

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY CERTIFIED MAIL/RRR
7099-3400-0001-2734-2182

February 21, 2001

Burt Neuborne, Legal Director
Brennan Center for Justice
161 Avenue of the Americas, 12th Floor
New York, New York 10013

RE: Meaningfully Advancing Judicial Independence: CJA's request for *amicus* and other assistance in the appeal of the public interest Article 78 proceeding, *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico, against Commission on Judicial Conduct of the State of New York* (NY Co. #108551/99; Appellate Division, First Dept. Cal #2000-5434)

Dear Professor Neuborne:

This is to memorialize your unprofessional and boorish behavior when I telephoned you yesterday to discuss what should have greatly concerned you as the Brennan Center's Legal Director: the irrational manner in which Deborah Goldberg, Deputy Director of the Center's Democracy Program, who is responsible for its Judicial Independence Project, had declined CJA's request for *amicus* and other assistance in the above-entitled appeal of my public interest Article 78 proceeding against the New York State Commission on Judicial Conduct, whose central issue is judicial independence (Exhibit "A").

My phone call followed up a voice mail message I left for you on February 12th in which I summarized the particulars of Ms. Goldberg's aberrant conduct. This included her admission to me that it was *without* reading my Appellant's Brief that she had concluded that a January 10th letter I had written to respondent's counsel, the State Attorney General (Exhibit "B") disentitled me to the Brennan Center's assistance¹. Such letter, *which was based on the Brief*, asserted that

¹ Ms. Goldberg's admission that she had *not* read the Brief was made during my phone conversation with her on February 12th, shortly before I left my voice mail message for you. Such phone conversation, which I initiated, followed upon Ms. Goldberg's failure to return my February 8th voice mail message, requesting that she

the Brief established that "there is NO legitimate defense to the appeal" and put the Attorney General on notice that if he engaged in the same fraudulent tactics before the Appellate Division, First Department as he had in Supreme Court/New York County, I would make a motion to disqualify him for violation of Executive Law §63.1 and multiple conflicts of interest, as well as for sanctions and disciplinary and criminal referral of him personally. Without troubling herself as to any of the underlying facts of the case, Ms. Goldberg's position was that my January 10th letter was "threatening... to the state Attorney General" and that the Brennan Center could not "take action that could be construed as condoning" it because "we believe in maintaining the highest standards of professional conduct even when we deeply disagree with our opposition or its counsel" (Exhibit "C-1"). Indeed, Ms. Goldberg was wholly uninterested that my January 10th letter was fully substantiated by the lower court record, showing that the Attorney General, at every turn, had engaged in a level of advocacy which, if committed by a private attorney, would warrant disbarment – and that it was I who had upheld the highest standards of professionalism – of which that letter was no exception.

In yesterday's phone conversation, you conceded that you had received my February 12th voice mail message, but had not returned the call. You stated that this was because you had "complete confidence" in Ms. Goldberg's judgment. You refused to entertain the possibility that such confidence was misplaced by permitting me to engage in discussion with you. Indeed, in response to my question as to whether your mind was closed on the subject, you unhesitatingly stated that it was. Likewise, in response to my question as to whether you subscribed to Ms. Goldberg's *not* having read my Appellant's Brief – you repeated that yes, you subscribed to her *not* reading it. With that, you hung up the phone, terminating our conversation of no more than a minute.

Such unprofessional behavior would be inexcusable were I a perfect stranger. It was all the more inexcusable inasmuch as you are well familiar with my groundbreaking work on issues of judicial independence and accountability. Two and a half years ago, I provided you with a duplicate copy of my September 8, 1998 letter to the Brennan Center's Executive Director, E. Joshua Rosenkranz, transmitting documentary proof of my expertise on those issues in the context of a request that the Brennan Center re-evaluate its legislative advocacy concerning federal statutes for judicial disqualification and discipline and that it provide *amicus* support for a petition for certiorari in a §1983 federal action involving those statutes. A copy of that letter – to which I received no response from you – and a cold-shoulder from Mr. Rosenkranz, who angrily refused to discuss it with me – is annexed hereto (Exhibit "D").

