

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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February 4, 2004

Lenore Banks, Judicial Off-Board Specialist
New York State League of Women Voters
151 Alberta Drive
Amherst, New York 14226

RE: Request for a Meeting to ensure that the reform recommendations of the Commission to Promote Public Confidence in Judicial Elections are *empirically-based* and confront the evidentiary proof of systemic corruption endangering the public and eviscerating its rights, exposed by the public interest Election Law lawsuits *Castracan v. Colavita* and *Sady v. Murphy*, suppressed by the judicial, governmental, and bar establishment

Dear Ms. Banks:

As you are a member of Chief Judge Judith Kaye's Commission to Promote Public Confidence in Judicial Elections, I take the opportunity to enclose the Ninth Judicial Committee's¹ March 20, 1992 memo to Governor Cuomo's Task Force on Judicial Diversity², summarizing the catalytic significance of *Castracan v. Colavita, et al.* and *Sady v. Murphy, et al.* each public interest lawsuits brought under New York's Election Law to vindicate the public's right to be protected against political manipulation of elective judgeships.

As you may recall, the New York State League of Women voters played an important role in the *Castracan* case – issuing an October 26, 1990 statewide alert to voters and calling upon the Appellate Division, Third Department to hear

¹ The Ninth Judicial Committee was the local non-partisan citizens' group from which the Center for Judicial Accountability, Inc. (CJA) emerged in 1993.

² Governor Cuomo's Task Force on Judicial Diversity was chaired by Evan Davis and Basil Paterson was among its members. Both are now members of this Commission.

and decide the case before Election Day. A copy of the alert, on which your name appears, is attached to the March 20, 1992 memo.

Last October 27th, I hand-delivered to the Commission's counsel, Michael Sweeney, a copy of this March 20, 1992 memo, along with a copy of the litigation files of *Castracan* and *Sady* to enable the Commission to make FINDINGS OF FACT AND CONCLUSIONS OF LAW with respect to what the memo summarized:

"These two lawsuits offer unique case studies...not only documenting the control by party bosses of the judicial nominations process – unrestrained by the State Board of Elections – but the complicity of the courts.

The files transmitted herewith give unassailable proof that the state courts – from the Supreme Court to the Court of Appeals – jettisoned elementary legal standards and the factual record so as to avoid the transcendent public interest issues those cases presented.

...

Your review of the facts, papers, and proceedings in Castracan and Sady will powerfully aid your perspective in structuring legislative proposals – which may well have to be revised in light of the conclusions that must be drawn from those cases.

Castracan and Sady can – and should – become the catalyst and rallying standard for needed change." (underlining in the original).

Please be advised that our non-partisan, non-profit citizens' organization has no confidence that over these past three months the Commission has made FINDINGS OF FACT AND CONCLUSIONS OF LAW with respect to *Castracan* and *Sady* – or with respect to the further Election Law case, *Reda v. Mehiel, et al.*, a copy of whose litigation file I sent to Mr. Sweeney in mid-November to additionally demonstrate the State Board of Elections' misfeasance, covered up by the courts.

We also have no confidence that the Commission has made FINDINGS OF FACT AND CONCLUSIONS OF LAW with respect to other primary source and lawsuit evidence arising out of *Castracan* and *Sady* and likewise hand-delivered to Mr. Sweeney on October 27th. These include:

(2) the uncontested cert petition and supplemental brief to the U.S. Supreme Court in the §1983 federal action, *Doris L. Sassower v. Hon. Guy Mangano, et. al.*, challenging the judicial retaliation unleashed by the Appellate Division, Second Department against Ms. Sassower for her judicial whistleblowing challenge to the political manipulation of elective judgeships in *Castracan*, aided and abetted by the New York Court of Appeals;

(1) a copy of the litigation file of the Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission on Judicial Conduct of the State of New York*, physically incorporating the litigation files of two other Article 78 proceedings against the Commission³ and documenting its corruption, covered up by New York courts, including the Court of Appeals⁴;

(3) a copy of CJA's ethics complaints and related correspondence with the New York State Ethics Commission – the state agency having disciplinary jurisdiction over the State Board of Elections and the State Commission on Judicial Conduct -- and documenting its corruption, covered up by New York courts, including the Court of Appeals.

³ These two physically-incorporated Article 78 files are: *Doris L. Sassower v. Commission* and *Michael Mantell v. Commission*.

