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Elena Ruth Sassower, Coordinator

BY FAX: 312-988-5709 (12 pages)

BY PRIORITY MAIL/CERTIFIED/RRR: 7000-1670-0007-9431-9936

October 30, 2001

Luke Bierman, Director
American Bar Association's Justice Center
541 North Fairbanks Court
Chicago, Illinois 60611-3314

RE: CJA's Request for Supervisory Review by: (1) Judge Norma L. Shapiro, Chair of the ABA Justice Center Coordinating Council, (2) by D. Dudley Oldham, Chair of the ABA Standing Committee on Judicial Independence, and (3) by Paul R. Verkuil, Chair of the ABA Advisory Council

Dear Mr. Bierman:

This responds to your September 27th letter, purporting that I have "misinterpreted several aspects of our telephone conversation on September 26, 2001", as recapitulated in my September 26th letter. Please be advised that our phone conversation was the previous day, September 25th¹.

Your paragraph "3" recognizes that in our phone conversation, as in my letter, I "ma[d]e several accusations about how [my] requests and communications have been handled". These are *not* disposed of by your general and ambiguous assertion in that paragraph:

"Suffice it to say that they have been dealt with by the entities to whom your requests are directed and replies are forwarded when appropriate. You should keep in mind that the ABA and its entities

¹ This is reflected by the first sentence of my September 26th letter, referring to "yesterday".

have limited resources and make difficult decisions about how to use those resources.”

Tellingly, your September 27th letter conceals the specifics of these “accusations” and my inquiries based thereon, warranting direct response -- *to wit*,

- (1) whether you furnished the members of the Standing Committee on Judicial Independence with the appellate papers pertaining to CJA’s request for *amicus* and other assistance 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. #108551/99) and, thereafter, with CJA’s May 30th letter for reconsideration of their purported denial of that request and for invitations to Justice Center programming at the ABA annual meeting in August and to its Justice Initiatives meeting in October;
- (2) the manner in which you *alone* have responded or *not* responded to these requests;
- (3) your refusal to discuss with me *any* of the substantive issues presented by the *E.R. Sassower v. Commission* appeal; and
- (4) your failure to acknowledge CJA’s demonstrated expertise in judicial selection and discipline and failure to invite us into the Justice Center’s announced “bench/bar/public collaboration”, which purports to draw on “the expertise of...involved citizens” to achieve reform of the justice system.

Thus, your paragraph “1”, which refers to the May 3rd letter communicating to me the Standing Committee’s purported decision denying CJA’s request for its *amicus* and other assistance, *omits* that such denial letter was signed *only by you* and stated *no reasons*. As asserted by my September 26th letter,

“I do not believe that *any* Committee member reviewing my Appellant’s Brief and Appendix would share your view as to the propriety of your May 3rd letter which, *without reasons or other elaboration*, purported that the Committee had denied CJA’s request for *amicus* and other assistance. As highlighted by CJA’s May 30th

letter, the issues presented by the appeal go to the very heart of the Standing Committee's stated mission and purpose." (at p. 2)

Indeed, your September 27th letter: (1) says *nothing* about whether the Committee members are even aware of your *without reasons* May 3rd letter -- let alone approve of it; (2) says *nothing* about whether the members themselves reviewed my Appellant's Brief and Appendix; and (3) does *not* answer -- let alone refer to -- the specific request in my September 26th letter that you:

"advise which, if any, of the Committee's members actually reviewed my Appellant's Brief and Appendix so that I can discuss with them the serious issues established therein, which you REFUSED to discuss with me on the pretext that without their being adjudicated by a court, you could NOT form an independent judgement." (at p. 2, emphasis in the original)

Likewise, your paragraph "2", regarding the requests in CJA's May 30th letter "for reconsideration and an invitation to the ABA Annual Meeting and the October Justice Initiatives program", does *not* state that you presented the May 30th letter to the Committee members. This, notwithstanding my September 26th letter asserted my belief, based on our phone conversation, that you had not. Such belief is reinforced by your repetition of what you told me by phone, *to wit*, that the May 30th letter "is on [your] desk for action", and not diminished by your claim that I "misunderstand that no attention has been given those requests" -- as to which you conspicuously omit *any* pronoun identifying who has given the "attention" you purport. Indeed, your bald assertion,

"Suffice it to say that the request for reconsideration remains pending and a determination will be communicated to you when made. Obviously, you were not invited to participate in the ABA Annual Meeting program and have not been invited to participate in the Justice Initiatives program in October",

also *without* identifying pronouns, (1) says nothing about when, *if at all*, you provided the Committee members with CJA's May 30th letter; (2) conceals that you did *not* respond to that letter in the nearly four months until I initiated my September 25th phone call to you; and (3) conceals the pertinent facts showing the time-sensitiveness of the requests in the May 30th letter. Thus, you do *not* identify that the May 30th letter explicitly stated that the *E.R. Sassower v. Commission* appeal was scheduled for *September* -- thereby necessitating a decision on CJA's

reconsideration request in advance thereof. Nor do you identify, as explicitly stated in the May 30th letter, that the ABA annual meeting was in *August*. That these are not accidental omissions may be seen from the fact that you identify October as the month for the Justice Initiatives program. Plainly, August had already passed and September was almost over when I initiated my September 25th phone call to you in the absence of any response to the May 30th letter. Only October was yet upcoming.

