administration of justice -- as to which Mr. Shestack promotes his supposed success (Exhibit "B-2") -- that I transmitted to him the full file of *Sassower v. Mangano* under a comprehensive January 26, 1998 letter, seeking *amicus* support and other ABA assistance (Exhibit "C", at p. 5). Mr. Shestack did not respond to that letter. Nor did he respond to any of my daughter's follow-up letters, to wit, her March 27th letter, which identified that I needed the ABA's help to meet a May 16th deadline for filing the cert petition (Exhibit "D"), her April 8th fax, highlighting that there had been no response to our January 26th and March 27th letters (Exhibit "E"); and her May 5th letter, reiterating our "urgent requests for ABA assistance...[to] meet the rapidly approaching May 16th deadline for the cert petition..." (Exhibit "F").

In short, the only ABA "assistance" I received for this case of "transcending importance to both the legal community and the public at large" (Exhibit "F"), was on the last day for filing the cert petition when the ABA Center for Professional Responsibility belatedly responded to my daughter's several telephone requests by finally faxing the text of, and commentary for, Rule 8.3 of the ABA's Model Rules of Professional Conduct, "Reporting Professional Misconduct" (Exhibit "G"), which by then we already had.

The cert petition was, nonetheless, timely filed -- but only because of the unstinting assistance of my non-lawyer daughter -- whose crude mistreatment by ABA leadership is referred to in my January 26th letter (Exhibit "C", at pp. 3-4). A copy of the petition, as docketed on July 21, 1998, is enclosed -- as is the notice, just received from the New York State Attorney General, respondents' counsel and himself a respondent, that respondents are waiving their right of response.

In its appendix [A-20], the petition reprints Rule 8.3, as well as Rule 8.4, "Misconduct". Consistent with ABA responsibilities, reflected in the Preamble to its Model Rules of Professional Conduct and particularized by such specific Rules as 8.3 and 8.4, I again request ABA *amicus* support. Such support is requested not only in obtaining Supreme Court review, but also an impeachment investigation by the House Judiciary Committee and criminal investigation by the U.S. Department of Justice. Such action is fully mandated by the record of *Sassower v. Mangano*, transmitted to Mr. Shestack <u>more than half a year ago</u>. As the cert petition reflects (at p. 24), the record in *Sassower v. Mangano* has already been transmitted to the House Judiciary Committee. Such transmittal was accompanied by two Memoranda, dated March 10, 1998 and March 23, 1998. The latter directly referred to my January 26, 1998 letter to Mr. Shestack [A-303-4] and called upon the ABA to respond to the uncontroverted evidence of judicial corruption presented by the *Sassower v. Mangano* file -- evidence empirically refuting the "all's

well" conclusions of the 1993 Report of the National Commission on Judicial Discipline and Removal, relied upon in the 1997 Report of the ABA's Commission on Separation of Powers and Judicial ndependence. These Memoranda are reprinted in the cert petition's appendix [A-295; A-301] because they are part of my incorporated-by-reference §372(c) judicial misconduct complaints against the federal district and appellate panel judges involved. Mr. Shestack previously received these Memoranda with my daughter's March 27th letter (Exhibit "D"), which highlighted that the March 23rd Memorandum challenged the ABA to respond to the principle asserted therein that:

> "Judges who, for ulterior purposes, render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in impeachable conduct" [A-315],

and further that

> "the district and circuit judges in *Sassower v. Mangano* should be among the first so-investigated for impeachment based on the "*readily-verifiable* evidentiary record...of [their] outright fraud." [A-316]

Such guiding principle is asserted in the cert petition itself (at pp. 25-26), which notes that the ABA's Commission on Separation of Powers and Judicial Independence -- like the Report of the National Commission on Judicial Discipline and Removal before it -- obscured and failed to identify when judicial decisions may properly be the subject of disciplinary investigation and impeachment.