⁴ Nearly a year earlier, I brought a similar copy of this 3-in-1 litigation file to the December 11, 2002 forum on the Commission on Judicial Conduct, sponsored by the Fund for Modern Courts and the New York State Bar Association. My statement and questions to the panel directly referred to this file. You were present and may recall what I said. In the event you do not, a transcribed copy is enclosed – as is a copy of the 1989 report about the Commission, “*Not Accountable to the Public*”, by New York State Comptroller Ed Regan, to which I also directly referred. [See fn. 14 of CJA's November 25, 2003 letter to State Bar President Levin, *infra*].

As the Commission's counsel, it was Mr. Sweeney's duty to provide members with copies of the March 20, 1992 memo and to fully brief them as to the serious and substantial nature of my hour's conversation with him on October 27th, when I hand-delivered the aforesaid documentary materials, meticulously organized and inventoried in three cartons to facilitate ready verification of the corruption of ALL safeguards for ensuring the integrity of judicial elections⁵. Likewise, it was his duty to fully brief the Commissioners, if not to provide them with copies, of CJA's subsequent correspondence to which the Commission was an indicated recipient, each highlighting what I discussed with Mr. Sweeney, *to wit*, the critical importance of FINDINGS OF FACT AND CONCLUSIONS OF LAW. This subsequent correspondence consisted of:

(a) our November 6, 2003 letter to Brooklyn District Attorney Charles Hynes pertaining to *Castracan* and *Sady*, the vicious judicial retaliation against Ms. Sassower by the Brooklyn-based Appellate Division, Second Department, and critically commenting on his testimony and that of former Appellate Division, Second Department Justice William Thompson at the Commission's September 16th hearing⁶;

⁵ Such documentary presentation would have been the subject of our testimony before the Commission at its September 16, 2003 hearing in New York City. However, my August 18th, August 21st, and September 2nd phone messages which I left for Barbara Reed, the Fund for Modern Court's former Deputy Director, then at the Constitution Project (202-721-5620) and designated as a "consultant" of the Commission, charged with providing it with "briefing materials", about such intended presentation were unreturned. Likewise, she did not respond to my September 10th faxed letter, again requesting her assistance in reaching the Commission. Meantime, on September 8th, I called the Office of Court Administration for a phone number for the Commission. The only phone number I was able to obtain was Chairman Feerick's old telephone number from when he was dean (212-636-6875), which I got from David Bookstaver, the OCA's Communications Director (212-428-2500). From this old number, I got Chairman Feerick's current number and left a message with his assistant, Derrick, on September 8th (212-636-6873) and then a second message on September 15th. Finally, on September 18th, I was able to track down contact information for Mr. Sweeney (212-636-7448) through, as I recall, Kathleen Baxter, Counsel of the New York State Bar Association (518-463-3200). Upon reaching Mr. Sweeney on that date – then two days after the September 16th New York City hearing – he confirmed that he had received, but not returned, my earlier messages left with Chairman Feerick's office. As for the Commission's subsequent hearings in Buffalo and Albany, he told me they were "oversubscribed".

⁶ As reflected by William Thompson's September 16th testimony, he is co-chair of Chief Judge Kaye's Commission to Promote Public Trust and Confidence in the Legal System – on

(b) our November 25, 2003 letter to New York State Bar Association President A. Thomas Levin⁷ pertaining to *Castracan* and *Sady* and calling upon him to identify the empirical basis for his testimony at the Commission's September 16th hearing; and

(c) our November 13, 2003 memo to Appellate Division, Second Department Presiding Justice Gail Prudenti and members of her committee reviewing attorney discipline, including Appellate Division, Second Department Justice Barry Cozier, a member of this Commission, to whom was transmitted a copy of underlying litigation files establishing the Appellate Division, Second Department's hijacking of its attorney disciplinary power to retaliate against Ms. Sassower for her judicial whistleblowing challenge to the political manipulation of elective judgeships in *Castracan*.

In the event Mr. Sweeney did not adequately brief you, copies of this November 2003 correspondence to key representatives of the judicial, governmental, and bar establishment are enclosed so that you may better gauge the significance of CJA's evidentiary contribution and take appropriate steps so that your good name – and that of the New York State League of Women Voters -- is not sullied by a cover-up final report of the Commission which, in order to protect Chief Judge Kaye, her Court of Appeals colleagues, and a substantial number of Commission members responsible for, and complicitous in, the systemic corruption at issue⁸, purposefully ignores it.

which Chairman Feerick is a member. CJA's letter to Brooklyn D.A. Hynes highlights (at pp. 13-14) the materially misleading nature of that Commission's May 1999 report with respect to attorney and judicial discipline.