Presumably, the members of the Standing Committee on Judicial Independence were gathered at the ABA annual meeting in August and would have made a determination on my reconsideration request then -- *had it been presented to them*. Therefore, in addition to *directly* responding to the foregoing inquiries, which your September 27th letter dodges, please advise as to whether CJA's reconsideration request was on the agenda for the "attention" of the Standing Committee on Judicial Independence during the August ABA annual meeting. Also, please advise whether it was the Committee members -- or you alone -- who made the decision to deny CJA an invitation to the Justice Center's programming at the ABA August annual meeting and to the Justice Initiatives' October program -- as well as the reason we were rejected for inclusion -- since *no* reason is given in your September 27th letter.

Although your paragraph "4" states that Paul Verkuil has asked you to inform me that "any communications with him should be forwarded to [your] attention", your conduct herein makes manifest your wilful disregard of your duties as the Justice Center's Director. Nothing exemplifies this more tellingly than your failure to respond to the final paragraph of my September 26th letter,

"Finally, inasmuch as the ABA's Justice Center purports to be seeking to reform the justice system 'by encouraging bench/bar/public collaboration' -- and by drawing on "the expertise of... involved citizens' -- please advise as to why the Justice Center, under your directorship, has taken NO steps to bring CJA into its collaboration and has failed to show ANY acknowledgment of, let alone appreciation for, CJA's expertise on judicial selection and judicial discipline -- the breathtaking evidence of which includes the appellate papers in my lawsuit against the New York State Commission on Judicial Conduct." (at p. 3, emphases in the original)

Such non-response bespeaks your knowledge, gained from the appellate papers in *E.R. Sassower v. Commission*, and your acquaintance with CJA's past correspondence with ABA Presidents, spanning nearly a decade, that CJA has earned a place in the activities of the ABA's Justice Center. Yet, you are not satisfied in excluding CJA from collaborative involvement, *without offering the slightest reason therefor*, you then see fit to begrudge us the most minimal gesture of recognition for our groundbreaking work. Thus, you choose not to provide our unfunded citizens' organization with the requested copies of the Justice Initiatives' "Roadmaps" on "Judicial Independence" and "Judicial Selection", whose total cost is all of \$10.

As you know, the ABA distributes all sorts of publications, free of charge. This, because these publications advance the ABA's self-serving claims on issues in which it has an interest. Over the years, CJA has received any number of ABA publications, without charge – including "*Promoting Professionalism*", for which George Soros' Open Society Institute gave the ABA \$20,000 for "distribution throughout the legal community". CJA's May 30th letter (at pp. 3-4) reflects the significance of this publication and Mr. Soros' largess in connection therewith, as well as Mr. Soros' financial support of the Standing Committee on Judicial Independence to "increase public awareness of the importance of an independent judiciary".

Of course, Mr. Soros' funding of the ABA's work on judicial independence preceded establishment of the Standing Committee. His Open Society Institute previously provided funding to the ABA's Special Committee on Judicial Independence and for the ABA programs, "*Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice*" (December 1998), "*Public Perceptions and Understanding of the Justice System*" (February 1999), and "*Public Trust and Confidence in the American Justice System*" (May 1999) – programs to which, in November 1988, CJA requested invitations. To refresh your recollection as to how, in your prior position in the Office of the ABA President, you handled that request, annexed is CJA's November 30, 1998 letter to then ABA President Philip Anderson, recounting the pertinent details and pointing to the Open Society Institute's express goal "to encourage debate in areas where one view of an issue dominates all others" (Exhibit "A"). Also annexed (Exhibit "B") is a copy of the fax receipts, showing that a copy of the November 30, 1998 letter, including its exhibits, numbering 23 pages all told, was sent to you and other indicated ABA recipients². That we received *no* response from President Anderson

²

The Open Society Institute was also an indicated recipient of that letter, however, due to

or from any of the other ABA recipients, including yourself, underscores that the ABA could *not* respond without conceding CJA's entitlement to the requested invitations, among other relief.