To enable the ABA to additionally support my efforts to obtain a criminal investigation of the subject federal judges -- as well as of the state judges and other public officials they protected -- enclosed is a full copy of my daughter's July 27th letter to Lee Radek, Chief of the U.S. Justice Department's Public Integrity Section, transmitting to him a copy of the *Sassower v. Mangano* record. Such letter additionally seeks the Justice Department's support for my *amicus* request to the U.S. Solicitor General, as set forth in my daughter's July 20th letter to Solicitor General Waxman, a copy of which is also enclosed.

In view of the shortness of time for the ABA to participate at this all-important cert stage, where *amicus* support for Supreme Court review would need to be submitted by the August 19th date on which respondents -- had they not waived their right of response -- were due to have submitted their opposing brief, I request -- at minimum -- that the ABA take emergency action to communicate with the Solicitor General its endorsement of my request for his *amicus* support for the cert petition and that it reinforce his own obligations under Rule 8.3 to make disciplinary and criminal referrals consistent with the record.

Obviously, in the event the Supreme Court does not grant review of the petition, the ABA's own obligations to make disciplinary and criminal referrals under Rule 8.3 will be all the more essential -- as well as its duty to advocate legislative changes, among them provisions reinforcing 28 U.S.C. §§144,

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Obviously, in the event the Supreme Court does not grant review of the petition, the ABA's own obligations to make disciplinary and criminal referrals under Rule 8.3 will be all the more essential -- as well as its duty to advocate legislative changes, among them provisions reinforcing 28 U.S.C. §§144,

455, and 372(c).

So that the ABA can have a full record of CJA's own legislative advocacy relative to these provisions, and of our protest against the House Judiciary Committee's abandonment of its duty to address judicial misconduct complaints, whether it receives those complaints directly or they are received by the federal judiciary, enclosed is a copy of CJA's statement submitted for the record of the House Judiciary Committee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary". Consistent with ABA rhetoric about ethical duties, the public has a right to expect the ABA to examine and vigorously follow through with the serious issues there presented as to the destruction of fundamental judicial and legislative checks on federal judicial misconduct and corruption.

(2) *FEDERAL JUDICIAL SELECTION: ABA ADVISORY OPINION TO THE SENATE JUDICIARY COMMITTEE*

Now before the Senate Judiciary Committee is the nomination of Alvin K. Hellerstein to the District Court of the Southern District of New York. Mr. Hellerstein would never have been nominated for a federal judgeship but for Mr. Shestack's unprofessional failure to respond to CJA's crucially important correspondence with him in early January of this year: my daughter's letters, dated January 8th, January 9th, January 12th, and her fax dated January 14th (Exhibits "J"- "M").

The substance of those letters concerned the ABA's ongoing duty under Rule 8.2 of its Model Rules of Professional Conduct to retract the favorable rating its Standing Committee on Federal Judiciary had conferred upon Westchester County (NY) Executive Andrew O'Rourke, who, in November 1991, was nominated by President Bush to the district court of the Southern District of New York. Such letters to Mr. Shestack were occasioned by the fact that in December 1997, New York Governor George Pataki nominated Mr. O'Rourke for a State Court of Claims judgeship. According to press reports, Mr. O'Rourke deflected questions about his qualifications for the Court of Claims judgeship by citing the fact that the ABA and the Association of the Bar of the City of New York ("the City Bar") had both approved his 1991 federal court nomination.

Mr. Shestack knew that the aforesaid ABA and City Bar ratings were insupportable and **NOT** the result of meaningful investigation, which would have *readily* revealed Mr. O'Rourke's pivotal misrepresentations about his qualifications. More than five years earlier, under a coverletter dated May 22, 1992 (Exhibit "H-2"), we had sent Mr. Shestack a copy of our 50-page critique of Mr. O'Rourke's qualifications, which had "pierced the veil of secrecy" shrouding ABA and City Bar screening by comparing their questionnaires to that of the Senate Judiciary Committee. The letter, which enclosed a copy of our May 19, 1998 letter to then ABA President D'Alemberte, asked for his support, as a leader of the bar, for our request to then Senate Majority Leader George Mitchell for a moratorium of all judicial confirmations and an official investigation of the deficiencies of the federal judicial screening process documented by our critique. Indeed, a week earlier, we had sent Mr. Shestack a copy of that

