

CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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BY FAX: 212-643-7828 (12 pages)

February 25, 2002

Michael Aronson, Editorial Board
New York Daily News
450 West 33rd Street
New York, New York 10001

RE: Scheduling a Meeting for the Center for Judicial Accountability, Inc. (CJA)
to make an *Evidence-Based* Presentation as to the Corruption of the NYS
Commission on Judicial Conduct, etc.

Dear Mr. Aronson:

Following up our phone conversation earlier today, I look forward to your finally scheduling a meeting for me to meet with you and other members of the Daily News editorial board and reportorial staff, if not this week then next, so that I can provide an overview of the *readily-verifiable* EVIDENCE of the corruption of the NYS Commission on Judicial Conduct – and the man at the Commission most responsible, Gerald Stern. Today's full-page "Judging the Judges" editorial, "*Lax Discipline Lacks Effectiveness*" -- powerful as it is -- continues to "protect" the Commission by concealing that the Commission is corrupt and that *readily-verifiable* EVIDENCE establishes this corruption. This is then reinforced by the editorial's commendation of Mr. Stern as having "done yeoman service", with a "commitment... unquestioned" -- notwithstanding the Daily News cannot possibly have evidence to support this accolade in view of the confidentiality of the Commission's operations.

By contrast, the file of my public interest lawsuit against the Commission – including the appellate papers I transmitted to you nearly three months ago -- documentarily proves Mr. Stern's unprofessional and corrupt conduct and that the Commission long ago subverted what today's editorial refers to as "its crucial mandate". That "mandate" is not only to appropriately punish judicial misconduct, but, pursuant to Judiciary Law §44.1, to investigate each judicial misconduct complaint not determined by the Commission to facially lack merit. What the Commission has done instead is to unlawfully promulgate 22 NYCRR §7000.3 so as to give itself unfettered discretion, unbounded by *any* standard, to do anything or nothing with the complaints it receives.

The result is that each year the Commission dismisses more than 80% of received complaints *without investigation*. This includes complaints which are not only *facially-meritorious*, but which are substantiated by *prima facie* proof of the judicial misconduct complained of.

The Commission's demonstrable subversion of this "crucial mandate", which, since 1995, has been the subject of CJA's very public advocacy [A-50, 51-52, 55-56], is embodied in the first two of my Verified Petition's six Claims for Relief [A-37-40]. As discussed, the Verified Petition's other Claims include my (Fifth) Claim [A-44-45] addressed to the unlawfulness of Henry Berger's lengthy tenure as Chairman – noted in today's editorial as spanning "13 of the last 14 years". Whereas today's editorial states, "[t]here is no suggestion of improper behavior on Berger's part", the file of my lawsuit chronicles Mr. Berger's unprofessional and corrupt behavior – and its catastrophic consequences. This includes the Commission's "pattern and practice of protecting powerful, politically-favored judges" by unlawfully dismissing, *without investigation, facially-meritorious* complaints against them (see ¶¶ FIFTY-FIFTH, SIXTY-FOURTH, SIXTY-SEVENTH, SEVENTY-FOURTH). Indeed, whereas today's editorial reports that "the mere perception" that the Commission "may be tainted by politics" "rightly troubles many in the legal community", the file of my lawsuit presents powerful evidence that politics and self-interest at the Commission are NOT "mere perception[s]", but fact. When this is exposed – by the Daily News or some other newspaper -- Mr. Berger will rightfully be disbarred, as likewise Mr. Stern and a long list of other attorneys who have transformed the Commission into a worthless façade, causing irreparable injury to countless innocent victims of judicial misconduct.

Enclosed, for your convenience, is a copy of my Verified Petition's six Claims for Relief [A-37-45] – inasmuch as you told me that the file of my lawsuit had been "borrowed" by Larry Cohler-Esses. I believe it would be most beneficial if Mr. Cohler-Esses and his editors in the investigative division of the Daily News were invited to our upcoming meeting.

Finally, I have *no* objection – and, indeed, would welcome -- your also inviting Mr. Stern, Mr. Berger, and anyone else on the Commission's behalf to our meeting. The Daily News could then witness "live" what the file of my lawsuit documentarily establishes: the Commission's *total* inability to confront the six Claims for Relief [A-37-45] and its massive defense misconduct to thwart my decisive litigation challenge.

