

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-450-4800 / 212-269-5420 (5 pages)

BY HAND: 9/20/00

September 18, 2000

Guy Miller Struve, Esq.
Davis, Polk & Waldwell
450 Lexington Avenue
New York, New York 10019

P. Kevin Castel, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

RE: The City Bar's Concealment of Pertinent Background Facts about the "Committee on Judicial Conduct" from the Committee's own Chairman and Members

Dear Messrs. Struve and Castel:

From our fortuitous conversation on September 12th at the conclusion of the meeting of the "Committee on Judicial Conduct" in the Davis Room at the Association of the Bar of the City of New York, it was obvious that you have been kept "in the dark" as to pertinent facts regarding the Committee's creation.

Although you were reticent to disclose the nature of the Committee pending formal announcement, it would seem logical that it is either a "Standing Committee on Judicial Conduct" – such as does not presently exist at the City Bar – or the "Judicial Complaint Review Committee", recommended by the City Bar's now defunct *Ad Hoc* Committee on Judicial Conduct in its March 1999 report and approved by the City Bar's Executive Committee, "on a pilot basis", for purposes of evaluating complaints "in the United States Court of Appeals for the Second Circuit and the United States District Courts for the Southern and Eastern Districts of New York"¹.

¹ See italicized note at the conclusion of the Report of the *Ad Hoc* Committee on Judicial

As discussed, CJA presented City Bar President Evan Davis with an extensive letter several months ago, calling upon him (at pp. 1, 2, 5) to establish a "Standing Committee on Judicial Conduct", and further pointing out (at p. 2) that there had been no implementation of the *Ad Hoc* Committee's 1999 recommendation for a "Judicial Complaint Review Committee". The letter, dated June 20, 2000, highlighted that:

"any such bar committee operating with a modicum of integrity would rapidly have to confront heinous judicial misconduct, including retaliation against judicial 'whistle-blowing' lawyers, for which all remedies have been corrupted." (at p. 2)

The letter particularized (at pp. 4-5, 13, 16-19) that this was because the City Bar's *Ad Hoc* Committee on Judicial Conduct had wilfully covered-up the corruption of the processes of judicial discipline, both state and federal, in its 1999 report – a report devoid of *any* factual findings as to the evidentiary proof in the possession of the *Ad Hoc* Committee or proffered to it that the New York State Commission on Judicial Conduct and 28 USC §372(c) are utterly worthless in protecting lawyers, litigants, and the general public from even the most unabashed judicial misconduct². Indeed, as to judicial discipline on the federal level, CJA's June 20th letter pointed out (at p. 17) that the *Ad Hoc* Committee had conspicuously not held a public hearing – so fearful was it that it would have "a repeat of the May 14, 1997 hearing [on the State Commission on Judicial Conduct] at which CJA and other members of the public had attested to the Commission's corruption"³.

As promised, and by reason of the great interest that each of you expressed, I will hand-deliver copies of CJA's June 20th letter to President Davis, one for each of you. Inasmuch as the two compendia of substantiating exhibits to the letter are voluminous, only a single copy will be being transmitted, and this to Mr. Struve as

Conduct: printed at p. 628 of the September/October 1999 issue of The Record (Vol. 54, No. 5).

² As I noted when we spoke, the worthlessness of 28 U.S.C. §372(c) is highlighted by my article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View (Massachusetts School of Law), Vol. 4, No. 1, summer 1997, pp. 90-96), copies of which I handed you.

³ CJA's \$3,000 public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, 8/27/97, pp. 3-4), which I also handed you, highlights what occurred at the *Ad Hoc* Committee's May 14, 1997 hearing on the New York State Commission on Judicial Conduct.

he indicated that he is the Committee's Chairman.

Your review of the June 20th letter and exhibits – as well as of the copies of the underlying litigation files that the letter and exhibits identify as in the City Bar's possession – will lead you to recognize that every member of the new Committee must see these documents for himself. This, so that each may have the opportunity to make an informed choice as to whether he is prepared for the enormity of the responsibility that will necessarily face the Committee, if it is to be more than a "front". By this letter, CJA explicitly requests that all these documents be *physically* presented to the Committee's membership at the next meeting – since unless they see them for themselves, they will NOT be able to believe their shocking, shocking content.