moratorium request when it was still in draft (Exhibit "H-1"). Thereafter, we sent him a copy of our June 2, 1992 letter to Majority Leader Mitchell, constituting a supplement to our critique and reinforcing our request with information further establishing the gross deficiencies of the City Bar's screening, to wit, its actual "screening out" of information adverse to Mr. O'Rourke (Exhibit "H-3").

Enclosed with my daughter's January 8, 1998 letter to Mr. Shestack (Exhibit "J")[4] was a long series of letters to and from ABA leaders, collected in a compendium, spanning from May 1992 to November 1993. Specifically highlighted was a November 11, 1992 letter to then ABA President J. Michael McWilliams, which, after quoting Rule 8.2(a) of the ABA's Model Rules of Professional Conduct, asserted:

> "In the event the ABA leadership does not recognize its obligation to retract a rating it knows to be false, we ask that you, as ABA President, refer our critique and all correspondence relative thereto to the ABA's Standing Committee on Ethics and Professional Responsibility with a request for a formal opinion.

My daughter's January 8, 1998 letter reasserted this position and urged immediate corrective steps to forestall Mr. O'Rourke's otherwise inevitable rubber-stamp confirmation. This was reiterated in her subsequent January 9th and January 12th letters (Exhibits "K" and "L").

None of these letters impelled Mr. Shestack to respond to us or to take any discernible action, with the result that Mr. O'Rourke was confirmed on January 13th to the New York State Court of Claims. This, however, did not end the ABA's ethical and professional responsibilities -- a fact pointed out by my daughter's January 14th fax to Mr. Shestack, drawing his attention to "business that should be on the ABA agenda" (Exhibit "M"). Such business included: developing a mechanism for retracting ratings; obtaining an advisory opinion from the Committee on Ethics and Professional Responsibility on the ABA's duty to make retractions; and improving the Standing Committee's demonstrably deficient screening procedures, *inter alia*, by including CJA as among those "likely to have information" on judicial candidates, particularly those in the Second Circuit. Indeed, enclosed was CJA's December 2, 1997 letter to Patricia Hynes, the Second Circuit's representative on its Standing Committee on Federal Judiciary, with a copy to Irene Emsellem, the ABA's liaison to that Committee, that we had information establishing the unfitness of two candidates for federal judgeships it might be evaluating, one of them being Alvin Hellerstein (Exhibit "I-1"). The December 2nd letter further stated that if the Standing Committee had already evaluated Mr. Hellerstein that it notify the Justice Department and White House of our proffered information bearing on his unfitness.

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[4] The enclosures to my daughter's January 8th letter to Mr. Shestack are itemized in her January 9th letter to him (Exhibit "K").

Five months later, on May 2, 1998, Mr. Hellerstein's nomination to a federal judgeship was announced in a notice in the New York Law Journal. No one from the ABA's Standing Committee, the Justice Department, or White House contacted us prior thereto -- even to the limited extent of ascertaining from us the information establishing Mr. Hellerstein's judicial unfitness.

According to Ms. Emsellem, the ABA will not disclose when the Standing Committee completed its evaluation of Mr. Hellerstein. Nor will it confirm or deny whether it was before or after its receipt of our December 2, 1997 letter (Exhibit "I-1") or whether the Standing Committee communicated to the Justice Department and White House notification of our opposition to Mr. Hellerstein's nomination, as we had requested. However, this would NOT be the first time that the ABA has knowingly "screened out" information bearing adversely on a judicial candidate. Indeed, it engaged in a similar practice two years ago[5] -- as summarized by CJA's May 27, 1996 letter to Senate Judiciary Committee Chairman Orrin Hatch, submitted in connection with the Judiciary Committee's hearing on "The Role of the American Bar Association in the Judicial Selection Process". A copy of that letter, as reprinted in the record of that hearing (S. Hrg. 104-497) (Exhibit "N"), was furnished to Mr. Shestack with my daughter's January 8th letter to him (*see* Exhibit "K"). The ABA's failure to take any corrective steps to ensure that adverse information is not "screened out" -- including removal of Ms. Hynes, who had engaged in such prior misconduct -- has led to the present situation, involving Ms. Hynes, who has, nonetheless, continued to be the Standing Committee's Second Circuit representative, responsible for its so-called "investigations" of candidates for federal judgeships in the Second Circuit.

