

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Coordinator

BY FAX: 212-608-1240 (9 pages)

December 23, 1999

Mr. David Rohde/The New York Times
100 Centre Street
New York, New York

RE: Evaluating CJA's Readily-Verifiable, Document-Supported Allegations that the NYS Commission on Judicial Conduct:

- (1) is dismissing, *without* investigation, facially-meritorious judicial misconduct complaints, which the law *requires* it to investigate (Judiciary Law §44.1);
- (2) has been unlawfully defended by the State Attorney General, who has used fraudulent litigation tactics to thwart the three most recent Article 78 proceedings challenging its unlawful dismissals of judicial misconduct complaints;
- (3) is the beneficiary of fraudulent judicial decisions in two of those recent Article 78 proceedings – with the third proceeding now pending before a judge disqualified for both self-interest and bias.

Dear Mr. Rohde:

Following up our conversation yesterday, I again thank you for phoning Alan Rothstein, General Counsel of the Association of the Bar of the City of New York. I understand from Mr. Rothstein that he told you there is NO committee at the City Bar able to comment on my instant Article 78 proceeding against the Commission on Judicial Conduct. This, because the City Bar conveniently has not set up a standing committee to address judicial conduct and its *ad hoc* committee on judicial conduct, formed in 1996, is defunct. In and of itself, this is worthy of a Times story – and all the more so because a standing committee on judicial conduct should be among the oldest at the City Bar, which was founded over 125 years ago to “fight

rampant corruption in the judiciary”¹. However, aside from the absence of a specially-designated committee at the City Bar to address judicial conduct, it is simply preposterous that with a membership of approximately 21,000 lawyers and judges, and a mission to “promote reforms in the law, to improve the administration of justice and to elevate the integrity and honor of our profession”, Mr. Rothstein could not direct you to a single one of the City Bar’s 180 other committees (Exhibit “A”)² from which to obtain an expert opinion on the above-cited three issues of systemic governmental corruption, *readily-verifiable* from the files of the three most recent Article 78 proceedings against the New York State Commission on Judicial Conduct³.

Mr. Rothstein told me he gave you the phone number of Robert Jossen, chairman of the City Bar’s defunct *ad hoc* committee on judicial conduct, and that he also advised you to call the Fund for Modern Courts – a non-membership organization run by the same “leadership” as runs the City Bar.

As you know from CJA’s \$3,000 public interest ad, “*Restraining ‘Liars in the Courtroom’ and on the Public Payroll*” (NYLJ, 8/27/97, pp. 3-4), annexed as Exhibit “A-3” to my hand-delivered October 25th letter to you⁴, as well as from my testimony before the *ad hoc* committee on May 14, 1997, annexed as Exhibit “B” thereto⁵, during the life of the *ad hoc* committee, Mr. Jossen and his committee *refused* to address the corruption issues presented by my mother’s 1995 Article 78 proceeding against the Commission. As summarized by pages 6-7 of that October 25th letter, the committee’s belated report, issued two years after that its May 14, 1997 hearing on the Commission, continues that refusal. For your convenience, a copy of pages 6-7 of my letter to you, summarizing that the report is not just a

¹ Letter to the Editor of Barbara Paul Robinson, then City Bar President, which also expressed support for the NYS Commission on Judicial Conduct (New York Law Journal, March 6, 1996).

² President’s Column by City Bar President Michael Cooper: “*Association Committees: Aspiring to Excellence*”, 44th Street Notes, September 1999, pp. 1-2.

³ These might reasonably include its Council on Judicial Administration; Committee on Professional & Judicial Ethics; and Committee on Professional Responsibility – all standing committees.

⁴ *See, in particular*, p. 2, last column.

⁵ *See, in particular*, pp. 10-11.

whitewash, but a dangerous deceit, is faxed herewith (Exhibit "B")⁶.

In contrast to the City Bar, which has a copy of the files of the three most recent Article 78 proceedings against the Commission – my mother's, my own, and Michael Mantell's – from which the above-cited three issues of systemic governmental corruption are *readily verifiable* -- the Fund for Modern Courts has a copy of only the file of my mother's 1995 Article 78 proceeding. As to it, Mr. Rothstein well knows that the Fund long ago refused to comment – including commenting on CJA's 3-page analysis of Justice Cahn's dismissal decision, showing it to be a fraud. This refusal is reflected by CJA's May 5, 1997 memorandum to which both the Fund and City Bar were recipients, a copy of which is annexed as Exhibit "A" to the Verified Petition in my Article 78 proceeding against the Commission.

