

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 631-843-2953 (11 pages)

February 28, 2003

Robin Topping
Newsday
235 Pinelawn Road
Melville, New York 11747-4250

RE: LEGISLATIVE OVERSIGHT HEARING OF THE NYS
COMMISSION ON JUDICIAL CONDUCT, ETC.

Dear Robin:

Following my faxing to you of Comptroller Regan's 1989 Report on the Commission, "*Not Accountable to the Public*", enclosed is my October 26, 2001 letter to Senator David Paterson -- NOW Senate Minority Leader. It reviews the three areas of READILY-VERIFIABLE evidence pertaining to the Commission's corruption (at pp. 2-5) and refers to what the Senator told me about having spent several years trying to secure a legislative oversight hearing of the Commission, following his unsatisfactory experience with the Commission concerning the disposition of a judicial misconduct complaint he had filed (at p. 7).

You would be making an important contribution by writing an article/columnny about WHY there has been no legislative oversight of the Commission over these past 15 years and no legislative changes notwithstanding Comptroller Regan's devastating 1989 Report. IT WILL MAKE A DIFFERENCE!

Yours for a quality judiciary,



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

Enclosures

Also enclosed is Comptroller Regan's December 7, 1989 press release: "*Commission on Judicial Conduct Needs Oversight*" -- inadvertently omitted from my faxing to you of his Report.

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BY CERTIFIED MAIL/RRR 7000-1670-0007-9431-9998

October 26, 2001

Senator David A. Paterson
Adam Clayton Powell, Jr. State Office Building
163 West 125th Street, Suite 932
New York, New York 10027

RE: CJA's Request for Legislative Hearing/Investigation of the
New York State Commission on Judicial Conduct

Dear Senator Paterson:

Thank you again for taking the time from your busy schedule to meet last Wednesday, October 17th with me and your constituent, Yashua Amen Shekhem'El-Bey, as well as his former New York City corrections officer colleagues, Donald Winkfield and Zaimah El. All four of us were impressed by your already substantial knowledge of the issues we presented for investigation and by your readiness to work with Assemblyman Keith Wright to build a coalition of legislators to undertake legislative inquiry. We are also grateful to Assemblyman Wright, who, on virtually no notice, sent his assistant, Sandra Hawkins, to be present at the meeting.

* As discussed, our non-partisan citizens' organization, the Center for Judicial Accountability, Inc. (CJA), calls upon you and Assemblyman Wright to take steps to secure a legislative hearing on the New York State Commission on Judicial Conduct and/or a legislative investigation. Previous legislative hearings on the Commission, for purposes of "oversight", were held in 1981 and 1987¹ – but not in the nearly 15 years since. An oversight hearing is long overdue for the Commission, whose current budget is \$2,000,000. Such hearing should be a predicate to – and component of – a legislative investigation of the Commission. This, because of the *readily-verifiable* evidentiary

¹ Copies of the initial transcript pages from the 1981 and 1987 legislative hearings, reflecting their purpose of "oversight", are contained in the blue file folder. Annexed hereto as Exhibit "A" is a revised "Inventory" of the contents of that blue folder, as well as of the yellow, purple, and manilla folders I left you -- correcting errors in the "Inventory" provided on October 17th.

proof that the Commission is a corrupt façade, *inter alia*, (1) that it has rewritten the duty imposed upon it by the Legislature to investigate *facially-meritorious* complaints; (2) that it is dismissing such *facially-meritorious* complaints, *without* investigation; (3) that it thwarts litigation challenges brought by complainants whose complaints have been unlawfully dismissed by subverting the judicial process with litigation misconduct, rising to a level of fraud; and (4) that it is the beneficiary of fraudulent judicial decisions – without which it would not have survived the litigation challenges against it.

To recap, the evidentiary proof of the Commission's corruption is *readily-verifiable* as follows:

* (1) Comparison of Judiciary Law §44.1 with the Commission's self-promulgated rule, 22 NYCRR §7000.3. Whereas Judiciary Law §44.1 requires the Commission to investigate each judicial misconduct complaint it receives, except where it "determines that the complaint on its face lacks merit", 22 NYCRR §7000.3 converts this mandatory investigative duty to a *discretionary option, unbounded by any standard*. As such, 22 NYCRR §7000.3 is irreconcilable with Judiciary Law §44.1 and, pursuant to Judiciary Law §42.5 and Article VI, 22(c) of the New York State Constitution, was *not* lawfully promulgated.

For your convenience, all these provisions² are included in the manila file folder.

* (2) Examination of *facially-meritorious* judicial misconduct complaints dismissed by the Commission *without* investigation. By the Commission's *own* statistics, it has received over 27,000 complaints in the more than 25 years of its operations – and has dismissed upwards of 80% *without* investigation³.