So that the record is clear, the basis for our opposition to Mr. Hellerstein is his complicity in the dysfunctional federal judicial screening process, documented by our 1992 critique and supplement. Much as we called upon the ABA to take corrective action, such as retracting its insupportable rating of Mr. O'Rourke and joining in our call for a moratorium and official investigation, we likewise called upon the City Bar to do so. In the fall of 1992, its then President, John Feerick, directed our critique

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[5] In 1995, the ABA purported to "screen" New York Supreme Court Justice Lawrence Kahn for a district court judgeship for the Northern District of New York. Justice Kahn was responsible for "throwing" the politically-explosive *Castracan v. Colavita* Election Law case on the trial level and protecting the respondent democratic and republican party leaders and their judicial nominees -- a fact I particularized in an October 31, 1995 letter to Ms. Hynes which transmitted a full copy of the case file (Exhibit "I-2"). As reflected in CJA's May 27, 1996 letter to Chairman Hatch, Ms. Hynes never thereafter contacted me for an interview and ultimately returned the file in uncreased, "untouched-by-human-hands" condition. CJA's protests to the then Chairman of the Standing Committee were crudely rebuffed. It was only after the Senate Judiciary Committee's sham confirmation "hearing" on Justice Kahn's nomination that we learned that the Standing Committee had conferred upon him a mixed "qualified/not qualified" rating [*See* CJA's June 28, 1996 letter to Chairman Hatch (at p. 11 and Ex. "D")].

to Mr. Hellerstein, then Chairman of the City Bar's Judiciary Committee. After "dragging his feet", Mr. Hellerstein, who received from us a letter in which we quoted DR 8-102(a) of New York's Code of Professional Responsibility and cited Rule 8.2(a) of the ABA's Model Code of Professional Conduct, finally responded with a three-sentence letter, dated February 3, 1993, in which he claimed to have "read" the materials, yet three times referred to Mr. O'Rourke as "Judge O'Rourke" and stated "There is nothing further for this Committee to do with respect to Judge O'Rourke".

So that you can make your own assessment of Mr. Hellerstein's candor and judgment when, as Chairman of the City Bar's Judiciary Committee, he wrote these words -- a foretaste of the lack of integrity and judgment that can be expected from him should he be confirmed as a federal judge -- enclosed is a copy of the 1992 critique and supplement, as well as the exchange of correspondence with Mr. Hellerstein and, prior thereto, with the City Bar, collected in a compendia similar to the compendia collecting our correspondence with the ABA. [*See*, in particular, Exhibits "L"- "P" of that compendium].

There are three possibilities to account for Mr. Hellerstein's February 3, 1993 letter -- all disqualifying him for a federal judgeship or any other public office: (1) that he lacks competence and was unable to grasp the evidentiary presentation that was before him; (2) that he had not actually "read" the critique and other materials transmitted to President Feerick, notwithstanding his affirmative representation that he had; (3) that he knew that if he took corrective steps and exposed the dysfunction of the City Bar's screening process, as well as that of the federal judicial screening process, he would be jeopardizing his own judicial aspirations -- now finally verging on fulfillment.

As set forth in our July 30, 1998 and August 3, 1998 letters to the Senate Judiciary Committee (Exhibits "O-1",. O-2"), it is CJA's position that Mr. Hellerstein put his own federal judicial aspirations above the public welfare, whose interest in meaningful screening and truthful ratings he was duty-bound to ensure -- but did not.