To the extent that the volunteer members of the ABA's Standing Committee on Judicial Independence defer to you, as the Justice Center's paid, full-time Director, to act on their behalf and to guide them by your recommendations, your obligation has been to advise them that you suffer from significant conflicts of interest. Among these, the conflict born of your complicitous role in the wrongful denial of CJA's November 1998 request for invitations to ABA programs on judicial independence, accountability, and public trust and confidence. Inviting CJA to now participate in the work of the Justice Center would necessarily expose the indefensibility of the ABA's denial of invitations to us three years ago and its flagrantly unprofessional conduct, as summarized by CJA's November 30, 1998 letter (Exhibit "A").

Among the most spectacular of our long-list of stellar accomplishments three years ago was the §1983 federal action, *Doris L. Sassower v. Hon. Guy Mangano, et al.* CJA's November 30, 1998 letter highlighted this case as "explod[ing] EVERY myth the ABA and judicial establishment has been promoting about judicial independence and accountability." (Exhibit "A", at p. 3, emphasis in the original). That *Sassower v. Mangano* is an integral part of *E.R. Sassower v. Commission* may be seen from the fact that the U.S. Supreme Court papers in that case (U.S. S.Ct. 98-106) are physically part of the instant lawsuit [A-348]³ -- papers long ago provided to ABA Presidents, along with the substantiating lower court record, to support CJA's requests to them for *amicus* and other assistance in *Sassower v. Mangano*. Such ABA President, including those who made professional responsibility and judicial independence the cornerstones of their tenure, simply ignored these document-supported requests, *without* response.

E.R. Sassower v. Commission promises to be just as monumental as the *Sassower v. Mangano* federal action. On the state level, it has already exploded a panoply of myths that the ABA and judicial establishment promote about judicial independence

time constraints, including those occasioned by the events that gave rise to *E.R. Sassower v. Commission*, the letter was not sent to the Open Society Institute. This will be corrected once the pressures of this time-consuming lawsuit are over and I have the opportunity of putting together a comprehensive presentation to the Open Society Institute.

³ See my *facially-meritorious* October 6, 1998 judicial misconduct complaint to the New York State Commission on Judicial Conduct, enclosing my October 5, 1998 letter to the New York Commission on Judicial Nomination [A-57-83; A-86-90]

and accountability and, as pointed out by CJA's May 30th letter (at p. 2), "exposes the corruption of the so-called 'merit selection' process to New York's highest state court – a process the ABA actively promotes..."

That "you are particularly familiar with 'merit selection' to New York's Court of Appeals" by virtue of your PhD dissertation is expressly noted by CJA's May 30th letter (at p. 2, fn. 1), as, likewise, your "inexplicable" cover-up of the corruption of the New York State Senate Judiciary Committee's "advice and consent function" in connection with two 1993 confirmation hearings, at which CJA testified. As recently as our September 25th conversation, you sidestepped my direct and repeated question to you as to whether you were actually at those two confirmation hearings or had just read the transcripts thereof. In either case, your summarized descriptions in your dissertation conceals that the Senate Judiciary Committee brushes aside, *without investigation*, disqualifying objections to candidate fitness and legitimate questions about the integrity of the "merit selection" process.

As CJA is uniquely capable of exposing your deficient scholarship in covering up the corrupt sham that passes for Senate Judiciary Committee confirmation hearings of "merit selected" appointees to the New York Court of Appeals, you have a particular interest in keeping CJA out of the Justice Center's coalition. Indeed, *E. R. Sassower v. Commission* exposes the Judiciary Committee's culminating travesty in "merit selection": an *unprecedented* no-notice, by-invitation-only confirmation "hearing", at which NO opposition testimony was permitted – and CJA specifically excluded [A-101] (Appellant's Brief, p. 6).

For the record, although I previously apprised you of the fact that last fall CJA issued two document-supported reports exposing the hoax of "merit selection" to New York's Court of Appeals – the first of which details that the corruption of a functioning judicial disciplinary mechanism necessarily undermines "merit selection"⁴ -- you did *not* request that I send you such reports⁵ any more than you

⁴ This, because nominating commissions rely on judicial disciplinary commissions as a source for disqualifying information about candidates who are already judges. Likewise, "merit selection" relies on properly-functioning attorney disciplinary mechanisms for information about lawyer-candidates.

⁵ As discussed, CJA's reports and advocacy based thereon prompted John Caher's front-page November 2, 2000 article in the New York Law Journal, "*Semi-Secret Court of Appeals Nominations Draws Criticism*", as well as the November 30, 2000 article in the New York Times, "*A New Judge is Welcomed For Top Court In Albany*", quoting Professor Vincent Bonventre. I am virtually certain that I sent you copies of each of these articles.

requested that I send you copies of CJA's document-supported 1993 testimony before the Senate Judiciary Committee.