Immediately after speaking with Mr. Rothstein and before calling you yesterday, I telephoned the Fund for Modern Courts (212-575-1577). In the absence of its Executive Director, Steven Zeidman, and Associate Executive Director, Barbara Reed, I left a lengthy message with its Assistant Director, Kim Robinson. I stated that the Fund should obtain, as a loan from the City Bar (which is across the street), the copy of the file of my Article 78 proceeding against the Commission⁷, in Mr. Rothstein's possession or, alternatively, that I would supply the Fund with its own copy. This, so that the Fund will be able to provide you with comment on the issues presented therein.

It must be emphasized that copies of the files of the three most recent Article 78 proceedings against the Commission are in the possession of each of the proposed intervenors in my Article 78 proceeding. Since these are public officers and agencies, whose duty is to protect the public from the kind of corruption demonstrated by these files, you should contact them for comment.

⁶ The report's failure to address the dismissal of facially-meritorious judicial misconduct complaints by the Commission on Judicial Conduct, which CJA presented to the *ad hoc* committee, as well as to the City Bar leadership, including the Commission's dismissal of facially-meritorious lawyer-presented complaints bodes ill for what can be expected from "a standing bar committee" to act as an intermediary in presenting lawyer complaints of judicial misconduct – its most extensively presented and seemingly positive recommendation (at pp. 625-28).

⁷ The file of my Article 78 proceeding includes the file of Mr. Mantell's proceeding, which I put before Justice Wetzel in support of my application for reassignment to a specially-designated judge, *infra*.

These proposed intervenors are:

- (1) Attorney General Spitzer, as "the People's Lawyer" (David Nocenti, Counsel: 212-416-8095, Peter Pope, Chief of the "Public Integrity Unit": 212-416-8058, and William Casey, Chief Investigator of the "Public Integrity Unit": 212-416-6327);
- (2) the Manhattan D.A. (Tom Wornam, Deputy Chief of the Special Prosecutions Bureau: 212-335-9258);
- (3) the U.S. Attorney for the Southern District of New York (Andrew Dember, Chief of the Public Corruption Unit: 212-637-2563);
- (4) the New York State Ethics Commission (Donald Berens, Executive Director⁸: 800-873-8442).

Obviously, anyone purporting to provide you with a legal opinion as to the above-cited three issues can only do so based on the files of the three most recent Article 78 proceedings against the Commission. Needless to say, I will promptly provide copies to anyone you ask me to. This would include Professors Stephen Gillers, Monroe Freedman, and Alan Dershowitz, as well as activist lawyer Ronald Kuby – whose shameful refusal to comment on the file of my mother's Article 78 proceeding – or to provide a recommendation as to who would -- is detailed at pages 3-5 of my October 25th letter to you, with copies of the substantiating correspondence enclosed therewith.

Since Professor Gillers provided you with expert comment for articles on other subjects at least twice since my October 25th letter⁹, it will be most interesting to see whether he will provide you with comment on the above-cited three issues, all encompassed in my pending Article 78 proceeding. At very least, he, the other professors, and Mr. Kuby should at least be willing to comment on the limited issue of my application to Justice Wetzel for his disqualification for self-interest and bias, and to offer their view as to whether, as I have requested, this politically-explosive case should be assigned to a specially-designated judge, either retired or

⁸ This is the same Donald Berens who is referred to in the very first sentence of CJA's ad, "*Restraining 'Liars'*" and who was then is Attorney General Vacco's Deputy Attorney General for State Counsel.

⁹ See your October 27th article, "*A Defense Witness is Barred in Subway Trial*" and your December 4th article, "*Getting Tough if Petty Crime is Repeated*".

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retiring, and willing to disavow any interest in subsequent judicial/political appointment.

Of course, unless you yourself review at least the file documents in your possession, you will be unable to evaluate *any* of the comment you might elicit, including my own. The lull between the holidays is perfect for that purpose. This would be a far better use of your all too-scarce time than reading the City Bar's *ad hoc* committee report which you told me you were planning to read in this period (presumably following a recommendation from Mr. Rothstein).

Unless I hear from you on Monday of next week, I will call you on TUESDAY to arrange a date and time either for you to interview me or for a meeting with you and your editors about this fully-documented, *easily-verifiable* story of systemic governmental corruption and cover-up.

Yours for a quality judiciary,



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

Enclosures

N 44th Street NOTES

The Association of the Bar of the City of New York

President's Column

Association Committees: Aspiring to Excellence

by Michael A. Cooper

I am confident that I am not alone in believing that the distinctive feature of this Association—what sets it apart from the multitude of national, state, local, ethnic and practice specialty bar associations—is the extent and extraordinary variety of the activities of our 180 committees and the high quality of their work product. And so, at the beginning of September, when committees are officially reconstituted for the coming year with the addition of many new members and new chairs, I would like to share with you some thoughts on the role and responsibilities of committees, committee chairs and committee members.