Clearly reflected by these two letters is the fraudulent and sham nature of the Senate Judiciary Committee's own confirmation process -- as to which the ABA has long been aware, but about which it has done nothing. Indeed, my daughter's January 9, 1998 letter to Mr. Shestack (Exhibit "K") offered him a copy of the compendium of our correspondence with the Senate Judiciary and Senate leadership relating to our 1992 critique. Such compendium, as well as the compendium of our correspondence with the ABA and City Bar, had been transmitted to the Senate Judiciary Committee under CJA's May 27, 1996 letter to Chairman Hatch (Exhibit N"). Mr. Shestack was also specifically advised to obtain from Ms. Emsellem a copy of our June 28, 1996 letter to Chairman Hatch -- a letter focusing on the dysfunctional and sham post-nomination screening employed by the Senate Judiciary Committee for federal judicial nominees, including its cover-up of the ABA's demonstrably deficient and dishonest screening.

The Senate Judiciary Committee, whose characteristically perfunctory confirmation "hearing" on Mr. Hellerstein's nomination took place on July 30, 1998, will not be voting on confirmation until after it returns from recess on September 1st. Consequently, the ABA still has time, albeit brief, to meet its ethical and professional duty to take corrective steps. CJA is already preparing a written submission to the Senate Judiciary Committee, opposing Mr. Hellerstein's confirmation for the above-stated reasons and again protesting the Senate Judiciary Committee's sham confirmation procedures, much as we had in our June 28, 1996 letter to Chairman Hatch. It is appropriate for the ABA to provide the Senate Judiciary Committee with its opinion both as to Mr. Hellerstein's assessment of the critique, supplement, and related correspondence -- and the claim made by Leah Belaire, Senate Judiciary Committee investigative counsel, who telephoned us after we faxed the Senate Judiciary Committee our August 3, 1998 letter (Exhibit "O-2"), that she had reviewed those materials and had found nothing objectionable in Mr. Hellerstein's response. Ms Belaire further indicated that the Senators were apprised of such materials and had, likewise, shared in that assessment.

A copy of this letter is being sent to Ms. Belaire so that if I have not accurately represented her statement to us, she can correct it. If true and correct, such shocking statement only further reinforces the exigent need for ABA leadership to stop the "rubber-stamp" and palpably dishonest confirmation of Mr. Hellerstein, who -- based on his above-described performance of cover-up and protectionism of powerful, vested interests as Chairman of the City Bar's Judiciary Committee -- can be expected to engage in the same kind of cover-up and protectionism as a federal judge as is at issue in *Sassower v. Mangano, et al.*

CONCLUSION

The aforesaid issues of federal judicial discipline and selection, including the dysfunction of both the House and Senate Judiciary Committees, as well as the unconstitutionality of New York's attorney disciplinary law, employed by the state judiciary to retaliate against judicial whistle-blowing attorneys, demand *immediate* ABA response to protect the public interest. All relevant documentary evidence has long been in the possession of the ABA, or proffered to it.

If the public is to have any respect for the ABA's ongoing campaign for "judicial independence" and its defense of judges against "unjust criticism", the ABA must be willing to confront the threat to "judicial independence" coming from its own collusive role in politicized processes of judicial selection on the federal level -- and from its refusal to acknowledge and confront "just criticism" of judges, to ensure the integrity of the mechanism by which judges who violate their judicial oaths can be disciplined and removed, and to protect from retaliation lawyers who meet their ethical and professional duties by whistleblowing on political manipulation of the judiciary, judicial corruption, and other abuse of power.