It seems quite plain that the Justice Center, under your directorship, is perfectly content to mislead the public by advocacy unencumbered by "on the ground" evidence that contradicts ABA-supported myths. Indeed, your September 27th letter does *not* identify whether and in what fashion the gold-mine of primary source evidence embodied by *E.R. Sassower v. Commission* will be utilized by the Justice Center into any examination of judicial independence, including of selection and discipline, so that the ABA's advocacy might be informed by what such case so powerfully shows. This replicates your unwillingness in our September 25th phone conversation to respond to my repeated question as to what entity within the ABA would be utilizing *E.R. Sassower v. Commission* for research purposes.

So that the ABA may properly supervise your performance as Director of the ABA's Justice Center, a copy of this letter is being sent to Paul Verkuil, Chair of the ABA's Advisory Council, so that he may belatedly respond to the question posed in CJA's June 1st letter to him (at p. 2), reiterating CJA's May 30th letter to you (at p. 4), *to wit*,

"whether [the Standing Committee on Judicial Independence] is yet another ABA façade designed to mislead the public and such well-meaning benefactors as George Soros' Open Society Institute into believing that the ABA is an 'honest broker' on the issues [of judicial independence and professional responsibility]".

CJA received *no* response from Mr. Verkuil, who was then also dean of Cardozo Law School – *nor* from Professor Ellen Yaroshefsky⁶, Director of Cardozo Law School's Jacob Burns Ethics Center, to whom our June 1st letter suggested Mr. Verkuil turn if he had any doubt that your May 3rd letter was

"not remotely consistent with ethical rules of professional responsibility and with the ABA's rhetorical claims in 'Promoting Professionalism' about its 'leadership' role in 'tak[ing] ethics seriously'"

⁶ Ms. Yaroshefsky is a contributor to a huge loose-leaf volume entitled "Litigation Ethics: Course Materials for Continuing Legal Education", put out by the ABA's litigation section. CJA received such guide, free of charge, pursuant to a notice in the October 24, 2000 New York Law Journal (copy annexed).

October 30, 2001

As Judge Norma L. Shapiro, Chair of the Justice Center Coordinating Council, and D. Dudley Oldham, Chair of the Standing Committee on Judicial Independence, each appear to have more direct supervisory responsibilities over you than Mr. Verkuil, copies of this letter and our prior exchange of correspondence herein⁷ are also being sent to them with a request that they *personally* review the appellate submissions in *E.R. Sassower v. Commission* – a full copy of which you have – as well as the U.S. Supreme Court papers in *Sassower v. Mangano*, referred to in CJA's *unresponded-to* November 30, 1998 letter (Exhibit "A", pp. 3-4).

Based thereon, CJA requests that Judge Shapiro, Mr. Oldham, and Mr. Verkuil advise, *by signed letters*, whether they are satisfied that your responses and *non*-responses herein as Director of the ABA's Justice Center comport with the Center's purpose and goals – as well as those for which George Soros' Open Society Institute has provided the ABA with financial support.

Yours for a quality judiciary,



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

Enclosures

cc: Judge Norma L. Shapiro, Chair, ABA Justice Center Coordinating Council
By Certified Mail/RRR: 7001-0360-0002-6819-6191
D. Dudley Oldham, Chair, ABA Standing Committee on Judicial Independence
By Certified Mail/RRR: 7001-0360-0002-6819-6207
Paul R. Verkuil, Chair, ABA Advisory Council
By Certified Mail/RRR: 7001-0360-0002-6819-6214

⁷ (1) CJA's March 2nd letter; (2) your March 12th letter; (3) CJA's April 25th letter; (4) your May 3rd letter; (5) CJA's May 30th letter; (6) CJA's June 1st letter to Mr. Verkuil (with accompanying letter to Professor Yaroshefsky) – to which you were an indicated recipient; (7) CJA's September 26th letter; (8) your September 27th letter; and (9) CJA's October 19th letter.

Free Ethics Guide

THE AMERICAN Bar Association Section of Litigation has just released *Litigation Ethics: Course Materials for Continuing Legal Education*.

The guide, designed to help law firms and bar associations provide ethics and professionalism training, is divided into 11 course-like chapters.

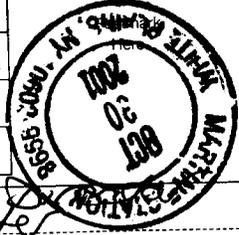
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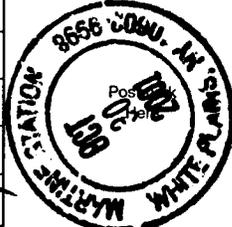
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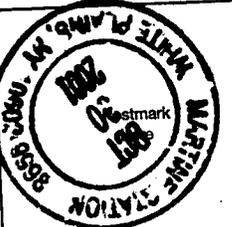
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 Street, Apt. No., or PO Box No.: *Fulbright + Jaworski, LLP*
 City, State, ZIP+4: *1401 McKinney St Suite 5100 Houston, Texas 77010-3095*

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