² The language of Judiciary Law §44.1 defining the Commission's duty to investigate *facially-meritorious* complaints PRECEDED the two constitutional amendments creating the Commission. Such language survived, intact, the two emendations of Judiciary Law 2A that followed each of those constitutional amendments. The high praise of Judiciary Law 2A by the Commission's Administrator and Counsel, Gerald Stern, in his testimony before the Legislature at the 1981 and 1987 hearings is reflected in the transcript pages included in the blue file folder.

³ See the Commission's 2001 Annual Report, table of cumulative totals at page 138. The yearly percentages of dismissals, *without* investigation, as reported in the past decade of the Commission's Annual Reports are as follows: 1991 Annual Report (at p. 1): 82%; 1992 Annual Report (at p. 1): 83.5%; 1993 Annual Report (at p. 1): 87.6%; 1994 Annual Report (at p. 1): 87.5%; 1995 Annual Report (at p. 2): 85.5%; 1996 Annual Report (at p. 2): 87%; 1997 Annual Report (at p. 2): 87%; 1998 Annual Report (at p. 2): 88%; 1999 Annual Report (at p. 2): 85%; 2000 Annual Report (at p. 2): 83%. Tellingly, the

Because Judiciary Law §45 makes judicial misconduct complaints filed with the Commission statutorily confidential – and contains *no* provision for any audit by the Legislature or other government branches, either separately or in combination – the Commission has successfully avoided scrutiny of its handling of complaints⁴. To overcome this, CJA long ago began building an archive of duplicate judicial misconduct complaints, filed with the Commission, most obtained directly from complainants⁵. This includes copies of the Commission's letters of acknowledgment and dismissal, as well as of subsequent correspondence between the complainant and the Commission based thereon. Such archive documentarily establishes that the Commission has been violating Judiciary Law §44.1 by dismissing, *without* investigation, *facially-*

Commission's 2001 Annual Report (at p. 2) cites no specific percentage or raw number of dismissals. From the table at page 136 of that Report, it would appear that 1,073 of 1,288 complaints were dismissed *without* investigation – amounting to 83.3%.

*⁴ Please be advised that in 1994, the Commission improperly obtained authorization from the State Archives and Records Administration to destroy, after a five-year retention, its files of judicial misconduct complaints, dismissed, without investigation. It thus destroyed the accumulation of thousands of such complaints from the previous 14 years – and has thereafter continued to destroy uninvestigated complaints after a five-year retention.

The Commission has refused to respond CJA's questions regarding this destruction, set forth in a May 17, 2000 letter to it, including: "whether, in seeking authorization in 1994 from the State Archives and Records Administration to destroy *uninvestigated*, dismissed complaints over five years old, the Commission ever notified the Legislature." As to this particular inquiry, CJA's May 17, 2000 letter noted:

"As you know, the Legislature held two public hearings on the Commission in 1981 and 1987, following which it did not legislate any statute of limitations for investigation of judicial misconduct complaints or authorize expungement of judicial misconduct complaints from the Commission's files, notwithstanding these issues were presented to it by spokesmen for judicial self-interest." (at p. 11).

The substantiating footnote reference to the hearing transcripts was as follows: "*See, inter alia*, transcript of the December 18, 1981 public hearing on the Commission on Judicial Conduct before the NYS Senate and Assembly Judiciary Committees: pp. 72, 76-79, 84-5; 90-92, 94-96, 99-101, 111-112, 163, 199-200, 201-202; and the transcript of the September 22, 1987 public hearing before the NYS Assembly Judiciary Committee: pp. 102, 157-8, 264, 266."

⁵ CJA's archive of duplicate complaints is described at pages 3-4 of my testimony before the Association of the Bar of the City of New York at its May 14, 1997 hearing on the Commission, a copy of which is in the yellow file folder. It is also described by me in the 1996 A & E investigative report by Bill Kurtis, "Bad Judgments" – a copy of which I left with Ms. Hawkins.

meritorious judicial misconduct complaints and its abusive and dishonest treatment of complainants who ask legitimate questions about the disposition of their complaints.

Illustrative samples of unlawfully-dismissed *facially-meritorious* complaints from CJA's archive are included in the appellate papers in *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* (NY Co. #99-108551)⁶ – a copy of which I gave to Ms. Hawkins. A further judicial misconduct complaint is annexed as Exhibit "J" to CJA's February 23, 2000 letter to Governor Pataki, contained in the purple file folder⁷.



