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BY CERTIFIED MAIL/RRR

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August 9, 2000

Mary Jo White, U.S. Attorney for the Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007

RE: Request for your supervisory review of the official misconduct of Alan Kaufman, Chief of the Criminal Division, covering up the official misconduct of Andrew Dember, Chief of the Public Corruption Unit

Dear Ms. White:

This letter requests your supervisory review of the official misconduct of Alan Kaufman, Chief of the Criminal Division, whose April 26, 2000 letter to the Center for Judicial Accountability, Inc. (CJA) purports to dispose of CJA's March 17, 2000 and April 24, 2000 letters, seeking your supervisory review of the official misconduct of Andrew Dember, Chief of the Public Corruption Unit. Absent appropriate review and corrective action by you, consistent with your supervisory duty, CJA will file a misconduct complaint against them -- and you -- with the U.S. Justice Department's Office of Professional Responsibility.

For your convenience, copies of CJA's March 17th and April 24th letters and Mr. Dember's April 26th response are annexed hereto as Exhibits "A-1", "B-1", and "C", respectively.

As you can see from Mr. Kaufman's April 26th letter (Exhibit "C"), he baldly claims "we have determined that Mr. Dember has engaged in no official misconduct". He then baldly adds -- in wilful violation of the same conflict of interest rules which CJA's March 17th letter identified Mr. Dember as having wilfully violated -- that CJA's submissions "do not implicate the federal criminal laws and do not warrant any further investigation or intervention by this Office".

Both these bald assertions, *devoid of any substantiating detail*, are belied by the factual specificity of CJA's submissions, including its March 17th letter. Indeed, it is plain that the reason Mr. Kaufman's modified form letter addresses *none* of this substantiating detail is because he could not then pretend that Mr. Dember had committed no official misconduct. Were Mr. Kaufman to have confronted the facts and law before him – as was his duty as Mr. Dember's immediate superior -- he would have had to acknowledge the seriousness of Mr. Dember's misconduct, warranting discipline, including removal from office. He would also have had to acknowledge his duty to refer CJA's October 21, 1999 complaint to the Public Integrity Section of the Justice Department's Criminal Division for the investigation, prosecution, and intervention overwhelmingly warranted by its transmitted evidentiary proof of systemic governmental corruption, involving state and federal judges and the New York State Attorney General.

CJA's March 17th letter, which was addressed to Mr. Dember (Exhibit "A-1"), detailed his official misconduct in purporting to dispose of CJA's October 21, 1999 criminal complaint/intervention request – *without* addressing the threshold issue particularized therein (at pp. 2-3, 19-20) as to the conflict of interest of the office of the U.S. Attorney for the Southern District of New York, including his own conflict of interest. By reason of these conflicts, the October 21, 1999 complaint had specifically requested referral to the Public Integrity Section pursuant to the policy for "Recusals by United States Attorneys' Offices", set forth in the Public Integrity Section's Annual Report to Congress, as well as pursuant to 28 USC §528, "Disqualification of officers and employees of the Department of Justice" – the text of which was quoted at the outset of the complaint (at p. 3).

As to 28 USC §528, which requires the U.S. Attorney General to

"promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney's staff, from participation in a particular investigation or prosecution, if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office",

the March 17th letter highlighted that Mr. Dember had failed to supply CJA with the Attorney General's promulgated "rules and regulations", notwithstanding the

complaint (at p. 3, fn. 2) had specifically requested a copy.

For this reason CJA's March 17th letter demanded (at p. 2), in bold lettering, that Mr. Dember provide:

“the legal authority by which, *without denying or disputing that staff at the U.S. Attorney for the Southern District of New York, [himself] included, have personal and professional relationships with those involved in the systemic governmental corruption which is the subject of CJA's October 21, 1999 complaint, and without denying or disputing the relevance of the Justice Department's recusal policy and of 28 USC §528 – whose “rules and regulations” [he] did not supply -- he nonetheless purported to dispose of the complaint.*”

Mr. Dember did not respond to this demand for legal authority – reflective of the fact that *no such legal authority exists*. Indeed, it is entirely possible that Mr. Dember then attempted to conceal his lawless violation of conflict of interest rules by ignoring the March 17th letter's second bold-lettered demand that he **“forthwith transmit”** the complaint to Mr. Kaufman and then to you for your **“direct attention and corrective action”**. The express purpose of such transmittal was:

“So that [Mr. Dember's] superiors can see for themselves “the flagrant manner in which [he] not only disregarded the ‘appearance’ of [his] conflict of interest, but...then manifested [his] actual conflict of interest by [his] dishonest disposition of the October 21, 1999 complaint”

Indeed, CJA received no response to the March 17th letter (Exhibit “A-1”) – necessitating its April 24th letter to you (Exhibit “B-1”). That April 24th letter, which gave you the benefit of the doubt in assuming that you would have responded had you seen the March 17th letter, suggested that Mr. Dember and Mr. Kaufman may not have transmitted it to you.