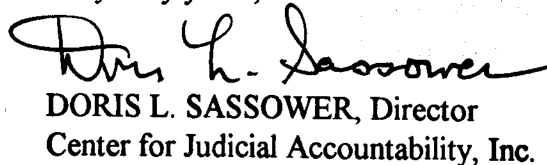
Finally, we note that both you and Mr. Shestack are listed among the supporters of the newly-formed "Citizens for Independent Courts" -- an organization largely underwritten by George Soros. Frankly,

we do not understand why the ABA and bar associations throughout the country, whose officers and directors earn incomes at the upper tier of society, do not have more than ample means and prestige, including public visibility, to defend judges from "unjust criticism" -- *without* benefit of Mr. Soros' largesse. It certainly is misleading and offensive that a *non*-membership organization, supported by politicians and lawyers like Mr. Shestack, who have deliberately betrayed the public on judicial selection and discipline issues, nonetheless calls itself "Citizens for..."

To enable Mr. Soros to get the maximum return on his misguided investment, we have already hand-delivered to Citizens for Independent Courts extensive materials: a copy of the *Sassower v. Mangano* cert petition, CJA's written statement to the House Judiciary Committee, and our 1992 critique of the federal judicial screening process including the three compendia of correspondence and our June 28, 1996 letter to Chairman Hatch. Also transmitted was CJA's August 1996 correspondence with Alliance for Justice, Free Congress Foundation, Common Cause and the Twentieth Century Fund, endeavoring to overcome the dysfunctional and politicized federal judicial selection process, by creating a coalition for non-partisan reform[6].

If Citizens for Independent Courts is to be a credible organization, it must take those materials and rise to the exigent demands of leadership and professional responsibility to which the ABA, under the tenure of your recent presidential predecessors, has thus far shown itself so completely incapable.

Very truly yours,



DORIS L. SASSOWER, Director
Center for Judicial Accountability, Inc.

Enclosures and cc's: *see* next page

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[6] As illustrative, enclosed is a copy of CJA's August 13, 1996 letter to Nan Aron, President of Alliance for Justice and a featured speaker at ABA programs, who is also a supporter of Citizens for Independent Courts. Included in that letter were recommendations for reform of the federal judicial confirmation process made by Common Cause and the Twentieth Century Fund in 1986 and 1988, respectively -- virtually all of them unimplemented. Ms. Aron never responded to that letter or our request for the Alliance's views on each of those recommendations. We request to know whether the ABA ever responded to these recommendations. If it did not, we ask that the ABA promptly do so -- and in the context of a statement to the Senate Judiciary Committee regarding its procedures in relation to Mr. Hellerstein's confirmation.

Enclosures:

(1) *Sassower v. Mangano, et al.* cert petition, S.Ct. Docket #98-106
(2) Waiver by the N.Y.S. Attorney General on behalf of the *Mangano* respondents
(3) 7/20/98 ltr to U.S. Solicitor General Seth Waxman
(4) 7/27/98 ltr to Lee Radek, Chief, Public Integrity Section, U.S. Justice Department
(5) CJA's 6/98 statement to the House Judiciary Committee, with compendium of exhibits
(6) CJA's 1992 critique and 3 correspondence compendia
(7) CJA's 6/28/96 ltr to Senate Judiciary Chairman Orrin Hatch
(8) CJA's 8/13/96 ltr to Nan Aron, Alliance for Justice,
with recommendations of Common Cause and Twentieth Century Fund

cc: Jerome Shestack, Esq.
N. Lee Cooper, Esq.
Roberta Cooper Ramo, Esq.
Talbot D'Alemberte, Esq.
Michael McWilliams, Esq.
Leah Belaire, Investigative Counsel, Senate Judiciary Committee
House Judiciary Committee: Subcommittee on Courts and Intellectual Property
ATT: Mitch Glazier, Chief Counsel
ATT: Robert Raben, Minority Counsel
Commission on Structural Alternatives for the Federal Courts of Appeals
ATT: Byron White, Chairman
Irene Emsellem, ABA Governmental Affairs Office
Patricia Hynes, Standing Committee on Federal Judiciary, Second Circuit Represenative
Citizens for Independent Courts
ATT: Virginia Sloan, Executive Director
Alliance for Justice
ATT: Nan Aron, Executive Director
Free Congress Foundation, Judicial Selection Monitoring Project
ATT: Thomas Jipping, Director