- (3) Examination of lawsuits against the Commission, brought by complainants whose complaints have been dismissed. The record of three separate Article 78 proceedings against the Commission based on its dismissals, *without* investigation, of *facially-meritorious* complaints, in violation of Judiciary Law §44.1, presents an identical scenario: the Commission, having NO legitimate defense, subverted the judicial process by litigation misconduct of its attorney, the State Attorney General, and was rewarded, in each case, by a factually fabricated and legally insupportable judicial decision – without which the Commission would not have survived. Most far-reaching of these three lawsuits, *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* (NY Co. #108551/99), physically incorporates the two other lawsuits, *Doris L. Sassower v. Commission on Judicial Conduct of the State of New York*

⁶ See my Appellant's Appendix for the two judicial misconduct complaints that generated the lawsuit: (1) my October 6, 1998 judicial misconduct [A-57-83], dismissed by the Commission by letter dated December 23, 1998 [A-93], and; (2) my February 3, 1999 judicial misconduct complaint [A-97] – which the Commission has neither acknowledged nor determined;

See my Appellant's Appendix for the May 21, 1999 complaint against Justice William Wetzel, filed by gadfly journalist Clayton Tiffany [A-266], as well as the Commission's September 14, 1999 dismissal letter [A-278]. This complaint and its dismissal is described at pp. 29-30 of CJA's February 23, 2000 letter to Governor Pataki [purple file folder];

See Exhibit "E" to my August 17, 2001 motion for an illustrative sampling of George Sassower's many, many complaints.

⁷ This further complaint – which is actually a series of three complaints, dated May 27, June 25, and July 23, 1999, against Justice Wetzel, filed by former New York City corrections officer and Vietnam Veteran Camou Bey -- and the Commission's September 17 and September 28, 1999 letters of dismissal thereof are summarized at pages 29-30 of CJA's February 23, 2000 letter to Governor Pataki.

(NY Co. #109141/95) and *Michael Mantell v. New York State Commission on Judicial Conduct* (NY Co. #108655/99). This 3-in-1 lawsuit is now on appeal in the Appellate Division, First Department and includes an August 17, 2001 motion, *inter alia*, to sanction the Attorney General and Commission for their appellate misconduct.

A copy of the appellate briefs and August 17, 2001 motion in *Elena Ruth Sassower v. Commission* were provided to Ms. Hawkins.

As discussed, CJA long ago provided Governor Pataki and Chief Judge Kaye with copies of the lower court record in each of these three lawsuits in support of requests that they initiate an investigation of the Commission's corruption – be it by appointment of a Special Prosecutor, an investigative commission, or a Special Inspector General. We received no response from Governor Pataki. As for Chief Judge Kaye, her counsel, Michael Colodner of the Unified Court System, threw the issue to the Legislature:

“The Chief Judge has no jurisdiction to investigate the State Commission on Judicial Conduct, which is an independent statutory body created by the Legislature.”⁸

Due to time constraints, I was unable to discuss with you – but did summarize for Ms. Hawkins – the fact that appellate disposition of *Elena Ruth Sassower v. Commission* may make legislative investigation, including hearings, even more exigent than it is presently. This would especially be true if the appellate tribunal disposes of the appeal on grounds of “standing” – which is what the Attorney General, on behalf of the Commission, is currently urging, relying on the Appellate Division, First Department's fraudulent appellate decision in the *Mantell* appeal, where, unsupported by ANY legal authority, the Appellate Division, First Department held, “Petitioner lacks standing to assert that, under Judiciary Law §44(1), respondent is required to investigate all facially-meritorious complaints of judicial misconduct”⁹. Plainly, if the judiciary – which has a self-interest in keeping the Commission a corrupt façade -- is going to erect a barrier of “standing” to insulate the Commission from the far-reaching litigation challenge represented by the Six Claims for Relief in the Verified Petition [A-37-45], the

⁸ See purple file folder containing Mr. Colodner's March 27, 2000 letter, which also contains CJA's March 3, 2000 letter to Chief Judge Kaye and pages 1-5, 29-35 of our February 23, 2000 letter to Governor (the omitted pages essentially duplicating the recitation that appears in my Appellant's Brief). Please note: the full letter is annexed as Exhibit “F” to my August 17, 2001 motion in the appeal.

⁹ A copy of the *Mantell* appellate decision is annexed to CJA's December 1, 2000 notice to the Attorney General and Commission, contained in the manila folder.

Legislature's duty to examine those Six Claims that the judiciary will not entertain.

The consequence of a corrupt Commission is that the People of this State – 300,000 of whom are your constituents and 60,000 of whom are Assemblyman Wright's constituents – are deprived of a means to discipline and remove unfit state judges – there being NO other state agency charged with such important duty. That is why when your constituents turn to you with complaints against New York State judges, you necessarily refer them to the Commission. It is the only place for them to go with misconduct issues relating thereto. Moreover, as *Elena Ruth Sassower v. Commission* demonstrates, an inevitable consequence of the Commission's corruption is to enable sitting judges who would otherwise have been *publicly disciplined, if not removed from office*, to be re-elected, re-appointed, and even promoted to higher judicial offices.