Barry Kamins, who I understood from you is a member of the new Committee and was at the September 12th meeting, already has a copy of CJA's June 20th letter. I gave him a copy shortly before the meeting, when I fortuitously ran into him at the City Bar. This was not the first that Mr. Kamins, Chairman of the City Bar's Judiciary Committee⁴, knew of the letter. Back on June 20th, he happened to witness me delivering a copy of it and the two compendia of exhibits for Mr. Rothstein, the letter's only indicated recipient. At that time, I described to Mr. Kamins the content of the letter. In particular, I discussed CJA's request for the creation of a Standing Committee on Judicial Conduct, reading to him, *verbatim*, from footnote #5 of the letter (at pp. 5-6) relating to his response to Michael Mantell, Esq., an attorney who had testified before the *Ad Hoc* Committee on Judicial Conduct at its May 14, 1997 public hearing and who had sought comment from the City Bar's Judiciary Committee as to the propriety of the State Commission on Judicial Conduct's dismissal, without investigation, of a judicial misconduct complaint he had filed with it.

Despite my requests to Mr. Kamins at that time and over these subsequent months of contact that he obtain from either President Davis or Mr. Rothstein a copy of CJA's June 20th letter and review it, my impression has been that he had not done so. This included in a phone conversation I had with Mr. Kamins on September 6th, at which time I apprised him of President Davis' shocking response to the letter.

⁴ Mr. Kamins is also Chairman of the New York State Bar Association's Committee on Professional Responsibility and a member of Chief Judge Kaye's Committee to Promote Public Trust and Confidence in the Legal System.

It is certainly appropriate that you also be apprised of President Davis' response: on August 31st in the elevator of the City Bar, which President Davis chanced to enter while I was inside. At that time, I mentioned to President Davis that I had left a message on his voice mail the previous week to schedule a meeting about the June 20th letter, but had received no response. In reply, President Davis, who had already told me that he had read through the June 20th letter, stated "there is not going to be a meeting". Then, in answer to my follow-up question as to when I could expect a response to the letter, President Davis told me there wasn't going to be one. He then refused to respond to my query as to whether it was his opinion that the June 20th letter did not merit a response. He also either refused to answer – or refused – my request that he set forth in writing what he had just told me.

This boorish and unprofessional behavior by the City Bar's newest president is consistent with what we have encountered from his presidential predecessors over the past ten years – as will be clear to you once you review our June 20th letter. Such behavior not only makes a mockery of the City Bar's participation in the American Bar Association's "Justice Initiatives Program"⁵, which aims "to improve justice" by "encouraging bars and courts at state and local levels to reach out and involve the non-lawyer community", but raises troubling questions as to the degree to which President Davis – and the City Bar's self-serving leadership – will permit your Committee to *genuinely* pursue its important purpose of safeguarding the integrity of the judicial process by ensuring the integrity of the judicial complaint mechanism. Certainly, no purpose is served by another bogus bar committee, deceiving the City Bar's rank and file membership and the general public on these important issues.

To assist the Committee do the vital work ahead of it – and consistent with the City Bar's participation in "Justice Initiatives", recognizing the vital role the public must

⁵ See, *inter alia*, the ABA's May 1999 "Summary of State and Local Justice Initiatives", which repeatedly lists the City Bar as a participant in justice initiative programs in New York State, along with the New York State Bar Association and New York County Lawyers. I might note that the ABA's Annual Meeting in London last July featured a plenary program co-sponsored by the ABA's Coalition for Justice and Committee on State Justice Initiatives entitled, "*Justice Versus the Appearance of Justice: Strengthening Public Confidence in the Justice System*". In the audience participation portion of the program, I identified the good and sufficient reasons for the public's lack of confidence, based upon *realities* of corruption within the justice system -- as to which, in matters involving judicial selection and discipline, the leaders of the bar associations have demonstrated a complete unwillingness to address the *readily-verifiable* evidence. While I did not see President Davis in the audience, I did run into him the next day, July 20th, at the President's Reception at the Tower of London – at which time he told me he had not yet finished reading through the June 20th letter.

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play – we would be pleased to provide a personal presentation about the New York State Commission on Judicial Conduct, about the federal mechanism under 28 U.S.C. §372(c), and about the very real retaliatory consequences faced by lawyers who seek to vindicate their clients' rights, their own rights, and the rights of the public against unfit judges. As is evident from our June 20th letter, we have an unmatched expertise in these and other areas in which any legitimate "Committee on Judicial Conduct" must necessarily be interested – one entitling us to inclusion, on an on-going basis, in such Committee's work.

Yours for a quality judiciary,



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

Enclosures with 9/20/00 hand-delivery

cc: Evan Davis, Esq.

President, Association of the Bar of the City of New York
Barry Kamins, Esq. [By Fax: 718-624-5626]
Chairman, Judiciary Committee
Association of the Bar of the City of New York
Chairman, Committee on Professional Responsibility
New York State Bar Association
Member, Chief Judge Kaye's Committee to Improve Public Trust and
Confidence in the Legal System

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Chill, Jordan + Reindel

RE: "Committee on Judicial Conduct"

FROM: ELENA RUTH SASSOWER, Coordinator

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CJA 9/18/00 ldr

with enclosed

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