Yours for a quality judiciary,


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

Enclosure

cc: Larry Cohler-Esses [By Fax: 212-643-7831]

DAILY NEWS

450 W. 33rd St., New York, N.Y. 10001

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Lax discipline lacks effectiveness

For six months, this page has been evaluating New York judges. But there exists a state agency whose job is to do the same thing — to investigate unethical behavior and incompetence on the bench. The Commission on Judicial Conduct is the ultimate check — indeed, the only check — on abuses by the judiciary. Unfortunately, it has had limited success in fulfilling its crucial mandate.

Created in 1974 as part of a national court-reform movement, the panel has oversight and disciplinary authority over all 1,300 judges in the state. Yet in its quarter-century history, it has all too frequently given mere written rebukes to bad judges — no lost pay, no demotions, no penalties whatsoever. And rarely has it exercised the ultimate sanction: stripping the worst of them of their black robes.

How toothless is the watchdog? While some lower-level upstate judges have been fired, just once in 26 years has the commission removed an elected Supreme Court justice in the city. Just once. Only a fool could believe that, among the hundreds who have served, only one deserved removal.

Not all its failings are the panel's own fault. It operates with meager resources. Its disciplinary process is closed by law to the public. When its staff brings charges against jurists, it's done in secret. And it has only three punitive options: admonition, censure or removal. However, the very composition of the commission creates a conflict.

Since its inception, Administrator Gerald Stern has done yeoman's service running the panel. His commitment is unquestioned. But he faces daunting obstacles. His role is that of prosecutor, presenting cases against unfit jurists to the 11 commissioners, who act as judge and jury. And therein lies the problem. Since 1976, panel members have largely been lawyers who do very well by working within, not against, the system. It is not in their interest to shake things up, although that's precisely what the system needs.

Case in point: Henry Berger, the commission's chairman for 13 of the last 14 years, is also a top election lawyer. Among his many clients from the world of New York politics is the Committee for a Golden Future — the fund-raising arm of ex-Brooklyn Democratic boss and Borough President Howard Golden — which contributes to the electoral campaigns of judges. And most of Brooklyn's judges are picked by the machine that Golden ran for years.

There is no suggestion of improper behavior on Berger's part. But there is an appearance of a conflict of interest when a lawyer who earns fees from clients like Golden wears his public-policy hat to stand in judgment of judges anointed and/or funded by Golden.

In the six years Berger has worked for Golden's committee, it has contributed or loaned more than \$150,000 to the campaigns of at least seven judges or judicial candidates. It also made an interest-free, \$75,000 loan to the campaign war chest of state Senate Minority Leader Martin Connor of Brooklyn. And Connor, himself a top election lawyer for Brooklyn pols, is the one who appointed Berger to the Commission on Judicial Conduct. That commission is intended to be a sacred trust. The mere perception that it may be tainted by politics rightly troubles many in the legal community.

Also problematic: When the panel does punish judges, it does so halfheartedly. Take the case of Richard Huttner, an elected Brooklyn Supreme Court justice rebuked last month for using his position to influence a lawsuit involving his own co-op board. Although he should have been fired for a breach of ethics, he didn't even lose a day's pay. This pro forma wrist-slap was hardly adequate. Soon after, the state Office of Court Administration stepped in, but it had the authority only to transfer the judge. Huttner was sent to Queens. His commute is a little longer, but he's still commuting to a courtroom.

Ann Pfau, Brooklyn's new chief judge, deserves credit for shipping Huttner out. She also is shifting from Civil to Criminal Court Justice Edward Rappaport, who is being probed for failing to report a bribe solicited by another judge, Victor Barron. There are plenty of other benchwarmers Pfau can focus on. The Daily News analysis found 29 elected Brooklyn justices ranging from marginal to unfit.

The court system comprises one-third of the government. Yet it remains largely unaccountable. Accountability is supposed to be in the hands of the Commission on Judicial Conduct, but its grasp on accountability is very weak. True reform of a court system in crisis will not come until the commission is free of conflicts and is willing to administer tough justice to those who besmirch the judiciary.

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