Note: So that the ABA past-presidents who are recipients of this letter can better meet their duty under ABA Model Rules 8.3 and 8.4 to protect the independence of the judiciary, we are enclosing for them copies of the *Sassower v. Mangano* cert petition, the New York Attorney General's waiver, and our letters to the Solicitor General and Justice Department (w/o exhibits). We request that they access CJA's April 24, 1998 statement before the Commission on Structural Alternatives for the Federal Courts of Appeals and our statement to the House Judiciary Committee for the record of its June 11, 1998 "oversight" hearing from CJA's website: www.judgewatch.org .

EXHIBITS TO CJA's AUGUST 11, 1998 LETTER TO ABA PRESIDENT PHILIP S. ANDERSON

Exhibit "A-1":	7/12/76 ltr of Francis Plimpton on behalf of Doris Sassower's candidacy as Assembly Delegate to the ABA House of Delegates, with petition signatures
Exhibit "A-2":	8/3/76 New York Law Journal article, "*New York Women's Bar Ex-President Gets Wide Support for Election to ABA House*
Exhibit "A-3":	Doris Sassower's listing in Martindale-Hubbell Law Director (1989 ed.)
Exhibit "B-1":	"*The Risks to Judicial Independence*", Jerome Shestack, President's Message, ABA Journal, June 1998
Exhibit "B-2":	"*With professionalism movement well under way, it is time for lawyers to address justice issues*", Jerome Shestack, National Law Journal, 8/4/98
Exhibit "B-3":	"*The bar must campaign for the independence of the judiciary -- and of the legal profession itself*", Philip S. Anderson, National Law Journal, 8/4/98
Exhibit "C":	CJA's 1/26/98 ltr to ABA President Shestack
Exhibit "D":	CJA's 3/27/98 ltr to ABA President Shestack [with Giraffe Project press release and award and 3/19/98 article from The Westchester County Weekly]
Exhibit "E":	4/8/98 fax to ABA President Shestack
Exhibit "F":	5/5/98 letter to ABA President Shestack
Exhibit "G":	5/18/98 fax from the ABA Center for Professional Responsibility with Rule 8.3 of the ABA Model Rules of Professional Conduct and commentary
Exhibit "H-1":	Ninth Judicial Committee's 5/14/92 fax to Mr. Shestack
Exhibit "H-2":	Ninth Judicial Committee's 5/22/92 ltr to Mr. Shestack
Exhibit "H-3":	Ninth Judicial Committee's 6/5/92 fax to Mr. Shestack

Exhibit "I-1":	CJA's 12/2/97 ltr to Patricia Hynes, Second Circuit Representative, ABA Standing Committee on Federal Judiciary
Exhibit "I-2":	CJA's 10/31/95 ltr to Ms. Hynes
Exhibit "J":	CJA's 1/8/98 ltr to ABA President Shestack
Exhibit "K"	CJA's 1/9/98 ltr to ABA President Shestack
Exhibit "L":	CJA's 1/12/98 ltr to ABA President Shestack
Exhibit "M":	CJA's 1/14/98 fax to President Shestack, enclosing CJA's 1/14/98 ltr to Irene Emsellem, ABA liaison to Standing Committee on Federal Judiciary
Exhibit "N":	CJA's 5/27/96 ltr to Senate Judiciary Committee Chairman Orrin Hatch, as reprinted in the record of the Senate Judiciary Committee's 5/21/96 hearing on "The Role of the American Bar Association in the Judicial Selection Process"
Exhibit "O-1":	CJA's 7/30/98 ltr to the Senate Judiciary Committee
Exhibit "O-2":	CJA's 8/3/98 ltr to the Senate Judiciary Committee
Exhibit "O-3"	CJA's 8/3/98 fax to Citizens for Independent Courts, Free Congress Foundation, Alliance for Justice