The only response to CJA's April 24th letter has been from Mr. Kaufman: his April 26th letter (Exhibit “C”). Conspicuously, he does not state that he has been designated by you to respond. Nor does he clarify when, if at all, he and/or Mr. Dember provided you with CJA's March 17th letter and the substantiating materials.

Thus, it is entirely possible that Mr. Kaufman's misconduct in covering up for Mr. Dember includes, even now, his withholding from you these incriminating documents.

Obviously, unless Mr. Kaufman was able to confront the threshold issues raised by CJA's October 21, 1999 complaint and March 17th letter as to the conflict of interest of the U.S. Attorney's office – issues Mr. Dember had wilfully ignored – he could not purport to “clear” Mr. Dember of official misconduct without himself engaging in official misconduct. Yet, Mr. Kaufman does not address the conflict of interest and recusal issues in his April 24th letter, which omits these subjects entirely.

The fact that Mr. Kaufman -- as Mr. Dember before him -- does NOT deny or dispute that staff at the U.S. Attorney for the Southern District of New York enjoy personal and professional relationships with persons implicated by the corruption detailed by CJA's October 21, 1999 complaint, such as Michele Hirshman, a predecessor of Mr. Dember as Chief of the Public Corruption Unit¹, and Paul Shechtman, a predecessor of Mr. Kaufman as Chief of the Criminal Division², and does NOT deny or dispute the relevance of the Public Integrity Section's aforesaid policy for “Recusals by United States Attorneys' Offices” and 28 USC §528 must be deemed a concession that the U.S. Attorney for the Southern District has a conflict of interest, requiring recusal and referral.

Moreover, Mr. Kaufman's actual conflict of interest, like that of Mr. Dember, is reflected by his bald pretense that the October 21, 1999 complaint is not within the purview of the Public Corruption Unit of the U.S. Attorney's Office or of the Justice Department's Public Integrity Section. Such pretense contravenes their “particular jurisdiction”, identified on the very first page of CJA's October 21, 1999 complaint as having been conceded by Mr. Dember in a phone conversation before the complaint was filed, *to wit*,

“to investigate and prosecute state governmental corruption which,

¹ As reflected by fn. 1 of CJA's October 21, 1999 complaint (at p. 2), before filing the complaint, CJA asked Mr. Dember to identify whether Ms. Hirshman, in whom he had expressed complete confidence, was his direct predecessor as Chief of the Public Corruption Unit. He declined to answer that question then – and ever since, as likewise to specify the nature of his relationship with her.

² Mr. Kaufman has not identified whether Mr. Shechtman is his direct predecessor as Chief of the Criminal Division – or the nature of his relationship with him.

because it involves powerful officials and influential persons, is not investigated and prosecuted at the state level.”

Mr. Kaufman, like Mr. Dember, does not address this “particular jurisdiction” nor dispute that the evidentiary proof supporting CJA’s October 21, 1999 complaint establishes that:

“individuals at the highest echelons of New York State government have corrupted their offices, yet are wholly insulated from accountability either because of their own political power and influence or because of the power and influence of those with whom they have personal and professional ties.” (October 21, 1999 complaint, pp. 1-2)

Certainly, to the extent that Mr. Kaufman disagreed with CJA’s statements as to the jurisdiction of the U.S. Attorney’s Public Corruption Unit and of the Justice Department’s Public Integrity Section, the evidentiary proof before him of systemic state governmental corruption required, at very least, that he make referral to state bodies and public officers for investigation and prosecution. Such alternative was clear from CJA’s March 17th transmittal memorandum (Exhibit “A-2”) accompanying its March 17th letter (Exhibit “A-1”) – and from CJA’s April 24th transmittal memorandum (Exhibit “B-2”) accompanying its April 24th letter (Exhibit “B-1”). Each of these memoranda *specifically* demanded, in addition to or in lieu of referral to the Justice Department’s Public Integrity Section, that the U.S. Attorney for the Southern District of New York

“join[] in CJA’s requests to Chief Judge Kaye for appointment of a Special Inspector General and to Governor Pataki for appointment of a Special Investigator or investigative commission.”

That Mr. Kaufman did not see fit to have the U.S. Attorney’s office join in those requests – entitlement to which CJA particularized in its February 23rd letter to Governor Pataki and in its March 3rd and April 24th letters to Chief Judge Kaye – is only further evidence of the degree to which he acted not in furtherance of the public interest – as is his duty – but, unlawfully, in the interest of those implicated in the corruption detailed by CJA’s October 21, 1999 complaint with whom the U.S. Attorney’s office has personal and professional ties.