But before doing so, a word to the many members of the Association who do not presently serve on committees. If you would like to do so, let us know in which committees you are interested by writing or calling Stephanie Rook in Committee Services at (212) 382-6664, and if we can accommodate your desire to join a committee, we will do so. In the interim, you can, and I hope will, take pride in the committee work of your fellow Association members.

This is the message I would like to convey to committee chairs and members:

Be Relevant

This Association has a mission: to promote reforms in the law, to improve the administration of justice and to elevate the integrity and honor of our profession. Focus on issues that offer opportunities to advance that mission. Within your respective jurisdictions, what proposed legislation is under consideration that stands a chance of enactment? (Many bills are doomed to go nowhere and are not worth the time and effort of study.) What condition, such as racial, gender or other discrimination, calls for comment and exhortation by the Bar? What actual or threatened governmental action (e.g., the recent appointment by the Mayor of a second charter revision commission in two years) or inaction (e.g., the State's persistent failure to fund civil legal services to the poor) threatens values the Association prizes?

Be Effective

Consider what is the most effective means of educating the public or achieving governmental acceptance of your committee's views. What will have the greatest impact? A report? A specific legislative proposal? A program at the House of the Association at which differing points of view on a controversial topic may be expressed? An *amicus curiae* brief? A manual or guide, like the Association's *Tenant's Guide to Housing Court* or our

Continued on next page

Exhibit "A"

September 1999

10/20/99

1/15/99

2/18/99

3/10/99

4/10/99

5/10/99

6/10/99

Monday, September 27

**Exposure for Attorneys
and Accountants Under
the Federal Securities Laws**

Monday, September 27

**Rights of People with
Disabilities**

9/21/99

Monday, September 28

**Pro Bono Training:
Assisting the Homeless**



Volunteer

City Bar Public

Service Network

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Sunday: CLOSED
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Sunday: CLOSED

A CLOAK ROOM is located in the upper lobby to the right of the front desk. House and Library rules require that all members and guests check their coats and hats. Service is free of charge.

- **SMOKING** is not permitted in the House of the Association.
- **THE PHOTOGRAPHING** or sound recording of any program or forum held at the House of the Association is prohibited without written consent.
- **ACCESS.** The House of the Association is barrier free.

(212) 382-6600

President's Column

Continued from page one

compendium of the rights of persons with disabilities under federal, state and city law? A community outreach effort, like our mentoring and other programs in the City's public schools? Different issues call for different strategies: one size does not fit all.

Be Timely

The most persuasive statement of views is wasted effort if it has been overtaken by events. If your committee is considering commenting on proposed legislation, keep abreast of its passage through the legislative process. A report or comment letter issued after legislation has been enacted is an exercise in futility. Frequently a deadline is set for comment on legislative and rule-making proposals. Respond by that deadline, which entails allowing time for other committees with an interest in the subject matter to express their views *and* allowing time for the Association's President to decide whether your Committee's views should be published to the outside world as those of the Association.

It will be easier to act in a timely fashion and to have an impact on proposed governmental action if you establish and maintain a close liaison with relevant legislative, executive and judicial personnel. In my experience, they usually are genuinely interested in receiving objective, insightful and persuasive comment from the organized bar. Invite appropriate governmental representatives to committee meetings; ask them what is on their minds; and tell them what is on yours.

Coordinate with Other Committees

Many social conditions or prospective governmental actions will fall within the jurisdiction of more than one of the Association's 180 committees. Before undertaking a project, consider whether another committee may be interested in the subject matter. If it is, establish early contact with that committee, and consider issuing a joint report. Doing so will eliminate—or at least diminish—the risk of later disagreement and delay in the formulation of an Association position.

Follow Through

The Association does not speak for the sake of hearing its own voice. We seek to influence the executive, legislative and judicial branches to pursue courses of action that we consider consistent with the Association's mission and to abandon those contrary to that mission. Committee action does not end with issuance of a report or letter of comment on proposed legislation. It is imperative to follow through by communicating directly with the relevant governmental players. Additionally, it is often advisable to herald a report by issuing a press release or simply getting the report into the hands of the media. Mark Lutin, the Association's Director of Communications, can be of invaluable assistance in getting the attention of the press. And be alert to other opportunities to communicate the Association's position through, *inter alia*, testifying at legislative hearings and meeting with relevant governmental and judicial personnel.