⁷ The first indicated State Bar Association recipient of this letter is Michael A. Klein, chair of the State Bar's Committee on Judicial Campaign Conduct. Mr. Klein is ALSO a member of this Commission.

⁸ Among these: (a) Chairman John Feerick in his former capacity as President of the Association of the Bar of the City of New York and, thereafter, Chairman of the Fund for Modern Courts; (b) Vice-Chair Patricia Salkin in her capacity as Director of the Government Law Center at Albany Law School; (c) Evan Davis in his former capacities as Chairman of Governor Cuomo's Task Force on Judicial Diversity and, thereafter, as President of the Association of the Bar of the City of New York; (d) Helaine M. Barnett in her former capacity as a member of the New York State Commission on Judicial Conduct; (e) James J. Lack in his former capacity as Chairman of the New York State Senate Judiciary Committee; and (f) James McGuire in his

As it is, the Commission's December 3, 2003 interim report is seriously flawed, with key recommendations failing to incorporate and draw upon the most fundamental lessons to be drawn from CJA's "in-the-trenches" experience.

Thus, in recommending the creation of "a system of state-sponsored Independent Judicial Election Qualifications Commissions" (pp. 12-16), with features ostensibly designed to assure the integrity of their judicial screening, there is no acknowledgment whatever of the marked similarity to Governor Pataki's judicial screening committees established by his Executive Order #10 for appointive judgeships – let alone assessment as to whether these existing committees are worthy of public confidence and appropriately screen judicial candidates. This is not surprising as the documentary proof provided to Mr. Sweeney establishes the corruption of the Governor's judicial screening committees⁹. Indeed, it also establishes how the entities which the Commission regards as champions of judicial integrity, i.e., the bar associations, the Fund for Modern Courts, Chief Judge Kaye and the Unified Court System have been complicitous in the corruption of the Governor's judicial screening committees, as likewise in the corruption of other judicial screening bodies¹⁰. Thereby foreshadowed is the part they will play in the anticipated, indeed inevitable, corruption of these "state-sponsored Independent Judicial Election Qualifications Commissions" – which will be facilitated by rules calling "for the strict confidentiality of all

former capacity as Counsel to Governor George Pataki and, prior thereto as First Assistant Counsel. Their involvement is reflected by the documentary materials provided to Mr. Sweeney on October 27th – including materials organized in separate folders bearing their names, which I personally reviewed with him at that time. [A substantial portion of these materials are posted on CJA's website, www.judgewatch.org; see, in particular, "Correspondence"].

The pivotal involvement of several of these members in the systemic corruption at issue was well known to Chief Judge Kaye when she appointed them to this Commission. The clearest, most egregious examples are James J. Lack and James McGuire.

⁹ Among these documents: CJA's March 26, 1999 ethics complaint to the NYS Ethics Commission [at pp. 14-21]; CJA's December 23, 1997 letter to Governor Pataki's Counsel James McGuire; CJA's June 17, 2001 letter to Senate Judiciary Committee Chairman Lack; each posted on CJA's website.

¹⁰ This includes the bodies involved in "merit selection" to the New York Court of Appeals, in the "merit selection" of Mayor Giuliani's Advisory Committee on the Judiciary, as well as in judicial appointment on the federal level.

commission business" (p. 15).

Likewise, the interim report's recommendations pertaining to amending and elaborating the impartiality and disqualification provisions of the Chief Administrator's Rules Governing Judicial Conduct (pp. 24-28). Apart from the false inference that compliance and enforcement will thereby result, such recommendations are without regard to the documentary evidence provided to Mr. Sweeney showing that existing rule and statutory provisions governing judicial impartiality and the integrity of judicial proceedings, even where clear and authoritatively interpreted, are "not worth the paper they are written on". This, because they are flouted by the courts, including Chief Judge Kaye and her Court of Appeals colleagues – while the Commission on Judicial Conduct, the bar associations, the Fund for Modern Courts, the Constitution Project and everyone else in a position of power and leadership stand "idly by"¹¹.