Tellingly, many of the important issues presented by the cert petition in that §1983 federal action are presented, on a state level, by my Appellant's Brief in the Article 78 proceeding. Both

return my call. Instead, Ms. Goldberg sent me a February 8th letter saying that she believed "further discussion would not be fruitful." (Exhibit "C-2").

particularize that the State Attorney General engaged in fraudulent defense tactics because he had NO legitimate defense to allegations of judicial corruption and that he was thereafter rewarded by fraudulent judicial decisions, which, in *every* material respect, falsified the factual record and disregarded fundamental law and adjudicative principles. Both continue the story of collusion between our State's highest law enforcement officer and federal and state judges detailed in CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (New York Law Journal, 8/27/97, pp. 3-4). Such fact-specific ad was not only annexed as an exhibit to my September 8, 1998 letter to Mr. Rosenkranz², but, as reflected by that letter, a copy had been previously provided to both you and him, in hand, in March 1998 at the dinner capping the conference at Harvard Law School on "Remembering and Advancing the Constitutional Vision of Justice William J. Brennan".

Whether on the federal or state level, systemic judicial corruption -- such as meticulously documented by these two cases -- must necessarily concern *any* organization professing a commitment to the rule of law and fundamental democratic principles and especially one, such as the Brennan Center, with a Judicial Independence Project that purports to "combat[] threats to the independence of the judiciary, the ultimate guarantor of liberty in a democratic society."

Presumably, Brennan Center benefactors who fund the Judicial Independence Project do so in the belief that it will *meaningfully* advance such important principle. Yet, based on my direct, first-hand experience with you, Mr. Rosenkranz, and Ms. Goldberg, I can attest to the Brennan Center's complete unwillingness to examine *readily-verifiable* evidentiary proof of judicial corruption -- including the corruption of safeguards for ensuring judicial independence and accountability -- and to entertain dialogue on the subject. Indeed, on these corruption issues, the Brennan Center abandons "the singular Brennan spirit of asking the hard questions, transcending conventional wisdom, keeping faith in the power of open and honest discourse, and building unlikely coalitions around practical solutions". Presumably, this is because Mr. Rosenkranz and you, among Brennan Center directors and officers, have personal and professional relationships with judges and public officers implicated by the systemic judicial corruption CJA has so resoundingly documented.

The issues of judicial independence and accountability presented by my instant appeal are too important to allow you and Ms. Goldberg to run roughshod over the duty you owe to "the singular Brennan spirit" and to Brennan Center benefactors. Consequently, I am enclosing herewith the same unincreased copy of the Brief and substantiating Appendix which Ms. Goldberg returned to me³. This, so that you and others at the Brennan Center can read them -- and, based thereon, make

² See Exhibit "D-2" therein.

³ Ms. Goldberg did not return the copies of my correspondence with the Attorney General which she had received with CJA's January 25th coverletter (Exhibit "A"). Presumably, they remain in her possession. However, in the event they are not, duplicate copies are enclosed herewith.

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an *informed* decision on CJA's request for *amicus* and other support on the appeal (Exhibit "A"). Brennan Center benefactors would surely agree that no *informed* decision could otherwise be made, be it as to that request or the absolute merit of my wrongly-maligned January 10th letter to the Attorney General based thereon (Exhibit "B").

I would point out that the New York Chapter of the American Civil Liberties Union, the Center for Constitutional Rights, the National Lawyers Guild, and the Fund for Modern Courts all have copies of the Brief and Appendix and are each aware that I have reached out to the Brennan Center's Judicial Independence Project to be part of a coalition of organizational support for the appeal. I expect that once they have finished reading the Brief and Appendix, which will be within the next two weeks or so, they will be contacting you about your position on the appeal.

Should you wish to see the underlying lower court record – including its physically-incorporated copy of the record of the two other most recent Article 78 proceedings against the Commission on Judicial Conduct: *Doris L. Sassower v. Commission* (NY Co. #109141/95) and *Michael Mantell v. Commission* (NY Co. #108655/99)—a copy is in the possession of Bill Goodman, Legal Director of the Center for Constitutional Rights⁴, who met with me for nearly an hour on February 1st to discuss the transcending public interest issues and posture of the appeal.

I would be pleased to come to the Brennan Center for a similar discussion with you or whomever you should designate for such important purpose.

Yours for a quality judiciary,



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

Enclosures

cc: Deborah Goldberg, Deputy Director/Democracy Program (w/exhibits)
E. Joshua Rosenkranz, Executive Director (w/exhibits)

⁴ Mr. Goodman also has a copy of the appellate briefs in *Mantell v. Commission*, including my motion to intervene and for other relief, which is part of the appeal.

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