Needless to say, it is the minority community – whose constituents largely comprise the 29th Senate District and 70th Assembly District – that is hardest hit by unfit judges, particularly of the biased variety. "*Black Robes, White Justice*", the powerful book by former Supreme Court Justice Bruce Wright -- Assemblyman Wright's father -- makes this clear.

Crystallizing how judicial misconduct involving racial, ethnic, and class bias plays out at the Commission level, is a January 16, 1987 judicial misconduct complaint (Exhibit "B-1"), whose recitation of intemperate and injudicious behavior by a Criminal Court Judge, included the following:

"While 32 black and Hispanic defendants were lined up, like cattle against a wall awaiting their cases to be called, [the] Judge...interrupted the proceedings so that attorney Jack Litman and his infamous client, Robert Chambers, could have Mr. Chambers' disorderly conduct case heard – with patience and kindness by the otherwise rude and abrasive judge. While all other defendants who received fines were yelled at by a court office to 'Step outside and pay the fine,' [the] Judge made special provision so that Mr. Chambers could exit through a side door where the clerk would accept his \$20.00.

In other cases she was rude, abrasive, impatient and contemptuous of the defendants. I also detected a distinct difference in the way she treated white and minority defendants.

If her conduct on other days is the same as her conduct on December 15, 1986, she should be removed from the bench, in my opinion."

Such *facially-meritorious* complaint was filed by a man whose "opinion" as to proper judicial conduct should have counted for a great deal -- M.L. Henry, Jr., then Executive Director of the Fund for Modern Court, who, additionally, was a "disinterested" observer of the judicial misconduct he had witnessed, and who had given his "opinion" on the matter a full month's reflection before filing the complaint.

Nevertheless, the Commission's response to Dr. Henry was that:

"Upon careful consideration, the Commission concluded there was insufficient indication of judicial misconduct to warrant further inquiry" (Exhibit "C-2").

Assuredly, to the extent the Commission conducted any "inquiry" on Dr. Henry's complaint, it was because of his position and prominence¹⁰ -- just as your own position and prominence may be presumed to have been a significant factor in the Commission's "inquiry" into your own long-ago filed judicial misconduct complaint¹¹ -- whose ultimate disposition you stated was so unsatisfactory that it compelled you to spend several years trying to secure a legislative hearing on the Commission.

The *prima facie* evidence of the Commission's corruption discussed at our meeting furnishes ample grounds for you to renew your prior efforts to obtain such legislative hearing -- and to do so with increased vigor, in coalition with Assemblyman Wright and other members of the Legislature who share a commitment to making government work for the People of this State.

Finally, as you review the appellate papers in *Elena Ruth Sassower v. Commission*, you will see that the lawsuit exposes a serious level of dysfunction at the New York State Commission on Judicial Nomination -- the body which nominates "well qualified" candidates for appointment by the Governor to the New York Court of Appeals. Your

¹⁰ Dr. Henry was a witness at the 1987 legislative hearing on the Commission, where, surprisingly, he said *nothing* about his direct, first-hand experience with the Commission. Even more surprising, his written statement interpreted the steadily decreasing numbers of judges publicly disciplined by the Commission (from 58 in 1979, 50 in 1980, 32 in 1981, 24 in 1982, 20 in 1983, 24 in 1984, 18 in 1985, to only 16 in 1986) to its success in deterring misconduct -- paying absolutely no regard to the fact that throughout these years the number of complaints being received by the Commission was on its way to doubling.


¹¹ As mentioned, I would appreciate a copy of the record of your complaint for CJA's archives.

eminent father, Basil A. Paterson, is a long-standing member of that body, including during the fall of 1998 when the Commission on Judicial Nomination included, among its "short list" of nominees, then Appellate Division, Second Department Justice Albert Rosenblatt – thereafter appointed by the Governor and confirmed by the Senate. That is not to say that your father knew of CJA's October 5, 1998 written presentation to the Commission on Judicial Nomination in opposition to Justice Rosenblatt [A-61], filed with the Commission on Judicial Conduct as a *facially-meritorious* judicial misconduct complaint [A-57]. Indeed, it is entirely possible that the Commission on Judicial Nomination's counsel, Stuart Summit, withheld same from the members, as, likewise, CJA's subsequent November 18, 1998 letter [A-86].

CJA trusts you will rise above this clear and painful potential conflict of interest so as to discharge your transcendent duty to your constituents, as likewise to the People of this State by virtue of your leadership position as Deputy Minority Leader of the State Senate.

Again, thank you.

Yours for a quality judiciary,



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

cc: Assemblyman Keith Wright
Blair Horner, Legislative Director, NYPIRG
Yashua Amen Shekhem'El-Bey