Finally, it must be noted that Mr. Kaufman’s bald claims that Mr. Dember engaged in “no official misconduct” and that CJA’s October 21, 1999 complaint/intervention

request did not warrant action by the U.S. Attorney's Office followed upon his bald claim that the Office had undertaken "careful review" of the March 17th and April 24th letters "as well as the other materials...provided...over the past several months". Likewise the falsity of this claim is readily exposed. ANY review -- let alone one that was "careful" -- would have disclosed to Mr. Kaufman that the Article 78 proceeding, *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) was NOT, as his April 26th letter states, "apparently pending in New York State Supreme Court in Manhattan". Rather, it had been "thrown" by a factually-fabricated, legally unsupported judicial decision, which CJA's resoundingly exposed as such in its February 23rd letter to the Governor (at pp. 14-29) calling for appointment of a special prosecutor or investigative commission. The U.S. Attorney received a copy of this letter under CJA's hand-delivered February 25th memorandum (Exhibit "D"), whose very first sentence reads:

"As predicted, the above-entitled Article 78 proceeding has become the third proceeding against the Commission on Judicial Conduct to be 'thrown' by a fraudulent judicial decision of the Supreme Court/New York County in the past five years."

It is this February 25th memorandum to which CJA's March 17th letter refers *in its very first sentence* (Exhibit "A-1").

The March 17th letter (at p. 3) also expressly refers to "post-decision correspondence", annexing an inventory of nine separate letters under that heading. Several of these letters were transmitted with CJA's March 17th letter, under CJA's accompanying March 17th memorandum (Exhibit "A-2"). This included not only CJA's March 3rd letter to the New York State Commission on Judicial Conduct, constituting a judicial misconduct complaint against Acting Supreme Court Justice William Wetzel for his fraudulent judicial decision "throwing" the Article 78 proceeding, but CJA's March 3rd letter to Chief Judge Kaye, highlighting that the proceeding was "thrown". This March 3rd letter to Chief Judge Kaye, calling upon her to appoint a special inspector general, is expressly identified in CJA's March 17th letter (Exhibit "A-1", at p. 3).

Likewise, CJA's April 24th letter (Exhibit "B-1") transmitted extensive post-decision correspondence under its accompanying April 24th memorandum (Exhibit "B-2") -- from which it would be impossible for anyone purporting to have undertaken a "careful review" to believe that *E.R. Sassower v. Commission* was

“apparently pending in New York State Supreme Court in Manhattan”.

On top of this, CJA sent the U.S. Attorney for the Southern District a copy of the Notice of Appeal and Pre-Argument Statement in *E. R. Sassower v. Commission*, dated March 23, 2000. For your convenience, a further copy, with its affidavit of service, are annexed hereto (Exhibit “E”).

Thus, Mr. Kaufman’s bald claim of “careful review” – part of the “boiler-plate” of the U.S. Attorney’s form response -- is as much a charade as his two other bald claims.

In view of the foregoing, CJA requests that you immediately undertake to *personally* review the flagrant official misconduct of Mr. Kaufman, covering up the equally flagrant official misconduct of Mr. Dember. Such review *must* examine:

- (1) their wilful and deliberate refusal to confront the conflict of interest issues, which CJA’s October 21, 1999 complaint particularized (at pp. 2-3, 19-20) with facts and law;
- (2) their wilful misrepresentation of the jurisdiction of the U.S. Attorney/Justice Department to investigate and prosecute the high-level, systemic governmental corruption here at issue, where the evidentiary proof transmitted in support of CJA’s October 21, 1999 complaint establishes that all avenues of state redress have been corrupted; and
- (3) their failure to refer CJA’s evidentiarily-established October 21, 1999 complaint of systemic governmental corruption to appropriate state agencies or public officers for investigation and prosecution.

CJA submits that by reason of the wilful and deliberate nature of the official misconduct of Mr. Kaufman and Mr. Dember – thwarting the public’s right to be free of the systemic governmental corruption evidentiarily established by the October 21, 1999 complaint/intervention request – and causing the public on-going and irreparable injury – your duty is to take firm disciplinary measures against them. This must include removing them from the important positions they hold, as no *objective* evaluation of their conduct herein can conclude other than that they are thoroughly unworthy of the public’s trust, which they have already shamelessly betrayed.

Obviously, to the extent that your personal and professional relationships with Mr. Kaufman and Mr. Dember interfere with your ability to discharge your supervisory duties, their misconduct – as likewise the systemic governmental corruption presented by CJA’s October 21, 1999 complaint/intervention request – must be referred to the Justice Department’s Public Integrity Section.

Yours for a quality judiciary
and government integrity,

Elena Ruth Sassower

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

Enclosures

- cc: Governor George Pataki
- Chief Judge Judith Kaye
- New York State Commission on Judicial Conduct
- New York State Attorney General
- Manhattan District Attorney
- New York State Ethics Commission
- U.S. Attorney for the Eastern District of New York
- Association of the Bar of the City of New York

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*Mary Jo White
US Attorney - SDNY
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