Aspire to Excellence

If the positions taken by the Association are to have a salutary impact on the world about us, they must be thoughtfully and objectively formulated and persuasively expressed. The Association, and the positions it espouses, are entitled to the finest lawyerly analysis and cogent arguments of which you are capable. Service on an Association committee is a privilege and opportunity that carries with it an obligation: to give the very best of yourself. That means attending committee meetings and doing your fair share of committee work. The rewards of doing so often are not public, but they are among the most valuable rewards you can receive as a lawyer.

Michael A. Coopers

from CJA -- were present at the hearing. Neither, however, addressed the Article 78 proceeding or CJA's analysis of the decision. Nor did the Committee did question either of them on the subject. Indeed, its Chairman, Robert Jossen, abruptly closed the hearing when CJA protested the Committee's failure and refusal to raise such obvious questions.

* As discussed, enclosed is a copy of the City Bar's just released report of its Committee on Judicial Conduct. It continues the City Bar's dishonest cover-up of the Commission, complained of in our testimony and protested at the hearing. This may be seen from its only reference to CJA's evidence-supported presentation, at p. 608:

"Elena Ruth Sassower, the Coordinator of the Center for Judicial Accountability, Inc., as well as other members of that organization, presented submissions which were highly critical of the Commission on a host of grounds."

Tellingly, the Report does not identify a single one of these "host of grounds" -- let alone assess their seriousness. In other words, faced with CJA's fact-specific, evidence-supported presentation that the Commission is corrupt and survived the prior Article 78 challenge only by fraud, the report does not deny or dispute anything.

The report then goes on to thwart public inquiry that would expose this dangerous state of affairs -- and the direct and irreparable harm to the public resulting therefrom. This may be seen from the "first" of its five "recommendations":

"First, critics of the State Commission often call for the establishment of some kind of oversight process. The nature or form of such oversight never has been carefully articulated, but presumably the options range from review of all actions of the Commission, including those of non-prosecution, to hearings before committees of the State Legislature to assess the work of the Commission. The Committee believes that *such oversight function is neither necessary nor productive...*" (at p. 613).

The Committee was well aware that if it wanted CJA to further articulate its oversight proposals, it had only to ask. Among CJA's proposals, reflected by petitions it had circulated, signed by 1,500 New Yorkers, was appointment by

Exhibit "B"

Governor Pataki of a commission "to investigate and hold public hearings on judicial corruption and the political manipulation of judgeships in the State of New York". Based on the evidentiary proof in its possession – the Article 78 file with its annexed judicial misconduct complaints – the Committee not only knew that oversight by an objective, independent body was exigent, but that it would result in sweeping recommendations overhauling the Commission and removing its members and staff.

I would be pleased to discuss with you further respects in which the City Bar's report is not just deceitful, but dangerous. This, not only as it relates to the Commission on Judicial Conduct, but the federal mechanism for judicial discipline under 28 USC §372(c). Suffice to say that the reason the City Bar never held a hearing on §372(c) is because it knew that CJA would publicly present it with evidentiary proof of the federal judiciary's corruption of that mechanism, much as we had publicly presented it with proof of the Commission's corruption at the May 14, 1997 hearing. Indeed, CJA long ago transmitted to it copies of publicly-inaccessible §372(c) judicial misconduct complaints, dispositive of the federal judiciary's corrupting of that mechanism, as well as a copy of our published article, "*Without Merit: The Empty Promise of Judicial Discipline*" The Long Term View (Massachusetts School of Law) Vol. 4, No. 1 (summer 1997). I believe I already transmitted to you a copy of that article. However, a further copy is enclosed, which should be read in conjunction with the City Bar's report and, in particular, the latter portion (at pp. 615-625) pertaining to the §372(c) mechanism. You will note that encompassed by CJA's law review article (at pp. 93-97) is a critique of the 1993 Report of the National Commission on Judicial Discipline and Removal, including its methodology pertaining to §372(c) complaints. It is this critique, as well as its faulty methodology, on which the City Bar's report relies.

I would note that both my parents filed §372(c) judicial misconduct complaints in the context of their federal lawsuits challenging the unlawful state court orders preventing them from practicing law. The corruption of §372(c) – as demonstrated by the record of those complaints – like the corruption of the Commission on Judicial Conduct -- further explains why they have been unable to regain their licenses to practice law.

FYI, I enclose a copy of a June 6, 1989 Village Voice article about my father, "*To the Gulag: Courthouse Leper George Sassower Takes On Every Judge in Town*" (Exhibit "D"). Although my father has yet to be recognized, beyond this article, for his courageous judicial whistleblowing, my mother received an award in the fall of 1997 from the "Giraffe Project" for "sticking her neck out for the common good"