Unless such Commission recommendations take into account the "on-the-ground" empirical evidence as to how existing mechanisms and rules function so as to incorporate specific safeguards based thereon, they will offer an illusion of reform, but no assurance of substance.

Please be further advised that following release of the December 3, 2003 interim report, I telephoned Mr. Sweeney to expressly respond to the Commission's statement that it considered its

"recommendations concerning the establishment of Independent Judicial Election Qualifications Commissions in each of the judicial departments not to be complete. We seek a continued opportunity to engage political and party leaders in New York, as well as citizens more generally throughout the State, in a discussion as to the composition of such commissions so that they represent the diversity of the state. Our final report will reflect the outcome of such discussions and our final recommendations on the subject." [Preface, vii, underlining added]

¹¹ See discussion in CJA's November 25, 2003 letter to State Bar President Levin (at pp.10-11).

In this regard, I reiterated what Mr. Sweeney already knew: that our non-partisan citizens' organization had a tremendous amount to contribute to such "not...complete" recommendations – and that, as a threshold matter, the proposed Independent Judicial Election Qualifications Commissions would be unable to effectively screen because of their dependence on information sources whose corruption is established by our transmitted documentary proof. Indeed, as to this critical point, I specifically confirmed with Mr. Sweeney that he had read CJA's November 25, 2003 letter to State Bar President Levin, with its assertion that:

"fundamental to any judicial screening process, be it for an elective or appointive judgeship, is an inquiry as to whether the candidate has been the subject of complaint and/or discipline as attorney or judge^{fn5}. The results of such inquiry are necessarily

^{fn5} "See, *inter alia*, questionnaire form of the NYS Commission on Judicial Nomination:

'To your knowledge, has any complaint or charge ever been made against you as a lawyer? If so, furnish full details, including the entity to which the charge was referred, the nature of the complaint or charge, the outcome and the dates involved.' (Question #29)

'(a) To your knowledge, has any complaint or charge ever been made against you in connection with your service in a judicial office? Your response should include any question raised or inquiry conducted of any kind by any agency or official of the judicial system. (b) If the answer to subpart (a) is 'Yes', furnish full details, including the agency or officer making or conducting the inquiry, the nature of the question or inquiry, the outcome and relevant dates.' (Question #30(a))

Also, the questionnaire form of Mayor Blumberg's Advisory Committee on the Judiciary:

'To your knowledge, have any complaints, charges or malpractice claims ever been preferred against you, whether or not sustained, as an attorney or counsel-at-law? If so, state in detail the circumstances and the outcome: Do you have documentary evidence regarding the outcome? If so, please provide copies.' (Question #17)

'State whether you have ever...: (d) Been the subject of any investigation by any federal, state or city, or other governmental

skewed – and skew the judicial screening process – when disciplinary mechanisms are not investigating legitimate complaints and disciplining unfit lawyers and judges, thereby enabling them to freely pursue judicial office.” (at p. 3, underlining in the original).

Mr. Sweeney did not contest the truth of this assertion. Nonetheless, his response – further confirmatory that NO FINDINGS OF FACT AND CONCLUSIONS OF LAW had been made with respect to the litigation file of *Elena Ruth Sassower v. Commission* – was to baldly purport that the Commission on Judicial Conduct was not corrupt because it had not been so found by the courts. This, without addressing the file evidence – including my culminating October 15, 2002 and October 24, 2002 motions before the New York Court of Appeals¹³ -- demonstrating how the Court of Appeals has joined the lower state courts in actively annihilating ALL adjudicative standards to protect a corrupted Commission.

Despite my express and many times repeated request during our conversation that CJA be invited to contribute to the Commission’s “discussions” so that final recommendations with respect to its proposed Independent Judicial Election Qualifications Commissions, there has been no contact from the Commission on that subject.

Nor has the Commission contacted us with regard to any other subject identified by the December 3, 2003 interim report as part of its on-going examination, such as “enforcement of the judicial conduct rules and election law” (pp. 2, 47). This, despite the fact that the documentary materials provided to Mr. Sweeney shows that CJA has a powerful expertise with respect to the complete non-enforcement of judicial conduct rules and Election Law – with a powerful expertise, as well, in a key area which the Commission’s interim report conspicuously fails to identify as part of its on-going examination: judicial cross-endorsement.

agency...?’ (Question #18)”

¹³ These dispositive motions are posted on CJA’s website: see “Test Cases-State (Commission)”.

A copy of this letter is being furnished to Chairman Feerick and Vice Chair Salkin, with a request that they meet with us to discuss the foregoing and that you and such other Commission members whose appointment by Chief Judge Kaye was meant to convey the impression of representation by individuals outside the judicial, governmental, and bar establishment be invited to attend. We respectfully ask that you endorse this request.

Should Chairman Feerick and Vice Chair Salkin not agree to meet with us and not take steps to ensure that FINDINGS OF FACT AND CONCLUSIONS OF LAW are made with respect to the dispositive primary source materials we supplied to Mr. Sweeney and, additionally, to Commission member Cozier, we request to *independently* meet with you and the League of Women Voters. The appropriate starting point for such meeting is the written three-year judicial cross-endorsements deal challenged by *Castracan* and *Sady*¹⁴. To date, more than a dozen years after Ms. Sassower's fact-specific, law-supported arguments as to the unconstitutional, unlawful, and unethical nature of that written deal¹⁵, those arguments have yet to be addressed – including by the New York State League of Women Voters.

Thank you.

Yours for a quality judiciary,

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

Enclosures & cc's: *see next page*

¹⁴ A substantial portion of the record in *Castracan* is posted on CJA's website – including the written judicial cross-endorsements deal – is posted on CJA's website under "*Judicial Selection-Judicial Elections*".

¹⁵ See, the arguments in the record of *Castracan*, posted on CJA's website, *inter alia*, *Petitioners-Appellants' October 16, 1990 Brief*, pp. 10-19: Point I, "The Cross-Endorsements Contract in Issue is an Invidious Violation of the New York State Constitution, the Election Law of New York State, and the Code of Judicial Conduct and Court Rules Relative Thereto. As Such, It is Illegal, Void, and against Public Policy"; *Petitioner-Appellants' January 24, 1991 Reply Brief*, pp. 14-26: Point I: "Respondents Have Failed to Refute Controlling Authority that the "Three Year Plan" is, as a Matter of Law, Illegal, Unethical and Prohibited by Public Policy"; *Doris L. Sassower's March 25, 1991 oral argument before the Appellate Division, Third Department*, pp. 4-10; *Petitioners-Appellants' August 1, 1991 Memorandum in Support of Subject Matter Jurisdiction as of Right*, pp. 1-2, 5-9.

- Enclosures: (1) Ninth Judicial Committee's March 20, 1992 memo to Governor Mario Cuomo's Task Force on Judicial Diversity^x
- (2) transcript of Elena Sassower's statement and questions to the panel at the December 11, 2002 forum on the Commission on Judicial Conduct, sponsored by the Fund for Modern Courts and New York State Bar Association
- (3) New York State Comptroller Ed Regan's 1989 report on the Commission on Judicial Conduct, "*Not Accountable to the Public*", with his December 7, 1989 press release, "*Commission on Judicial Conduct Needs Oversight*"
- (4) CJA's November 6, 2003 letter to Brooklyn District Attorney Charles Hynes
- (5) CJA's November 13, 2003 memo to Appellate Division, Second Department Presiding Justice Gail Prudenti and her committee reviewing attorney discipline
- (6) CJA's November 25, 2003 letter to New York State Bar President A. Thomas Levin
- (7) CJA's informational brochure with relevant 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); "*A Call for Concerted Action*" (NYLJ, 11/20/96, p. 3); "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4)

cc: Chairman John Feerick, Commission to Promote Public Confidence
in Judicial Elections

Certified Mail/RRR: 7002-2030-0007-8573-4154

Vice Chair Patricia Salkin

Certified Mail/RRR: 7002-2030-0007-8573-4147

Michael Sweeney, Counsel

New York State League of Women Voters:

ATT: Barbara Bartoletti, Legislative Director^x

Aimee Allaud, Off-Board Specialist for Government, Etc.

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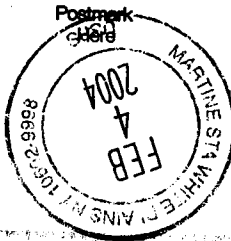
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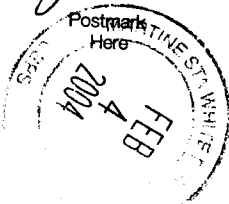
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